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Chapter 4

Exchange of Tax Information in the Post War Period in Ukraine

ABSTRACT

Due to Russia's brutal invasion, Ukraine's economy is being severely damaged and according to the World Bank's forecast, Ukraine's economy will contract by up 45% in 2022. Therefore, the visionary recovery plan should address all areas of state policy, including taxation. Transformation of the tax control system of Ukraine is required for the post war period. The risk-oriented approach should be strengthened, focus should be put on voluntary compliance improvement, and cooperative compliance should be introduced. This will made tax control measures more efficient, while contributing to the investment climate. This study aims to analyze the significance of the introduction of exchange of tax information in Ukraine in the post-war period focusing on the process of Ukraine's integration with the EU. The research methods include systematic and comparative analysis of scientific literature, deduction, induction, analysis, synthesis and systems approach. This study examined automatic exchange of tax information (AEOI) from the Ukrainian perspective – expectation for the legal framework, responsible and competent authorities, business processes functioning and application of Common Reporting standard, DAC2, DAC3 and DAC7. The study examined tax acts, their implementation status and how the challenge of AEOI should be addressed. The study results provide solutions for the effective use of the AEOI data, including risk assessment and control procedures. The results show that assurance of data quality is crucial at the stage of AEOI implementation.

Keywords: automatic exchange of tax information; Common Reporting Standard, tax control

International Exchange of Tax Information

Different tax administrations have asymmetric information about the taxpayers' incomes and assets, which often creates prerequisites for tax evasion in the countries of tax residency (Darmanti, Mangkan, 2020). Thus, Keen M. and Ligthart J. E. consider that the exchange of information between tax authorities is one of the most important measures to detect the threat of cross-border tax evasion (Keen, Ligthart, 2006). Kuznietsov K. V. proposed to apply new approaches to issues of cooperation between tax authorities, including automatic exchange of information (Kuznietsov, 2006).

Taxation is one of the key elements of a country's sovereign policy. However, independent countries may not sufficiently take into account the tax rules of other countries, so it leads to gaps and frictions in the regulation of tax rules, which further creates favorable opportunities for minimizing tax liabilities of taxpayers. It is obvious that countries must join their efforts in order to successfully fight against tax abuse.

The Organization for Economic Co-operation and Development (herein "OECD") is the main international body that regulates the rules of international taxation (OECD, 2022c). OECD activities in the field of taxation are focused on the following areas:

- improvement of tax administration, tax compliance and certainty;
- economic analysis and advice on tax policy;
- exchange of tax information and ensuring tax transparency;
- procedures for the settlement of international tax disputes;
- development of instructions for the application of bilateral Conventions on the avoidance of double taxation;
- development of transfer pricing (herein "TP") rules and recommendations for their application;
- study of problems of international tax evasion, identification of schemes of tax fraud, preparation of relevant recommendations;
- determination of the ways of countries' tax modernization systems in order to adapt to the new global financial and capital markets.

According to OECD assessment, the total loss of state budgets due to tax evasion is 10% of all income tax revenues (OECD, 2022c). The global economic crisis in 2008 encouraged the governments to look for ways to increase budget revenues and stimulate economic development. Therefore, the fight against profit shifting and tax base erosion has become very important.

The OECD developed the BEPS Extended Cooperation Program to comprehensively eliminate inconsistencies and gaps in international tax legislation. Its purpose is to create unified international tax rules to solve the problem of tax base erosion

and profit shifting, to protect tax bases, and to guarantee taxpayers a high level of tax certainty and predictability. In 2016, the OECD and the G20 countries developed the BEPS Plan – Action Plan on Base Erosion and Profit Shifting. It identifies 15 actions to eliminate gaps in international tax regulation that enable hiding of corporate profits and their artificial relocation to low-tax jurisdictions where companies do not carry out economic activities (OECD, 2022b).

Many scientists studied the history and prerequisites of the BEPS Plan development and analyzed its measures. Thus, Hernández González-Barreda P. A. examined historical prerequisites of the Plan development and emphasized the need for its renewal, which should be based on a deep analysis of the tax system structure, the tax base and tax jurisdictions rules regarding the principles of taxation source and residency (Hernández González-Barreda, 2018). American scientist Brauner J. noted that the BEPS Plan initiative could change the paradigm of international tax system by introducing a transition from competition between governments to cooperation within the framework of international tax regime and provided proposals to achieve this goal (Brauner, 2014).

The BEPS Plan initiatives became cornerstones in transformation of the modern international tax system. Table 1 shows the BEPS Plan Actions. The minimum standard of the BEPS Action Plan includes mandatory four steps.

Table 1. The BEPS Plan actions from the OECD

Action	Measures
1	Tax challenges of the digital economy
2	Neutralizing the effects of hybrid mismatch arrangements
3	Designing effective rules on controlled foreign companies (CFC) rules
4	Limit base erosion via interest deductions and other financial payments relates to excessive intra-group deductions
5	Countering harmful tax practices more effectively, taking into account transparency and essence principles
6	Preventing treaty abuse so as to address treaty-shopping resulting in double non-taxation
7	Preventing the artificial avoidance of permanent establishment status
8–10	Ensure that transfer-pricing outcomes are in line with value creation
	They respectively cover intangibles, risks and capital and other high-risk transactions
11	Methodologies to collect and analyze data

Action	Measures
12	Require taxpayers to disclose their aggressive tax-planning arrangements (mandatory disclosure) to enable countries to obtain early information on potentially aggressive or abusive tax planning schemes
13	Transfer-pricing documentation and country-by-country reporting (CBCR)
14	Increasing the efficiency of tax dispute settlement mechanisms
15	Development of a multilateral document to amend bilateral tax agreements to avoid double taxation

Note: The measures included in the minimum standard for the BEPS Plan implementation are highlighted.
Source: BEPS Actions by OECD (OCED, 2022b).

As of November 2021, over 135 countries and jurisdictions are implementing 15 Actions of the BEPS Plan to tackle tax avoidance and ensure more transparent tax environment (OECD, 2021j). On 1 January 2017, Ukraine joined the Enhanced Cooperation Program within the OECD and committed to implement the four minimum steps of the BEPS Action Plan (BEPSinUA; On making changes to the Tax Code of Ukraine for the purpose of implementing the Plan to combat the erosion of the tax base and the withdrawal of income from taxation). We believe the implementation of the BEPS Plan initiatives will allow Ukraine to prevent capital shifting and set equal and transparent conditions for businesses.

The implementation of the international exchange of tax information—exchange on request and automatic exchange—is also among the OECD initiatives. Transparency and exchange of information are the basis of global efforts aimed at combating aggressive tax planning activities of multinationals (Joshi et al., 2020).

The Global Forum on Transparency and Exchange of Information for Tax Purposes (hereinafter referred to as the Global Forum) is the international body that coordinates introduction and implementation of the international exchange of tax information and ensures its effectiveness. It was reorganized in September 2009 in order to accelerate and strengthen the exchange of tax information in response to the call of the G20 Leaders (OECD, 2021h). Today, 165 countries are equal members of the Global Forum (OECD, 2021a). Ukraine became a member of the Global Forum in 2013. The Global Forum is a leading international body that ensures the implementation of internationally agreed standards of transparency and information exchange in the tax area. The Global Forum also tries to establish unified rules for all states, including non-member countries.

To support an automatic exchange of information between tax administrations on Common Reporting Standard, Country-by-Country Reporting and Tax Rulings,

the OECD launched the IT-platform OECD Common Transmission System (herein the "CTS"), whose functionality was extended for other exchanges, including on--request and spontaneous exchanges (Olenzak, 2020).

Ukraine first declared its European integration direction of development in 1993 (Decree of the Verkhovna Rada of Ukraine On the Main Directions of Ukraine's Foreign Policy) (On the Main Directions of Ukraine's Foreign Policy № 3360-XII, 1993). This decision was consolidated in the Law of Ukraine On the Basics of Domestic and Foreign Policy No. 32411-VI dated 01 July 2010 (Law of Ukraine № 2469-VIII, 2018). Article 11 determines the "Ukraine's integration into the European political, economic, and legal areas with the aim of gaining membership in the European Union" (Law of Ukraine № 2469-VIII, 2018) as one of the main priorities in foreign policy. In fact, the intensification of adjusting domestic socio-economic processes to European standards began with the adoption of this law. The Association Agreement between Ukraine and the EU was signed and ratified in 2014 (Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part, 2014). In 2017, the Agreement between Ukraine and the European Community on the simplification of visa issuance was concluded and a visa-free regime with the EU was signed (*SchengenVisaNews*, 2017). The functioning of the Deep and Comprehensive Free Trade Area (DCFTA) between Ukraine and the EU began in 2016 (*Yevropeiska Pravda*, 2016). Cooperation takes place in many areas, including digitization and information society development.

Russia's aggression, the annexation and occupation of part of the territory in 2014 had a negative impact on Ukraine's significant progress towards European integration. Despite the hostilities in the eastern part of Ukraine, the Government continued to work on improving and adapting state institutions to EU rules and requirements. On 24 February 2022, the aggressor country began a full-scale military invasion of Ukraine's territory, which initiated the severance of diplomatic, trade and other relations with the aggressor state and strengthened cooperation with the European Union. In light of the Russian escalation, cooperation has increased primarily in the military sphere. However, as it is important to support the European integration strategy for Ukraine, some cooperation areas have been restored.

On 23 June 2022, the European Council granted candidate status to Ukraine, which marked the official first step toward eventual EU membership, beginning of the country's massive transformation, increased availability of financing and investments, and development of cooperation. The candidate status involves the fulfillment of a number of priority tasks, such as strengthening the fight against corruption and money laundering, carrying out the reform of the Constitutional Court of Ukraine, completing the judicial reform, adopting a number of important laws (the anti-oligarchic law, the law on media, changing the legislation on national minorities). In addition, the candidate status obliges Ukraine to harmonize legislation, including tax

law, with the legal framework of the EU. During the preparation of the Recovery Plan of Ukraine, which was presented and approved at the Ukraine Recovery Conference in Lugano, Switzerland (*Plan vidnovlennia Ukrainy*), an analysis of the EU regulatory legal acts on taxation, which must be implemented in order for Ukraine to become a member of the EU, was carried out (Annex 1) (*Priamuiemo Razom*, EU4PFM).

It is also necessary to change legislation, to build appropriate business processes in the government institutions, including the tax authorities, and provide necessary material and technical support. The EU membership does not imply any limitations on the state's autonomy in the tax policy implementation, however, mutual integration of tax authorities should be established according to the requirements of the Community. According to the EU practice, the tax authorities of the member states cooperate to exchange information, carry out joint control measures and facilitate the collection of debts owed to the state. In this aspect, the development of a legal and institutional framework for the automatic exchange of tax information (herein "AEOI") with EU member states is extremely important.

By advancing the OECD developments, the EU countries agreed to establish a procedure for the automatic exchange of information in the field of taxation between EU member states. In the EU, the exchange of tax information is regulated by Directive 2011/16/EU on administrative cooperation (herein «the DAC»), which provides the rules for spontaneous exchange, automatic exchange and exchange of tax information upon request (Council Directive 2011/16/EU on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC, 2011). The DAC establishes mechanisms for the participation of member state authorities in administrative investigations, mutual notification on tax rulings and exchange standardization. The DAC also provides for the designing of a secure IT system for the exchange of tax information. According to the DAC, the exchange of tax information between the competent authorities of the EU is carried out through a special joint protected IT platform CCN/CSI (Figure 1).

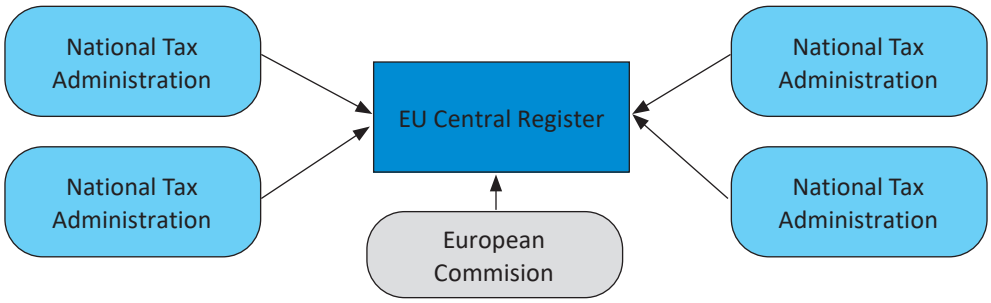

Figure 1. The process of automatic exchange of tax information in the EU according to DAC
Source: (Van Driessche, 2012).

The DAC has been amended six times through the adoption of other EU Directives, which provide the introduction of automatic exchange of certain categories of tax information:

– DAC1: introduces mandatory automatic exchange of tax information for five categories of income and capital (European Union. Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC);
– DAC2: extends the area of mandatory AEOI on financial accounts (Council Directive (EU) 2014/107 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation, 2014);
– DAC3: introduces mandatory AEOI for cross-border advance tax rulings and advance pricing agreements (Council Directive (EU) 2015/2376 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation, 2015);
– DAC4: introduces mandatory reporting of international groups of companies (Country by Country Report) and exchange of such reports (Council Directive (EU) 2016/881 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation, 2016);
– DAC5: provides tax authorities with access to beneficial ownership information collected under anti-money laundering legislation (Council Directive (EU) 2016/2258 amending Directive 2011/16/EU as regards access to anti-money-laundering information by tax authorities, 2016);
– DAC6: requires EU intermediaries to file information on Reportable Cross Border Arrangements to their home tax authorities (Council Directive (EU) 2018/822 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements, 2018);
– DAC7: provides for the exchange of information on the reporting of taxes by operators of digital platforms on the amounts of income paid to sellers who provide services or sell goods through the platforms (Council Directive (EU) 2021/514 amending Directive 2011/16/EU on administrative cooperation in the field of taxation, 2021).

Accordingly, Ukraine will implement automatic tax information exchange procedures that function in the EU by harmonizing domestic tax legislation with the above-listed Directives, and creating institutional and technical capabilities. In addition to preparations at the state level, businesses should also take appropriate measures.

The authors of the research have considered the issues of the BEPS Plan implementation in Ukraine, which provide for the exchange of tax information in the

context of Ukraine's European integration processes: the automatic exchange of tax information regarding tax decisions (rulings) that relate to favorable taxation conditions (BEPS Action 5) (OECD, 2015a) and exchange of information according to the Country-by-Country Reporting standard (BEPS Action 13) (OECD, 2015c). The subject of the study is also the OECD Standards implementation of the automatic exchange of information on financial accounts in Ukraine and reporting platform operators with respect to sellers.

Exchange According to the CRS/ DAC 2. Objectives and International Practice of CRS Implementation

In the years that followed the global economic crisis of 2008-2009, it became necessary to finance the deficits of the state budgets by state governments; at the same time, huge amounts of financial assets, either untaxed or derived from corruption, were hidden by wealthy individuals abroad. Taxpayers widely used opportunities to shift funds to low-tax or offshore jurisdictions and hid their funds from taxation by referring to bank secrecy.

For decades, tax havens have been used to hide money derived from corruption and provide an easy way to hide tax revenues for the elites of poor countries (Actionaid, 2013). Thus, Alstadsæter A., Johannesen N. Zucman G. consider that tax evasion contributes to income and wealth inequality, since very rich individuals carry out such activities (Alstadsæter, Niels, Zucman, 2019). It is estimated that more than eight percent of global household financial wealth remained unregistered in tax havens between 2001 and 2008, which corresponds to ten percent of total global GDP (Zucman, 2013). At the same time, according to experts, it is necessary to globally make additional investments in agriculture in the amount of 0.15 percent of the average world GDP in order to overcome hunger in the world for the time period from 2016 to 2030 (Schmidhuber, Bruinsma, 2011).

To overcome this problem, the G20 countries and the OECD platform initiated the introduction of the Common Standard on Reporting and Due Diligence for Financial Account Information (herein the "CRS") (OECD, 2014). The CRS provides for the automatic exchange of information between tax administrations of jurisdictions about financial accounts that were opened by a non-resident in another country. Thus, tax authorities receive information about the financial accounts of their tax residents in other countries and send data about non-residents to other countries.

The first automatic exchange of information on financial accounts was in September 2017 between 49 jurisdictions (OECD, 2022a).

According to the Global Forum 2021 report, 102 jurisdictions exchanged information on 75 million financial accounts with a total asset value of more than EUR nine trillion in 2020 (OECD, 2021f). Today, the exchange is carried out not only by OECD member countries, but also by most of the states that were considered offshore jurisdictions (OECD, 2022a). 120 tax jurisdictions have made a commitment to implement the exchange of information on financial accounts by 2024 (OECD, 2022a). Therefore, the introduction of the CRS Standard has increased tax transparency in the world.

It should be noted that the CRS Standard provisions are not applied in the USA and that country is not planning to join the exchange procedure (Bloomberg, 2017). However, the USA is the largest financial center for now, so the exchange of tax information according to the CRS would be more effective if all attractive tax jurisdictions joined it.

CRS implementation and effective automatic exchange of information on financial accounts should ensure:

– taxation of offshore assets in the jurisdiction of their owner's tax residence;
– protection of the tax base of the exchange participating countries;
– more opportunities for domestic revenue mobilization for developing countries.

According to the Global Forum, the implementation of the CRS exchange resulted in EUR 112 billion of additional revenues (tax, interest, penalties), thanks to voluntary declaration programs and similar initiatives and offshore investigations; more than EUR three billion of additional tax revenue was received through direct information as part of the exchange procedure (OECD, 2021f).

The implementation of the CRS exchange has led to a 20-25 percent reduction in bank deposits in the countries recognized as international financial centers, according to preliminary OECD data (OECD, 2019). Scientists consider this significant decrease as direct evidence that the automatic exchange of tax information on financial accounts improves compliance of tax legislation (O'Reilly, Ramírez, Stemmer, 2021).

Today, the exchange of tax information according to the CRS standard is one of the most effective measures against tax evasion and profit shifting. Knobel A. and Mainzer M. consider that the automatic exchange of information about financial accounts does not solve all the problems caused by bank secrecy, but is an important step in the fight against tax evasion, corruption and money laundering (Knobel, Meinzer, 2014).

Many scientists have studied the reasons and consequences of the CRS introduction. In particular, Highfield R. believed that the introduction of the Standard may provide the tax administrations with an opportunity to improve tax compliance within the country through easy access to information about the accounts of financial institutions of national and foreign residents (Highfield, 2017). Ahrens L.

and others (Ahrens et al., 2021) have investigated the impact of the introduction of automatic exchange of information on financial accounts on the tax policy of the countries' governments regarding the reduction of tax competition between jurisdictions. Casi L. and Nenadic S. studied the peculiarities of the national legislation of the countries that implemented the CRS standard and provided recommendations for countries' preparation for the CRS introduction (Casi et al., 2019). Niels J. and Zucman G. think the OECD initiative to share information about accounts was the reason to stop the practice of using bank secrecy in order to avoid paying taxes (Niels, Zucman, 2014). Knobel A., Mainzer M. studied the importance of introducing automatic exchange for developing countries (Knobel, Meinzer, 2014). Darmanti. R. M. and Mangkan D. highlighted the difficulties faced by jurisdictions when implementing the Standard (Darmanti, Mangkan, 2020).

The strategic goals of using the information received under the framework of the CRS exchange are:

– increasing voluntary tax compliance;
– disclosure of information about foreign assets and sources of income;
– reducing the possibility of using local financial institutions to avoid international taxation.

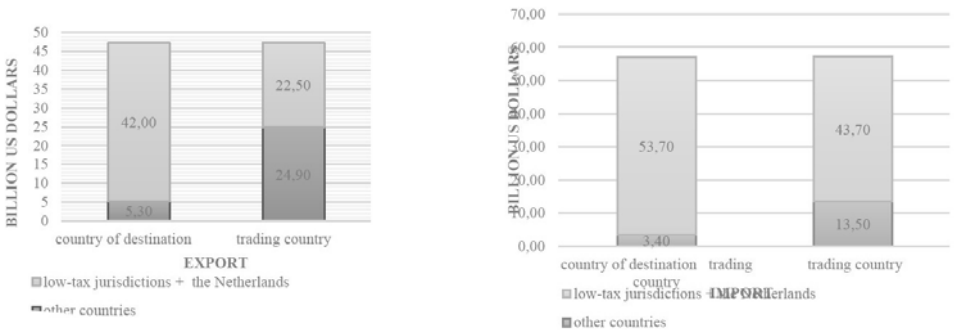

Figure 2. Structure of Ukrainian companies' payments under foreign economic contracts in 2018
Source: (Stepaniuk, Strynzha, 2019).

According to this source, two thirds of unsecured long-term loans raised by the non-financial sector of the Ukrainian economy were granted by non-resident companies registered in the Netherlands, Cyprus and the British Virgin Islands (Figure 3). Therefore, we consider that Ukrainian companies continue to widely use schemes for profit shifting.

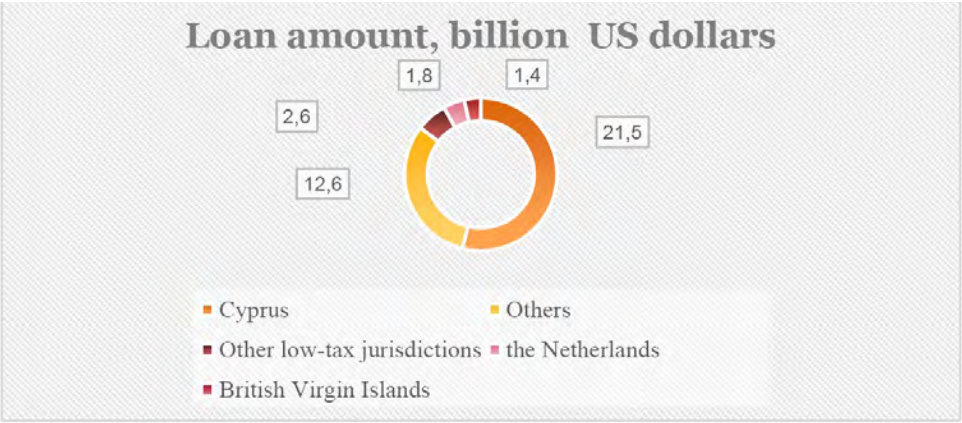

Figure 3. Amount of unsecured long-term loans, non-financial sector, in billion USD as of 1 April 2019
Source: (Stepaniuk, Strynzha, 2019).

Accordingly, it is important for Ukraine to introduce tools to find the funds moved offshore.

Rushchyshyn N. and Halko N. have proved the necessity of automatic exchange introduction of tax information in Ukraine (Rushchyshyn, Halko, 2016). They research the principles and current status of tax information exchange and emphasize the importance of regulation of this process by international organizations and legal instruments such as bilateral tax conventions based on the OECD and UN standard conventions on the avoidance of double taxation regarding taxes on income and capital; international instruments specially developed for the purposes of administrative mutual assistance in tax matters (Rushchyshyn, Halko, 2016). Kosse D. analyzed the implementation of the CRS Standard (Kosse, 2020). Halchynskyi A. S. (Halchynskyi, Haiets, 2004), Monaienko A. O. and Atamanchuk N. I. (Monaienko, Atamanchuk, 2022), Melnychenko R. V. (Melnychenko, 2020) and Gerasymenko N. M. (Gerasymenko, 2014) emphasized the importance of introduction of the automatic exchange of tax information in Ukraine.

The Ukrainian government started the CRS implementation in 2017. The preliminary roadmap for the CRS implementation in Ukraine was developed by specialists of the Ministry of Finance of Ukraine (herein the "MoF") in 2017 (AEOI CRS. Implementation guide, 2017).

In 2021, Ukraine undertook an international commitment to implement the CRS and exchange of tax information within the framework of this standard in 2023 for 2022 (Ministry of Finance of Ukraine, 2021). This commitment was reflected in the letter sent by the Government to the OECD Secretariat in August 2021. At the same

time, Russian aggression negatively affected the timing of the Standard introduction. Moreover, there may not be adequate opportunities for financial institutions to properly prepare for the Standard implementation under the martial law and there is a risk of ensuring adequate protection of information by the tax authorities. Due to the full-scale invasion of the country and the introduction of the martial law in Ukraine, the decision has been made to postpone the introduction of the CRS for one year.

However, despite the ongoing war, the Ukrainian government is continuing to work on important tax reforms. The implementation of the CRS Standard is provided for in the Recovery Plan of Ukraine, which was presented and approved at the Ukraine Recovery Conference, in Lugano, Switzerland, on 4-5 July 2022 (*Reliefweb*, 2022).

The CRS introduction is of particular importance now, as Ukraine is gaining the EU candidate status (*European Council Conclusions*, 2022). In particular, the EU Directive On Administrative Cooperation in the Field of Taxation 2011/16/EU (Council Directive 2011/16/EU on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC, 2011) corresponds with the provisions of the CRS. Enactment of the CRS law brings the Ukrainian tax legislation closer to the EU acquis in international administrative cooperation in the tax area: all Member States enacted CRS legislation in 2015. Therefore, Ukraine will be ready to implement European legislation in this area by building appropriate capacities within the State Tax Service of Ukraine (herein "the STS") and establishing exchange processes.

The experts consider that the CRS Standard introduction demonstrates a constant commitment to transparency and the fight against tax evasion and profit shifting, indicates a willingness to improve tax compliance at the national and international levels, and confirms the quality and capacity of the institutions (Highfield, 2017).

Researchers emphasize that the implementation of automatic exchange of tax information by developing countries is very important, because they are facing problems in the scope of providing revenues for their state budgets (Darmanti, Mangkan, 2020). Knobel A. and Mainzer M. believe that developing countries have additional obstacles in implementation of exchange procedures, as they have more needs for capacity development (Knobel, Meinzer, 2014). We consider that the post-war period in Ukraine may be more difficult and the government will have to overcome more serious challenges during the country's recovery. Therefore, it is important that the introduced exchange procedure meets the set goals and contributes to ensuring transparency and fair payment of taxes for the country's recovery from the consequences of the Russian aggression.

Today, it is crucial for Ukraine to accumulate budget revenues by implementing measures for broadening taxation base without increasing tax rates, in this case—revealing tax evasion and corruption schemes of wealthy individuals.

According to the Draft Law On Amendments to the Tax Code of Ukraine and some Legislative Acts of Ukraine Regarding the Implementation of the International Standard for the Automatic Exchange of Information on Financial Accounts (herein the Draft Law on the Implementation of CRS), the introduction of the CRS is planned for 1 July 2023, thus the financial institutions will submit their first reports in 2024 for 2023, and the first Ukraine's exchange will be in 2024 for 2023 (Figure 4).

Figure 4. Basic dates of CRS implementation in Ukraine
Source: (Draft Law On amendments to the Tax Code of Ukraine and some legislative acts of Ukraine regarding the implementation of the international standard of automatic exchange of information on financial accounts, 2022).

The OECD has developed and approved regulations and guidelines that make up an international framework regulating the exchange process under the CRS (Table 2).

Table 2. International legal acts regulating exchange under the CRS

International legal act	The content of the document
Model Competent Authority Agreement (MCAA CRS) Multilateral Agreement of Competent Authorities on Automatic Exchange of Information on Financial Accounts	• Provides an international legal framework for the automatic exchange of information according to the CRS standard • Is the legal basis for the CRS introduction at the national level
Common Standard on Reporting and Due Diligence for Financial Account Information (hereinafter referred to as CRS)	• Procedures for due diligence measures for financial accounts • Procedure for submitting reports on reportable accounts
The Commentaries on the Competent Authorities Multilateral Agreement and the CRS Standard	• Additional Guidelines on the application of the provisions of the Multilateral Agreement and the CRS Standard (they are an integral part of the Standard)

International legal act	The content of the document
Common Reporting Standard XML Schema	• Extensible Markup Language (XML) Accounts Payable Report Schema of reportable accounts, which allows to report information in a standardized manner using IT solutions and contains a data structure for storing and transmitting information electronically and in bulk
The CRS Implementation Handbook	• Explains the information that must be included in each CRS data element in order to submit the Report on Reportable Accounts

Source: (OECD, 2014; The CRS Multilateral Competent Authority Agreement; OECD, 2019a, 2018b).

The CRS is the main document that defines the rules for implementing the exchange procedure. The overview of the CRS is presented in Table 3.

Table 3. Analysis of the CRS structure

CRS Standard	The main provisions of the Chapter
Chapter I	List of information provided in the reports of financial institutions
Chapter II-VII	Rules for proper verification of financial accounts by financial institutions (due diligence procedure)
Chapter VIII	Definitions of the terms: „Financial Institutions," and their types, „Financial Accounts," and their types, „Excluded Accounts"
Chapter IX	Minimum requirements for compliance control of financial institutions by the tax authorities

Source: (OECD, 2014).

The OECD developed and approved the CRS Implementation Guidance, which is a practical handbook of the CRS implementation for tax administrations and financial institutions (OECD, 2018).

The Global Forum has also established an AEOI peer review mechanism to ensure the maintenance of exchange efficiency and monitoring of compliance with the Standard principles, as well as review of practice and improvement (Figure 5).

The Global Forum annually assesses the status of the implementation of the automatic exchange of tax information and its effectiveness, and publishes a report.

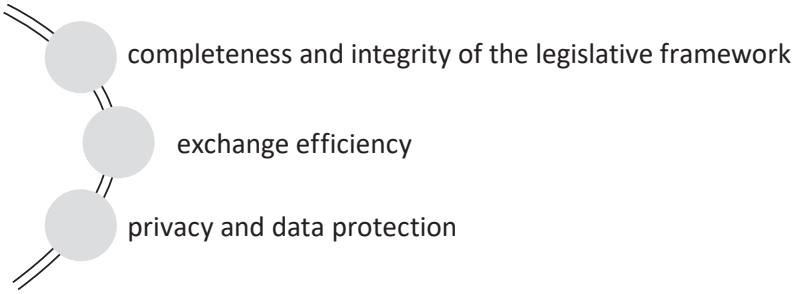

Figure 5. Global Forum expert assessment of the CRS implementation quality by jurisdictions
Source: (Global Forum annual reports).

During the implementation of CRS, there have been publicly voiced concerns that any data leakage could lead to problems with identity fraud and facilitate other criminal activities. Therefore, the OECD has developed a number of policies and procedures of information protection, and monitors their compliance.

The information transferred within the framework of the exchange procedure has a confidential status, it must be securely protected, and access must be strictly limited. The OECD has issued Guidance on protecting the confidentiality of information exchanged for tax purposes, which contains practical recommendations and a checklist on implementing procedures to ensure an adequate level of protection, taking into account the possibility of using different approaches by tax administrations (OECD, 2012). Another important document is the Confidentiality and Information Security Management Toolkit, issued by the Global Forum, which provides general guidelines for the implementation of legal and information security management (ISM) systems that ensure the confidentiality of information about taxpayers in accordance with the requirements of the CRS (OECD, 2020b).

At the same time, it should be noted that the EU countries have introduced high standards of personal data protection, which includes the information transmitted within the framework of the CRS exchange procedure. The document that regulates data protection measures is Regulation (EU) 2016/679, which Ukraine will implement in order to harmonize domestic legislation with the EU legal framework (Regulation (EU) 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (Official Journal of the European Union, 2016, 2016).

In the exchange practice, there was a precedent of data breach from the databases of Bulgaria's tax administration as a result of a hacker attack and publishing them in public domain. The data included information obtained as part of the exchange

procedure. Therefore, the countries continue to work on the strengthening information security together with the OECD (Bloomberg Tax, 2019).

Adoption of the domestic regulatory framework by the jurisdiction is a necessary prerequisite for an effective implementation of the CRS. The following legislative documents will be the legal basis for the introduction of the CRS in Ukraine:

1. Article 6 of the Convention on Mutual Administrative Assistance in Tax Matters "Automatic Exchange of Information" provides for the automatic exchange of tax information with other jurisdictions (OECD/Council of Europe, 2011; Convention on Mutual Administrative Assistance in Tax Matters; Law of Ukraine № 406-VII, 2013).
2. The Multilateral Agreement of the Competent Authorities on the Automatic Exchange of Information on Financial Accounts (herein the "MCAA CRS"), which will be the basis for the exchange and application of the CRS Standard (OECD). The agreement will be concluded on the basis of Article 6 of the Convention on Mutual Administrative Assistance in Tax Matters.
3. Provisions of the domestic national tax legislation regarding the implementation of requirements and procedures CRS.

On 16 April 2022, the MoF approved a new Procedure for Exchanging Tax Information with Competent Authorities of Foreign Countries (On the approval of the Procedure for exchanging tax information with the competent authorities of foreign countries № 118, 2022). The document defines that the STS is the authorized representative of the MoF and Ukraine's competent body for the exchanging tax information in accordance with the Convention on Mutual Administrative Assistance in Tax Matters and Ukraine's international treaties on the avoidance of double taxation.

The basis for signing the MCAA CRS is the norms of paragraph 53^{1} of subsection 10 of chapter XX of the Tax Code of Ukraine (herein the "TCU") (Tax Code of Ukraine № 2755 VI, 2010), which were introduced into the TCU by the adoption by the Ukrainian parliament of the Law of Ukraine On Amendments to the Tax Code of Ukraine and Other Legislative Acts of Ukraine on Ensuring Balanced Budget Revenues in 2021 (Law of Ukraine № 1914-IX, 2021). Ukraine signed the MCAA CRS that facilitates the multilateral automatic exchange of financial account information on 19 August 2022 (Ukraine joined the Multilateral Agreement of Competent Authorities on Automatic Exchange of Information on Financial Accounts), and notified the OECD Secretariat on that 2023 will be the first reporting period. Thus, it fulfilled one of the conditions for joining the procedure of the automatic exchange of tax information. Therefore, there is no need to sign individual bilateral international agreements. The STS is the competent authority for the purpose of exchange under the CRS and the MCAA CRS.

According to Ukrainian law, the CRS will be considered an integral part of the MCAA CRS and a basis of tax law. There will be changes to the TCU in order to implement the rules of the CRS Standard in Ukraine (Tax Code of Ukaraine № 2755 VI, 2010). For this purpose, the Draft Law on CRS Implementation (Proekt Zakonu Ukrainy Pro vnesennia zmin do Podatkovoho kodeksu Ukrainy…) has been developed, published for public discussion, approved by the Cabinet of Ministers of Ukraine and registered at the parliament. On 16 November 2022, the Draft Law No. 8131 was approved by the Ukrainian Parliament in the first reading, on 16 March 2023, it was approved in the second reading and on 28 April 2023, it became effective as the Law No. 2970-IX (Draft Law On amendments to the Tax Code of Ukraine and some legislative acts of Ukraine regarding the implementation of the international standard of automatic exchange of information on financial accounts, 2022). The provisions of the TCU will regulate the issue of compliance with the CRS rules (compliance) and the cooperation of financial institutions with the tax bodies. It should be noted that the aspects regulated in the Standard will not be directly transferred to the provisions of the tax law. The provisions of the TCU will directly refer to the Standard as the applicable document. The Procedure for the Application of the CRS, approved by the MoF Order, will define detailed rules for the Standard application. Thus, Ukraine is implementing the CRS using the "by reference" method. The official translation of the CRS is published on the official web portal of the STS, and translations of updated Standard editions will be published therein in the case of any changes to it.

In addition to changes to the TCU, the Draft Law on the Implementation of CRS will introduce an amendment to the Law of Ukraine On Banks and Banking Activity (Law of Ukraine y № 2121-III, 2000). According to these changes, banks will disclose bank secrecy to the tax authority to fulfill the requirements of the CRS. Thus, the legal regime of bank secrecy will be partially eliminated in Ukraine. However, it should be emphasized that for the purposes of the CRS, banks will disclose bank secrecy only in respect of accounts held by tax residents of other jurisdictions (non-residents). Some jurisdictions also oblige banks to provide information to tax administrations about their tax residents for the effective implementation of tax control. Such approach is applied in the Republic of Lithuania (Law on Tax Administration 2005-06-16 IX-2112, 2005).

Implementation of the CRS by the relevant jurisdiction and further administration of the information exchange process requires the state's and financial institutions' resources (human, financial and technical). Therefore, the Plan on implementation of the CRS in Ukraine envisages a number of a legislative, methodical and technical measures. They are presented in Table 4.

Table 4. Plan on implementation of the CRS in Ukraine

Date	Measures
September 2022	signing the MCAA CRS by the STS C
October 2022	sending a request to the Global Forum on the assessment of the maturity of security management systems
November 2022-March 2023	adoption of the Law on the CRS Implementation by the Ukrainian parliament;
May 2023	approval of the MoF Order on detailed requirements for financial institutions in regard to proper verification of financial accounts.
July 2023	launching the IT-solution of the tax administration through which the exchange will be carried out
December 2023	MoF Order approving other regulatory documents that will regulate the exchange process

Source: (Draft Law № 8131, 2022).

To ensure the successfully implementation of the CRS, the Standard requires a jurisdiction to adopt domestic law and introduce the following procedures:

i) prevention of practices intended to circumvent the reporting and due diligence procedures (anti-abuse provisions);
ii) requirements for the reporting financial institutions to keep records regarding the steps undertaken to comply with the CRS and collected evidences (record-keeping requirements);
iii) audit rules for reporting financial institutions in regard to compliance and due diligence procedures and further procedures regarding the including of undocumented accounts in reporting;
iv) ensure that non-reporting financial institutions and non-reporting accounts defined by the national regulatory framework have a low risk of tax evasion;
v) effective legal provisions of coercion regarding violations (OECD, 2014).

Therefore, Ukraine should develop a number of sub-legal acts and regulations, taking into account the peculiarities of the structure of the national tax legislation, and adopt amendments to the TCU in order to fulfill the CRS requirements. We believe the MoF should approve this secondary legislation to regulate the process of reporting financial accounts and control the compliance with the CRS.

Table 5 shows the list of sub-legislation that should be developed for the implementation of the international standard of automatic exchange of information on financial accounts.

Table 5. List of secondary legislation required for the CRS implementation in Ukraine

Sub-legal act	Content of the document
The form of the reporting accounts, the procedure for collecting and reporting	The form of the report, the rules for its filing and submission by financial institutions
The Procedure on the application of the due diligence procedures of financial accounts and other issues of the application of the CRS	• Rules of the CRS application for the due diligence of financial accounts by financial institution; • Details of definitions: Existing and New Accounts, dates of completion of due diligence; • Compliance requirements: (development of internal documents; documents to be requested from clients and kept); • Issues regarding which the Standard provides for the right to choose an approach; • List of Non Reporting Financial Institutions; • List of Excluded Accounts.
The procedure for monitoring the activities of financial institutions and surveys	Rules for the monitoring of financial institutions by the tax administration.
The procedure for conducting audits of financial institutions regarding their compliance with the CRS requirements and the imposing of penalties	Rules for conducting tax audits of financial institutions by the tax administration and imposing sanctions on financial institutions and account holders.
Procedure for registration and de-registration of financial institutions that are reportable financial institutions for the purposes of the CRS Multilateral Agreement and the CRS	Rules for accounting of financial agents at the tax authorities and forms of documents for accounting: • application form of a financial institution; • the form of notification of registration; • form of notification of refusal to be registered.
Notification and decision form for residents for charging penalties under the CRS (amendments to Order of the Ministry of Finance No. 1204 dated 28 December 2015)	The form of documents for the imposing of penalties for violations of the CRS rules.
The procedure for considering a non-resident's complaint against a tax notice to a non-resident for violation of CRS requirements	Rules for an appeal hearing of a non-resident's complaint.

Sub-legal act	Content of the document
Guidance for Financial Institutions on the Application of the CRS	Guidance for the financial institutions on due diligence of the financial accounts, implementation of the CRS procedures to collect information.

Source: developed by the authors.

In order to support tax reforms in Ukraine aimed at improving tax administration and implementation of European integration obligations, the EU provides material and technical assistance. It is provided under the framework of the EU Public Finance Management Support Programme for Ukraine (herein "the EU4PFM Programme") (*Priamuiemo Razom*, EU4PFM), which is implemented under the Financing Agreement No ENI/2017/040-426 73 between the Ukrainian government and the European commission dated 12 December 2018 (Agreement on financing of the program "Support of public financial management for Ukraine – EU4PFM,2022"), and approved by the order of the Cabinet of Ministers of Ukraine dated 5 December 2018 No. 958. The EU4PFM Programme started on 18 June 2019, and among its beneficiaries are the MoF and the STS. The total budget of the EU4PFM Programme is EUR 55 million. The priorities of the EU4PFM Programme are Ukraine's ability to collect taxes through improving the exchange of tax information with other countries and preventing tax evasion, and ongoing harmonization of tax legislation with the EU legal framework and best global practices.

Therefore, the EU4PFM Programme provides support for the implementation of the OECD standards for automatic exchange of information according to the CbC and CRS standards. The EU4PFM Programme includes the following measures:

– presentation of international experience and recommendations which were given by international experts in regard to the building of business processes within the tax administration, the application of IT -solutions, the use of information within the AEOI framework for tax control;
– recommendations on the AEOI implementation in Ukraine and support in the development of a road map for the AEOI implementation;
– methodological support provided for the development of the legal framework for the AEOI implementation;
– preparation of the functional requirements for the development and implementation of the CbC/CRS IT Subsystem for the AEOI;
– funding, procurement and development of the IT subsystem "Automatic exchange of tax information under CbC Standart/CRS" as a component of the IT-System "International automatic exchange of information" (*Priamuiemo Razom*, EU4PFM).

According to the STS reports, the IT subsystem "Automatic exchange of tax information under the CbC Srandart/CRS" is being developed now; its functions include a direct verification of reports received from financial institutions, the formation of packages for exchange with the jurisdictions-participants, and the direct implementation of the exchange through the OECD CTS platform (Common Transmission System). This technical solution will be implemented in July 2023. However, in addition to the development of this IT system, it is also necessary to implement additional IT measures:

– improvement of the STS IT systems and databases to ensure the registration of financial institutions for the purposes of the CRS and administration of the data register of the financial institutions;
– modernization of the STS IT Systems to provide the functionality for submitting reports on reportable accounts for the CRS.

Besides the adoption of the legislative framework and deployment of IT solutions for the exchange, to ensure that the CRS is implemented, the STS needs to design new business processes (for the collection, processing, transmission and receipt of the data and application of the obtained information for the tax control purposes). In addition, it is crucial to determine the STS departments responsible for the following functions:

1) conducting audits of financial institutions in regard to their compliance with the requirements of the due diligence procedures and the submission of the CRS reporting, analysis and monitoring of compliance by financial institutions with the CRS regulations;
2) communication with financial institutions on the CRS application, including seminars, meetings, trainings and publications of the communication materials;
3) support of preparation and submission of the reporting on the reportable accounts by the financial institutions;
4) carrying out a desk audit of reporting accounts for compliance with the requirements of the CRS identifying violations when preparing reports, communication with financial agents regarding identified violations;
5) institutions of the financial institutions that have not submitted the reports on reportable accounts, ensuring the preparation of reports by all financial institutions to which the CRS requirements apply;
6) monitoring of financial institutions, identification and assessment of the CRS risks;
7) sending reports to the CRS partner jurisdictions, receiving data packages from CRS partner jurisdictions;
8) identification of data received from the CRS partner jurisdictions (identification taxpayers' data);

9) information support for the exchange of information with the CRS partner jurisdictions (communication with the competent authorities of other CRS partner jurisdictions, analysis of errors in obtained data and reports on reportable g accounts submitted the financial institutions);
10) IT support of the process of receiving reporting accounts from financial agents, sending them to jurisdictions-partners for automatic information exchange and receiving data within the framework of the AEOI procedure according to the CRS;
11) administration of the databases, software, servers and processes of the application of the Common Transmission System (ensuring data protection and confidentiality);
12) usage of CRS data for the effective tax control measures, their integration into the comprehensive tax risk management system;
13) audit inspections of financial institutions.

Therefore, despite the war challenges, the Ukrainian government is actively working on the CRS introduction. The Standard implementation is carried out according to the approved Plan.

CRS Exchange Procedure

In accordance with the Standard, financial institutions annually report to their tax authorities in regard to financial accounts held by foreign tax residents or in some cases legal entities controlled by foreign tax residents.

The tax administration receives the data from the financial institutions, carries out their preliminary verification, systematizes, prepares separate reporting files for each of the countries participating in the exchange and sends them to the relevant jurisdictions.

The tax authority receives similar reporting documents about the balances on the financial accounts of domestic tax residents from the foreign countries. The process of automatic exchange of information about financial accounts according the CRS is shown in Figure 6.

According to the provisions of the CRS, tax authorities receive information from the financial institutions annually by 1 July. They exchange this information with the tax authorities of each CRS jurisdiction in which the account holder is a resident by the end of September of a calendar year. In addition to the initial exchange, jurisdictions may exchange corrective statements when financial institutions report corrected information in the form of correction statements.

Such reports are sent when inaccuracies are identified by the financial institutions agents or when requested by a foreign jurisdiction that received the information and identified the inaccuracies. It should be noted that the process of providing feedback on the data quality and integrity received by the partner jurisdiction, addressing the need for corrections and further assessment of the completeness of their implementation at the international level is not regulated and is carried out by the tax authorities of various countries in any form.

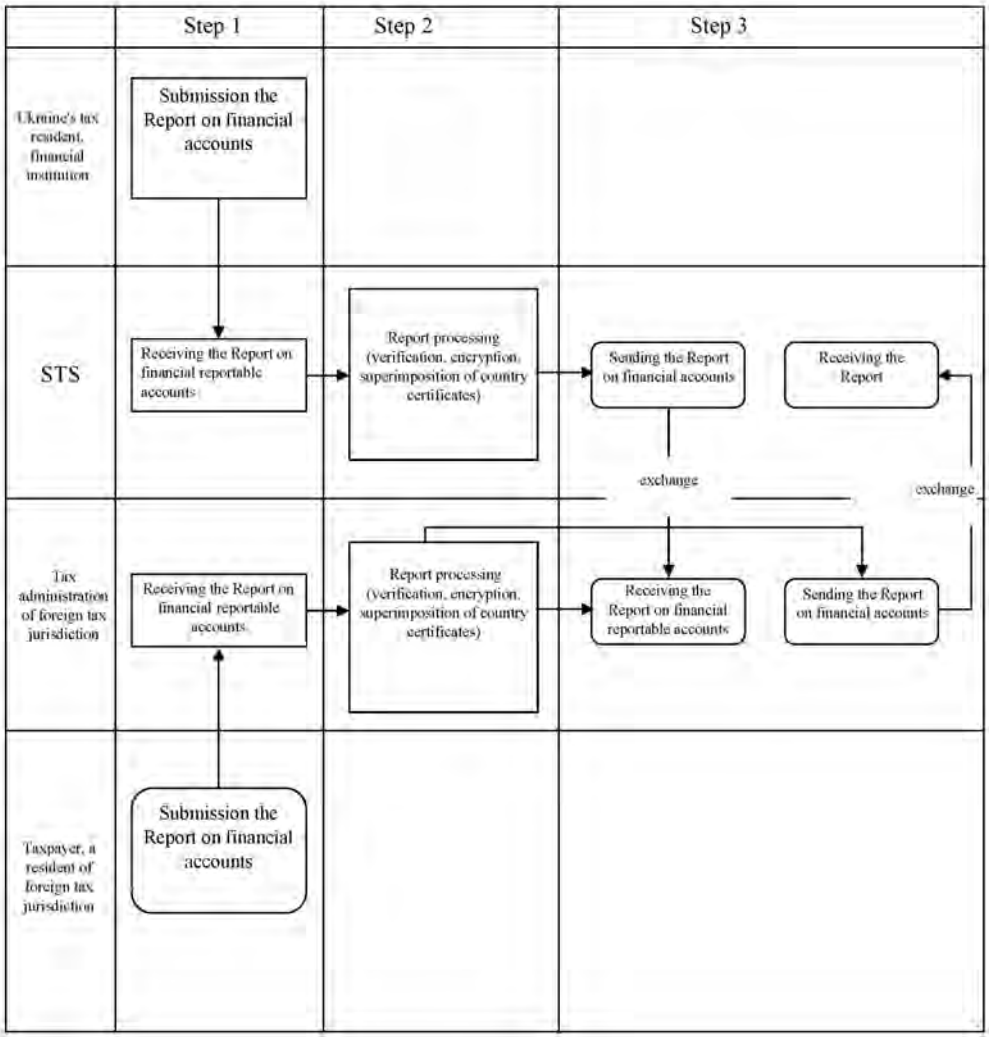

Figure 6. The process of automatic exchange of tax information according to the CRS
Source: developed by the authors.

Tax authorities of the jurisdictions participating in the exchange must collect information from relevant financial institutions on all specified types of financial accounts of residents of other jurisdictions participating in the CRS exchange. There are only certain financial institutions and accounts that pose a low risk for tax evasion (government agencies, public pension funds, inactive accounts, etc.).

Therefore, the rules for financial institutions are applied to a specially defined market segment, the CRS financial institutions. Table 6 shows types of financial institutions according to the CRS.

Table 6. Types of financial institutions according to the CRS

Type of financial institution	Category
Depository Institution	• any entity that accepts deposits in the ordinary course of a banking or similar business; • commercial banks, credit unions, building partnerships, loan associations, etc.
Custodial Institution	• financial institutions that obtained the license to carry on deposit-taking; • an entity holds financial assets for the account of others as a substantial portion of its business if the entity's gross income attributable to the holding of financial assets and related financial services equals or exceeds 20% of the entity's gross income; • custodian banks, nominal owners, trust companies, certain brokers, central securities depositories.
Investment Entity	• Type A: An entity that conducts certain activities for or on behalf of clients (trading in financial instruments; individual and collective portfolio management; or otherwise investing, administering or managing funds or money on behalf of others), e.g., brokers, investment managers/consultants, etc.; • Type B: An entity that receives gross income from investing or trading financial assets and is managed by a financial institution (invests for its own account, as a CIV on behalf of members or as a trust on behalf of beneficiaries): listed/unlisted investment funds, private equity funds, funds of venture capital, professionally managed trusts, joint investment institutions.

Type of financial institution	Category
Specified Insurance Company	• an entity that is an insurance company or the holding company of an insurance company that issues or is obligated to make payments with respect to, a cash value insurance contract or an annuity contract (i.e., an insurance contract with an investment component); • generally, does not include insurance companies that provide only general or term life insurance or reinsurance companies that provide only contracts.

Source: (OECD, 2014).

According to the CRS, there are two categories of financial institutions:

1) Reporting Financial Institutions (institutions that do not meet the criteria of a reporting financial institution);
2) Non-Reporting Financial Institutions to which CRS rules do not apply. The criteria for such institutions are described in Section VIII of the CRS. The Ministry of Finance of Ukraine will approve the list of non-reporting financial institutions by special Order.

A financial institution should follow the CRS provisions to determine whether it meets the requirements of a reporting financial institution. When a financial institution is defined as a "reporting financial institution" for the purposes of the CRS Multilateral Agreement, it must be registered with the STS. According to the Draft Law on the CRS implementation, financial institutions that meet the criteria of a reporting financial institution will have to submit an application for registration to the tax authority during 2023 (the first year of the CRS implementation in Ukraine), and in subsequent years within 60 calendar days after obtaining such a status. If a financial institution loses its reporting status, it must deregister. The procedure for registration and deregistration will be determined by a separate bylaw of the Ministry of Finance.

The Law will require to register reporting financial institutions with the Ukraine's tax authority, in order to establish proper tax control and determine a complete list of reporting financial institutions. There are different approaches of the tax administrations in international practice, as in some countries requirements for separate registration of financial institutions are not applied. At the same time, all tax authorities are developing methodical approaches for formation a domestic list of reporting financial institutions and identification of organizations that avoid CRS

compliance. To form a list of reporting financial institutions, tax authorities can use different sources of information:

(i) their own sources—registers, databases, submitted tax reporting;
(ii) registers of the National Bank, the National Securities Market Commission, authorities that regulate insurance and pension funds, capital markets, financial services and markets; authorities of financial supervision and supervision of credit unions;
(iii) non-regulatory lists (representative associations)—representative authorities of associations of funds; insurance associations; associations of banks; asset management associations;
(iv) entities that are required to provide FATCA reporting—FATCA FFI list (legal entities registered with the IRS to obtain a GIIN); annual FATCA reporting.

Reporting financial institutions must annually report financial accounts to the tax authority and carry out due diligence procedures in accordance with the CRS requirements. If the Reporting financial institution doesn't maintain the accounts that must be included in the reporting, it is obliged to prepare blank reporting in accordance with the Standard requirements. For example, when a bank does not have any reportable accounts under the CRS, the bank must file a report that does not contain account information. The classification of financial institutions according to the CRS is shown in Figure 7.

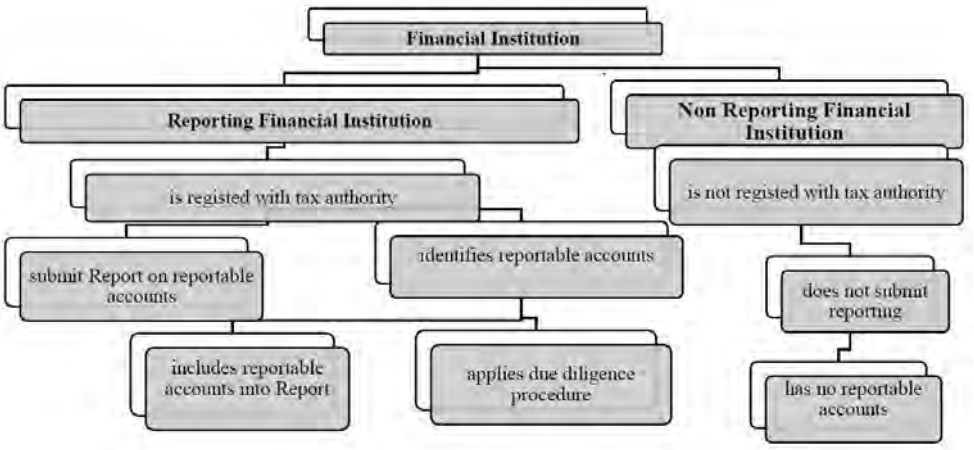

Figure 7. Classification of financial institutions according to CRS
Source: developed by the authors.

Reporting financial institution must assess the financial accounts, identify the reportable accounts, apply a comprehensive review procedure, and submit annual reports.

The list of non-reporting financial institutions will be approved by the Ministry of Finance of Ukraine in accordance with the CRS requirements. Accordingly, non-reporting financial institutions are financial institutions that are included in the list. A non-reporting financial institution should not be registered with the STS, it is not obliged to carry out due diligence procedure and prepare reports.

The information that financial institutions should report to the tax authority must contain the identification data of the account holder (including the taxpayer identifying number in a jurisdiction of tax residence), the account balance at the end of the calendar year, and—for certain types of accounts—payments received during the calendar year from account's holder (dividends or similar income payments) and other reportable information under the CRS. Table 7 shows the information to be exchanged according to the CRS Standard.

Table 7. Information to be exchanged according to the CRS

Type of Data	Details
Non-resident	1. account holder's name; 2. address; 3. tax residency; 4. tax number; 5. date and place of birth.
Financial institution	The name and the identifying number of financial institution
Account	1. Account balance at the end of the reporting period; 2. Account balance on the account closing date; 3. For deposit accounts: interest paid; 4. For custodial accounts: interest, dividends, other income and gross income paid; 5. For other accounts: gross amounts paid; 6. Controlling persons—their share of income and value of assets/balance sheet; 7. Income and turnover per account (depends on the type).

Source: (OECD, 2014).

Based on the analysis in Table 7, it should be noted that the tax number of the account holder, a non-resident in the jurisdiction of his or her tax residence, plays an important role in collecting information for the purposes of reporting under the CRS. This information will ensure the identification of the owner of the financial account at all stages of the exchange according to the CRS. Financial institutions will send information to the tax administration annually as the reporting, the form of report and procedure of its preparation will be approved by the MoF.

The term "Account Holder" means a person identified as the holder of a financial account by a financial institution that maintains the account. A person that is not a financial institution and holds a financial account in the interest or benefit of another person as an agent, custodian, trustee, signatory, investment adviser or intermediary, is not considered as a person that holds such an account for purposes of the CRS, and the other person is considered the owner of the account (OECD, 2014). According to the CRS, financial accounts (opened in financial institutions by tax residents of other jurisdictions) are divided into the following types:

– reportable financial accounts (they must be reported to the tax authority);
– excluded accounts (the list will be approved by the MoF).

A reporting financial institution must perform due diligence procedures of financial accounts to identify whether any of them are reportable accounts. Knobel A. and Mainzer M. argue that there are many loopholes and exceptions in the procedure of the special inspection, thereby unscrupulous financial institutions and holders of reporting financial accounts may take advantage of these gaps. These procedures should be revised and eliminated (Knobel, Meinzer, 2014).

To determine the type of financial account of the reporting financial institution, the account holder must provide the following documents:

1) CRS self-certification;
2) other information or necessary documents for the review of financial accounts.

In order to carry out due diligence procedures, a reporting financial institution may use information provided by account holders under the law on prevention and countermeasures against money laundering.

The reporting financial institution must obtain a self-certification of the tax residency status of the account holder or its controlling persons when it opens new financial accounts. The aim of this document is to determine the tax residency (country or territory) of the account holder or its controlling persons (herein "self-certification"). The account holder fills out this document upon opening the account. The account holder is responsible for the information provided in self--certification. The CRS Implementation Draft Law provides for transitional provisions of self-certification by financial account holders for the accounts opened on the CRS implementation date. Account holders are obliged to inform the financial institution of any changes in tax residency status or any changes in the status of their controlling persons within ten working days.

When the reporting financial institution identifies that the self-certification is incorrect or unreliable, it must obtain a valid self-certification. The reporting financial institution cannot use the self-certification or other information provided by the account holder if there are doubts about the authenticity of the data provided.

The reporting financial institution must not open a financial account or provide financial services if the account holder:

a) has not provided information for due diligence procedures;
b) has not provided a response to a financial institution's request;
c) has provided incorrect information.

The main advantage of the exchange procedure is a reliable due diligence system, because a coordinated verification of the tax resident status of financial investors for the purposes of international reporting is carried out for the first time.

During due diligence, a reporting financial institution should identify reporting financial accounts according to the following algorithm (Figure 8).

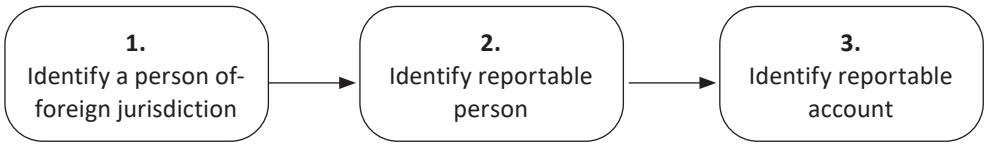

Figure 8. Algorithm for determining a reporting financial account
Source: developed by the authors.

According to the algorithm provided in Figure 8, at the first stage of the analysis of the financial account, the reporting financial institution must determine the person of the foreign jurisdiction, the reporting person and the reporting account. The analysis of these concepts is shown in Table 8.

Table 8. Basic Definitions

Definition	Meaning of the definition
Entity	A legal person or a legal arrangement such as a corporation, partnership, trust or foundation.
Reportable Jurisdiction Person	The term "Person of Reportable Jurisdiction" means an individual or Entity that is resident in a Reportable Jurisdiction under the tax laws of such jurisdiction, or an estate of a decedent that was a resident of a Reportable Jurisdiction.
Reportable Person	The term "Reportable Person" means a Reportable Jurisdiction Person other than: (i) a corporation whose stock is regularly traded on one or more established securities markets; (ii) any corporation that is a Related Entity of a corporation described in clause (i); (iii) a Governmental Entity; (iv) an International Organization; (v) a Central Bank; or (vi) a Financial Institution.

Definition	Meaning of the definition
Reportable Account	The term "Reportable Account" means an account held by one or more Reportable Persons or by a Passive NFE with one or more Controlling Persons that are Reportable Persons.
Controlling Persons	Means natural persons who exercise control over the Entity. In the case of a trust, the term "Controlling Persons" means the settlor(s), the trustee(s), the protector(s) (if any), the beneficiary(ies) or class(es) of beneficiaries, and any other natural person(s) exercising ultimate effective control over the trust.

Source: (OECD, 2014).

Ukraine implements the Standard by applying a "broader approach," which means that reporting financial institutions are obliged to submit data on all reporting accounts held by tax residents of other jurisdictions, regardless of whether the jurisdiction is an exchange partner or not. This approach is simpler for financial institutions and requires less administrative and financial resources to support it. Therefore, the STS will receive data on all accountable accounts of tax non-residents, but send information only to jurisdictions that will be the exchange partners, i.e., which are defined in the published list.

Controlling persons of a passive non-financial Entity may be owners of a reportable account (Table 8). To define a Passive Non-Financial Entity (herein the "NFE"), the CRS provides the following rules:

1) the term "Non-Financial Entities" means any organization that is not a financial institution;
2) NFEs are divided into active and passive;
3) NFE is passive if it does not meet the characteristics of an active NFE;
4) if the NFE is "passive," it is necessary to determine the tax status of its Controlling Person (CP) (Figure 9).

The CRS standard defines the following characteristics of an active Non-Financial Entity:

– passive incomes make up less than 50% of gross income and assets that generate passive incomes are less than 50% of all assets of the NFE for the previous calendar year;
– public companies;
– non-profit, governmental and international organizations;
– newly created NFEs (within 24 months after registration) that do not plan to provide financial services;
– NFEs that were not Financial Entities during the last five years and are in the process of reorganization (liquidation) (OECD, 2014).

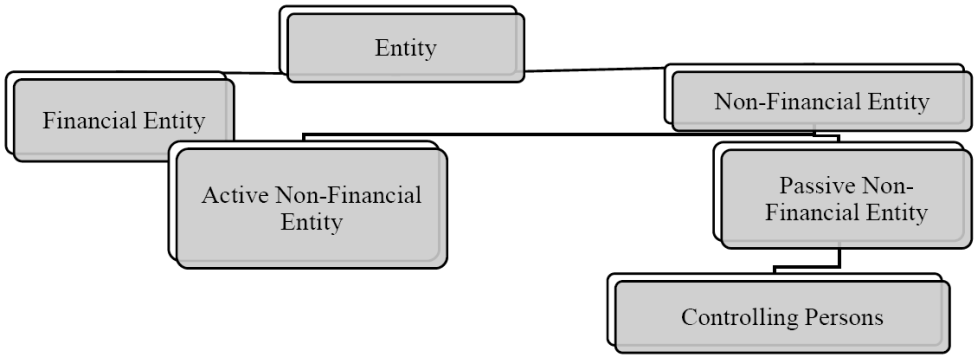

Figure 9. Identification of Passive Non-Financial Entity according to the CRS
Source: (OECD, 2014).

Passive financial entities are often used to avoid taxes. The CRS defines the following characteristics of passive financial institutions:

a) economic entities with ≥50% of their assets generate passive income (dividends, interest, rent, etc.);
b) type B investment entities located in non-participating jurisdictions;
c) public organizations (and related organizations), state institutions, etc. (OECD, 2014).

Investment organizations of type B include organizations whose gross income relates to investment, reinvestment or trading of Financial Assets, and which are under the management of another Organization (Depository Institution, Custodial Institution, Designated Insurance Company or Investment Company).

The CRS define the following holders of reportable accounts (as shown in Figure 10).

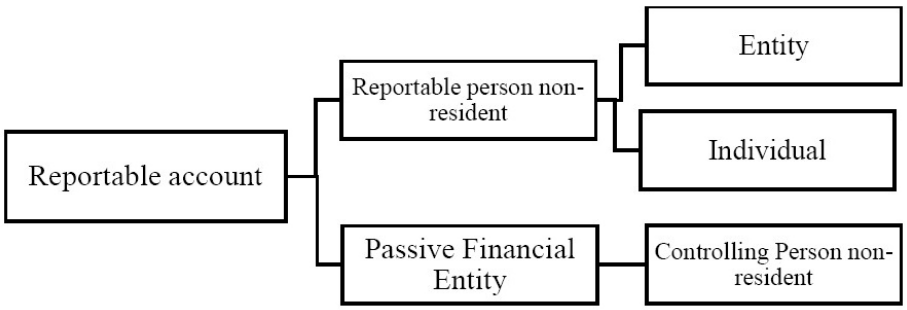

Figure 10. Holders of Reportable Accounts
Source: (OECD, 2014).

Financial institutions must define two basic categories of reportable accounts in the first year of CRS implementation:

– existing accounts (opened in financial institutions on the effective date of CRS legislation);
– new accounts (opened in financial institutions after the date of implementation of automatic exchange of tax information on financial accounts).

Participating jurisdiction that starts in CRS should also implement a one-time mechanism for obtaining and sharing information about pre-existing financial accounts, i.e., develop rules for financial institutions to conduct due diligence procedure and on including the reportable accounts into the reporting.

The CRS identifies three types of financial accounts. The Draft Law on the Implementation of the CRS establishes the step-by-step application of verification procedures and inclusion in the Report on Reportable Financial Accounts such accounts as:

i. High value accounts (the balance or value of the accounts exceeds USD 1,000,000);
ii. Low value accounts (the balance or value of the accounts is less than USD 1,000,000);
iii. Entity accounts (the balance or value of the accounts exceeds USD 250,000).

Figure 11 shows the classification of the financial accounts that is based on the analysis of the CRS and the Draft Law of Ukraine on the Implementation of the CRS.

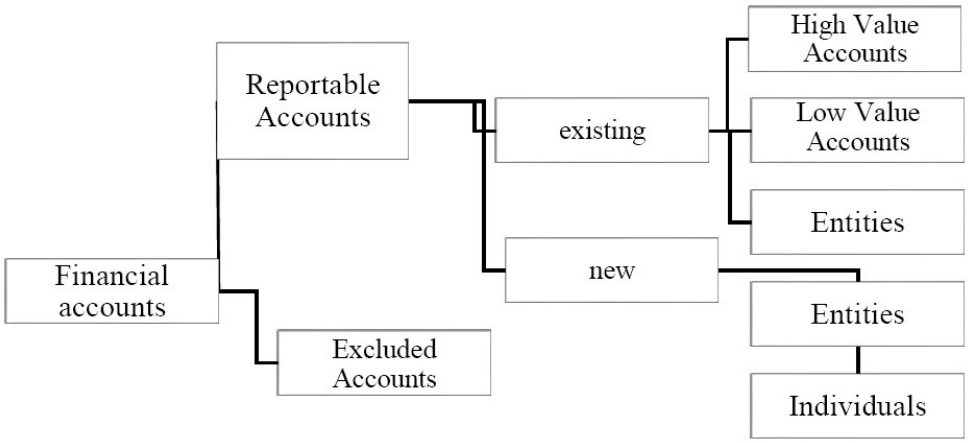

Figure 11. The classification of the non-residents' financial accounts according to the CRS
Source: (OECD, 2014).

Table 9 shows the aspects of the application of the CRS rules in regard to reportable accounts, and the verification deadlines and reporting.

Table 9. Types of reportable financial accounts and the aspects of the application of CRS rules

Accounts			Intended Dates			
			Deadline for due diligence	Reporting Period	Deadline for reporting	Deadline for Information Exchange
Existing Accounts opened as of 31 December 2022	Individual High Value Accounts	the balance or value of the accounts exceeds USD 1,000,000	31 December 2023	2023	1 July 2024	30 September 2024
	Individual Low Value Accounts	the balance or value of the accounts is less USD 1,000,000	31 December 2024	2024	1 July 2025	30 September 2025
	Entity Accounts	the balance or value of the Entity accounts exceeds USD 250,000	31 December 2024	2024	1 July 2025	30 September 2025
New Accounts (opened since 01 January 2023)			1 December 2023	2023	1 July 2024	30 September 2024

Source: summarized and adapted by the authors based on Draft Law of Ukraine № 8131, 2022.

Based on the analysis of the information provided in Table 9, it should be emphasized that the CRS rules will be applied for the Entity accounts of institutions when their value exceeds USD 250,000.

At the same time, a number of methodological issues may arise during the implementation of the planned stages. It is important to clarify the issue how Investment Funds will conduct due diligence on existing accounts, as fund managers are not required to collect any data on account holders in accordance with the current legislation. The register of investors will be the only available information for them on December 31, 2022. The register of investors (or the "register of holders of securities") is prepared at the request of the central depository on a certain date and contains information of each investor, the number of securities he owns and the

custodian's name (RFI in accordance with the CRS). Information about the owners will not be available to the fund manager. It is advisable to oblige custodians to provide the necessary information to fund managers.

Investment Entities do not have direct contact with investors and they do not see the overall ownership's structure. And now the open question is whether Investment Entities may carry out due diligence procedures for new accounts (opened on or after 1 January 2023).

To ensure compliance with the requirements of tax legislation in accordance with the CRS, financial institutions must complete the following steps of preparation (Table 10).

Table 10. The steps to be taken by financial institutions to implement the CRS

Date	Measures
By 30 June 2023	• It is necessary to define whether the institution meets the criteria of the reportable Financial Institution.
From 1 July 2023	• Apply due diligence rules when opening New Accounts; • Require self-assessment CRS (self-certification) documents from clients; • Integrate the collection of new documents into AML procedures; • Refuse to open accounts or conclude contracts with clients who do not provide CRS self-assessment documents.
during the first year of application of the CRS rules	• Register as a Reportable Financial Institution with the STS, fill a special form and send it automatically to the tax authority; • Develop an internal document (policy) on CRS compliance issues; • Describe the system of internal control over employees' fulfillment of CRS requirements; • Determine the duties of compliance managers; • Determine the approach to the due diligence rule; • Develop a procedure for using information when implementing the rule of due comprehensive verification; • Modernize IT systems to ensure compliance with CRS requirements (reception, storage of self-assessment documents, accounting of accountable accounts and reporting).
By 1 July 2024	• Submit Report on Reportable Accounts to tax administration for 2023.

Source: developed by the authors based on Draft Law of Ukraine № 8131, 2022.

For the due diligence procedures when opening New Accounts, the authors suggest to apply an algorithm provided in Annex 2.

It is important to note that financial institutions should ensure the storage of self-certification and other documents related to reportable financial accounts for five years from the day following the deadline for reporting on reportable accounts (1,825 days). For example, the documents relating to all accounts included in the preparation of statements for 2024 will need to be kept for five years after 1 July 2025 (e.g., 1 July 2030).

Tax Control

The CRS requires effective tax control over compliance by financial institutions and account holders with CRS rules and implements a fair system of penalties in case of violations (Figure 12).

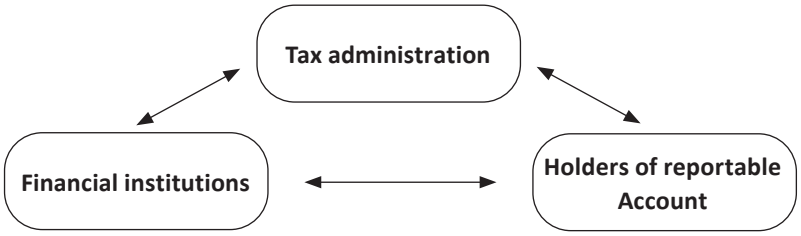

Figure 12. CRS Tax control
Source: developed by the authors.

The draft Law on the Implementation of the CRS provides for the following forms of tax control of financial institutions concerning their CRS compliance:

– desk audit of the reporting;
– monitoring and survey of financial institutions;
– unscheduled tax audit concerning the CRS issues;
– including the issue of compliance with the CRS in a scheduled tax audit of institutions that are or may be potential financial institution (Draft Law of Ukraine № 8131, 2022) (Figure 13).

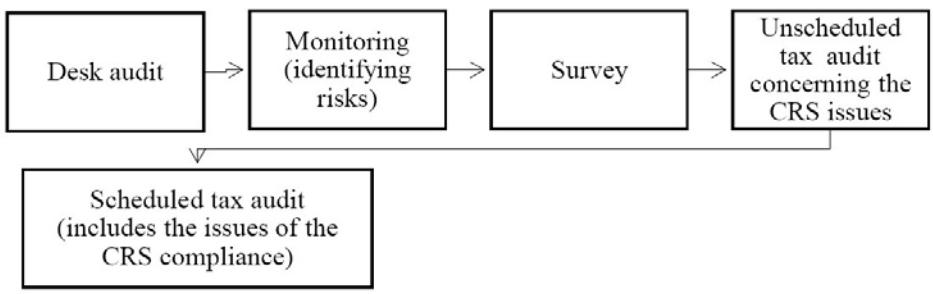

Figure 13. Forms of tax control of CRS compliance in financial institutions
Source: (Draft Law of Ukraine № 8131, 2022).

According to the Draft Law on the CRS implementation, the STS will conduct desk audit of the Report on the reportable accounts within 30 calendar days. Such verification will be carried out automatically, using specially developed standardized algorithms. The taxpayer will receive a receipt for the detected errors and a requirement to send a corrected report during ten calendar days. The tax authority will not apply penalties if such report is submitted on time.

During a desk audit, the tax authority may detect such errors as incorrect date of birth and tax number of the account owner or its controlling person; incomplete data on the date of birth, tax number, address and country of the account holder or its controlling person; the account number that does not correspond to the IBAN or ISIN structure; the negative value of the account balance.

Monitoring of financial institutions will be carried out by the STS in order to identify institutions that evade reporting of financial accounts or violate CRS requirements.

For the sake of monitoring, the tax authority will use information from its databases, the National Bank of Ukraine, the National Commission for Securities and the Stock Market, and data provided by tax authorities of other countries. Information from open sources, such as social networks, professional publications, and advertisements is also used in international practice.

A risk-oriented approach is used to identify specific risks for the sector of the economy or the type of activity of financial institutions during monitoring. When the risks are identified in certain financial institutions, the tax authority will perform a survey, and based on its results, a decision can be made to appoint a CRS audit. In such a case, the object of audit will be compliance with the CRS, and not the risks identified during monitoring.

Risk management plays an important role in ensuring the effectiveness of tax control with the CRS, the identification and risk assessment of violation of the CRS rules.

The main objectives of the CRS risk assessment are:
– improvement of voluntary compliance by financial institutions;
– improvement of data quality.

In practice, risk assessment must be carried out twice a year. July and August are important for identifying risks for the tax authority, as they follow the CRS reporting deadline. The tax administration should take all appropriate measures to identify the CRS risks during this time.

During risk identification, the tax authority must identify and evaluate such groups of the CRS risks as:
– non-reporting of the CRS;
– non-inclusion of the reportable financial accounts into reporting;
– incorrect information in the reporting about the jurisdiction of the account holder or controlling person;
– incorrect data;
– lack of a proper due diligence procedures.

Based on the results of identified risks, the tax administration takes measures to reduce risks in the following periods (e.g., the disclosure of information about the identified risks and ways of their mitigating to target groups of financial institutions and business associations). It is advisable to provide information on identified risks to financial institutions, so that financial institutions can improve their CRS compliance.

There is a practice to remind early about the reports preparation and sending them to the following groups of financial institutions:
(i) a new financial institution (at the time of its registration/qualification as a financial institution in the Central Bank);
(ii) institutions with low compliance with reporting deadlines;
(iii) financial institutions with previously identified risks;
(iv) institutions within the same business group.

The STS is obliged to inform the National Bank of Ukraine (herein the "NBU") and the National Commission for Securities and the Stock Market about the detected violations committed by financial institutions if there is a risk that these violations relate to the requirements of legislation in the area of prevention and countermeasures against the legalization of proceeds of crime, the financing of terrorism, and the proliferation of weapons of mass destruction (*Zakon Ukrainy № 361-IX*, 2019).

Account holders' violations may be detected by the tax authority during the audit of financial institutions or by obtaining information from the tax administration of another country. In such cases the draft Law on the Implementation of the CRS considers two options of tax control:

a) an unscheduled audit is carried out if the account holder is registered with the tax authority;
b) if the account holder is a non-resident and is not registered with the tax authorities, the tax administration fines the account holder for violating the rules of the CRS and sends a corresponding tax notice.

According to the Draft Law on the Implementation of the CRS, the application of fines for violation of the CRS requirements is foreseen, but its introduction is planned according to the schedule shown in Table 11.

Table 11. Stages of introducing penalties for violation of the CRS rules

Time period of violation	Approach to the application of penalties
2023	Penalties are not applied (reporting is not sent during this period and there are no deadlines for the due diligence procedure)
2024	Penalties are not applied (the period of the first reporting and deadline for carrying out due diligence procedures and registration with the tax authorities as a financial agent)
2025	A factor of 0.5 will be used to calculate penalties
2026	Penalties will be applied in full

Source: developed by the authors based on Draft Law of Ukraine № 8131, 2022.

The biggest penalties will be imposed on a financial institution in the case of systematic violations, more than twice within two calendar years. Table 12 presents the classification of violations of the CRS requirements for which the tax authority will apply administrative penalties. The following table is a summary of the penalties for violating the CRS rules:

Table 12. Classification of violations of the CRS requirements

Violator	Violation category	Violation type
Financial institutions' violations	Registration violation	• untimely registration of the reportable institution; • lack of registration of the reportable institution;
	Reporting violation	• failure to submit reports; • untimely submission of reports; • untimely submission of a corrected report; • submission of a report with incomplete data; • submitting a report with inaccurate information; • submitting a report with errors; • deliberate failure to include a reportable financial account in reporting.
	Violation for cooperation with clients	• refusal to establish business relations; • provision of financial services in case of detection of violations by the account holder; • non-termination of business relations in case of detection of violations by the account holder.
	Violation of due diligence requirements	• failure to conduct a proper inspection; • improper conducting of a comprehensive inspection; • violation of the rules for conducting a proper audit; • lack of documents confirming the implementation of a proper inspection; • lack of self-assessment documents.
	Violation of document storage	• violation of the requirements regarding the terms of storage of documents and information; • storage is not complete; • loss or destruction of documents.
Account holder's violation	Violations regarding the provision of self-certification documents	Deliberate submission of CRS self-certification documents on the tax status of the account holder and/or its controlling persons with incorrect data.

Source: developed by the authors based on Draft Law of Ukraine № 8131, 2022.

The analysis of the violations of the CRS requirements in Table 12 shows that the developed system of penalties corresponds to the international practice and it is used in the United Kingdom of Great Britain and Northern Ireland (Legislation, 2017),

Australia (Australian Government, 2023), the Cayman Islands (Cayman Island. Tax Information Authority, 2022), and Indonesia (Darmanti, Mangkan, 2020).

At the same time, penalties will be applied in the case of fault or intention of the financial institution (when the financial institution violates the CRS rules intentionally and does not take appropriate measures to prevent it). Therefore, the tax administration will not impose penalties to financial institution if:

– there is no fault of a financial institution concerning the errors in the Report on reportable accounts;
– an account holder provides incorrect information and the financial institution carries out due diligence procedure on the data of the reportable accounts and checks the tax residency status of the holder under the CRS rules;
– the financial institution immediately informs the tax authority about false information;
– errors in the Report do not affect the identification of the reportable account, the account holder and his jurisdiction;
– the institution corrects errors in the report independently or according to the notification of the STS within the limits set by the TCU.

In our opinion, the planned system of administrative penalties for the CRS violations needs a broader rethinking, taking into account the reasons for the Standard implementation. It is also important to introduce penalties against Ukraine's tax residents who violate the CRS requirements or abuse cooperation with jurisdictions that are not participants in the automatic exchange of tax information on financial accounts, in order to hide information about their profits and avoid taxation. There is a penalty of 300 percent of the tax for moving assets to try to avoid the CRS in the United Kingdom of Great Britain and Northern Ireland, and criminal prosecution is a risk for those who deliberately fail to pay tax on offshore income (Walker, 2018).

Experts believe that any country that introduces the exchange under the CRS should abandon the further implementation of voluntary declaration programs or tax amnesties, because they will neutralize the effect of the automatic exchange of tax information on financial accounts and stimulate tax evasion (Langenmayr, 2017).

Therefore, Ukraine should introduce a tax control system for obtaining timely and high-quality information for exchange with other jurisdictions and develop a system of control measures to prevent violations of the CRS reporting requirements by Ukraine's tax residents. The information about domestic tax residents is important for the country's budget and the fair taxation of all taxpayers.

Meanwhile, the Global Forum calls on tax administrations to implement measures aimed at strengthening voluntary compliance by financial agents. Such measures may include:

a) training courses;
b) communication materials;
c) a special section about the CRS on official portals of the tax administrations;
d) reminder deadlines for submitting reports, including personal messages to the e-mail of a financial institution;
e) notice of inaccurate information in reporting;
f) recommendations for reducing technical errors when filing out the xml scheme;
g) improvement of domestic legislation.

At the stage of the CRS implementation it is important to carry out a well-planned communication campaign in order to clarify the requirements of the Standard for financial institutions in Ukraine. Tax administrations may involve other institutions and associations, which will inform the potential financial institutions about the CRS rules. Banking committees of the European Business Association (EBA) and the American Chamber of Commerce in Ukraine (ACC), banking and insurance associations may fulfill such functions in Ukraine. These organizations should help to the introduce the CRS, pass domestic laws, carry out trainings, and materials.

Use of CRS Information

The issue of the effective use of data received as part of the exchange procedure is important as is the approval of the legal framework that regulates the application of the CRS, the design of effective processes and the development of necessary procedures to ensure the collection of information and the exchange of financial accounts. The use of information is the main purpose of the functioning of the exchange procedure according to the CRS.

The Global Forum also evaluates the effective use of information by the jurisdiction during the peer review. An assessment of the use of data is systematic and includes all tax risk management and tax audit processes.

Application of new methods and technologies will allow tax authorities to effectively use the CRS data to:
– detect mismatch of income from foreign sources;
– develop improved profiles of taxpayers and databases for more effective use of tax control resources;
– assess risks and use of analytical tools and methods.

The CRS data is informative, accurate, relevant, timely and ensures high performance.

The tax authority should ensure the integration of the CRS data into the general IT system of tax risk management, carry out analysis in the risk management

process in order to use effectively data received under the procedure of the exchange of information on financial accounts.

The tax administration should introduce the following procedures for the effective management of the CRS information:

– determination of the structural unit responsible for general supervision of the use of the CRS in the STS;
– definition of business procedures that will be involved in the mandatory use of the CRS data;
– development of changes draft to internal documents regulating business procedures under the use of the CRS data;
– testing of updated tax control business procedures as soon as the CRS data is available;
– prepare technical specifications for the modernization of IT systems of taxpayer reporting, risk management, audit and tax accounting for the purpose of integrating the CRS data and its further analysis;
– carry out modernization of internal IT systems.

We propose to divide the methods of using the CRS data according to their origin:

1) data received from domestic financial institutions;
2) data received as part of the exchange from foreign jurisdictions.

It is advisable to use the information that will be received as part of the exchange from the competent authorities of other countries for these purposes:

– data comparison with the income tax declaration (assets of individuals);
– investigation of bank accounts of local individuals with large incomes (e.g., accounts in offshore tax zones);
– data comparison with passive income of legal entities;
– identification of foreign trust companies, holding companies related to local individuals and legal entities;
– use for the BEPS measure: structuring of companies, verification of transfer pricing obligations in reporting on income tax;
– research of the sources of passive income of legal entities;
– request statements for accounts in foreign banks/operations of foreign companies/individuals.

We suggest to use the information in the reports of domestic financial institutions for:

– detection of undisclosed (undeclared) bank accounts of financial institutions;
– using tax liabilities, declared in tax returns and payments, for cross-checking (in relation to Ukrainians who are beneficial owners of foreign companies);
– using local tax registration, tax reporting for cross-checking (in relation to foreign companies, permanent representations);

– identification of foreign trust companies, holding companies related to local individuals and legal entities;
– use for BEPS purposes, identification of groups of companies, review of transfer pricing reporting;
– accessing statements of local bank accounts/operations of foreign companies/individuals that are beneficial owners for BEPS purposes.

Therefore, the information received under the automatic exchange of information according to the CRS may be used for the following measures:
– improvement/expansion of the taxpayers register (unregistered individuals, permanent representations, beneficial owners, bank accounts);
– pre-filing of annual income tax declaration and property declaration;
– disclosure (provision) of the CRS information in the taxpayer's account (profile);
– simplified access to statements of local bank accounts/operations of foreign companies/individuals;
– tax audits, multilateral tax audits;
– international assistance in debt collection, assets seized;
– criminal investigation.

The tax administration should demonstrate how it uses the CRS to identify unscrupulous taxpayers and that it does not waste public resources by initiating additional investigations for the compliant taxpayers. Trust in the tax authority and public support for this tool may decrease if the CRS information is frequently used to survey or audit those who meet the criteria of bona fide taxpayers.

The peculiarity of the use of information obtained under the CRS exchange is that the Standard limits its use in criminal or corruption investigations. At the same time, the tax authority, having received the information and identified certain risks based on the results of its analysis, may ask the country's competent authority within the framework of procedures for exchange of tax information upon request (herein "EOIR"). At the same time, it should be noted that this information may be used for criminal investigations related to corruption offenses. The tax authority of Ukraine may send received data according to the EOIR standard to the relevant investigative bodies (NABU and SBI).

Although democratic countries allocate funds to support Ukraine during the war and contribute into the reconstruction of Ukraine, the issue of controlling the intended use of funds and preventing their embezzlement requires special attention.

We believe that the implementation of the CRS will be one of the important safeguards against ineffective use of the funds provided to Ukraine during the war and the funds for recovery, namely the use of these resources in corruption schemes. And this is due to the fact that information about any financial resources on foreign accounts will be available to the Ukrainian tax authority, and the opportunities to hide illegally obtained funds in foreign bank accounts will be reduced.

Exchange According to the CbC Standard/ DAC 4
Objectives and International Practice of Implementing the CbC Standard

Many experts believe that the biggest problem that arises in the international tax system is the taxation of transfer prices between related groups of corporations (Raghu, 2015).

According to the latest OECD data, there were 82,000 non-financial corporations in the world as of 2008, and 230,000 of their foreign branches as of 2014 [Figure 14]. These data are incomplete, because not all countries are included in the statistics. Therefore, international corporations play a key role in the global economy.

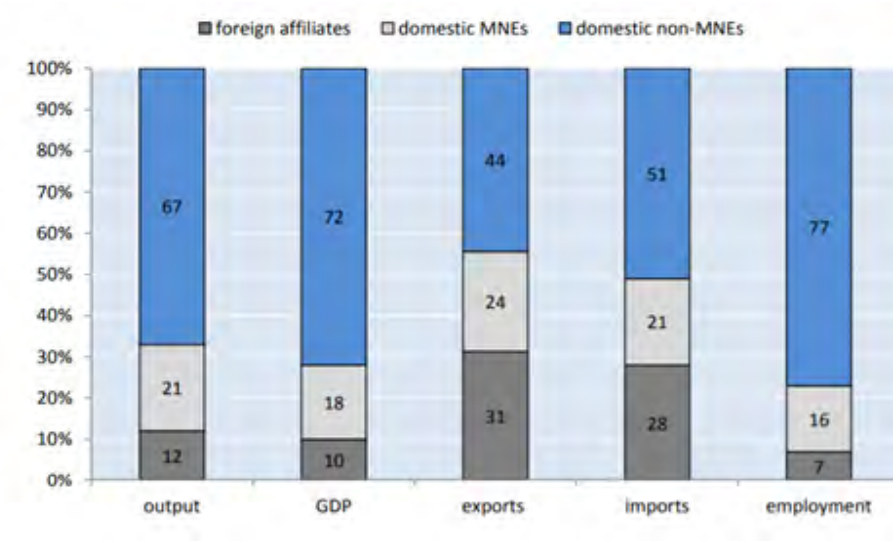

Figure 14. Impact of multinationals on the world economy, 2014
Source: (OECD, 2018a).

Multinational Enterprise Enterprise (herein the "MNE") Groups make their profits globally, but countries tax them locally, using the technique of geographic distribution or allocation (Raghu, 2015). International Groups of Companies built their group structures with the aim of efficient use of their resources, expansion and maximization of profits by registering companies in low-tax jurisdictions, which allowed to shift profits and reinvest them in the future without restrictions (Barlow, Wender, 1955). That is why national governments began implementing TP regulations at the state level more than a century ago, and developed and coordinated these rules at the international level for greater efficiency. Today, the OECD is the main international body that develops and improves TP rules.

The practice of abusing the rules of transfer pricing is the most serious risk for reducing revenues to the budgets of developed countries of the world. According to estimates, more than 40% of MNE Group's profits were transferred to low-tax jurisdictions as of 2015 (Tørsløv, Wier, Zucman, 2022).

Foreign scholars Becker J., Fuest C. (Becker, Fuest, 2012), Raimondos-Moler P. (Raimondos-Moler, Scharf, 2002), Udompol S. and Myles G. D. (Udompol, Myles, 2019) made a significant contribution to the study of the impact of transfer pricing rules on the reducing of the profits shifting to low-profit jurisdictions, and the strengthening of competition in terms of tax rates between countries. Rogers H. and Oats L. (Rogers, Oats, 2021) proposed that the current rules of transfer pricing were imperfect and suggested to review them.

The tax authorities of different countries had different data on the activities of a MNE Group as most countries applied different approaches to the disclosure of information submitted by the MNE Group in the TP reports. In addition, they did not have the opportunity to carry out a high-level analysis of the cross-border activities of the MNE Group, application of tax strategies and planning aimed at artificially reducing tax liabilities. Thus, there was a need to introduce unified requirements for reporting from TP, and tax administrations carried out effective tax control from TP.

In order to create opportunities for tax administrations to assess high transfer pricing risks, the OECD developed Step 13 of the BEPS Plan, which provides for the introduction of a standardized three-step approach to TP documentation in 2015 (OECD, 2015c).

Table 13 shows the analysis of the three-level reporting. Step 13 of the BEPS Plan provides for the submission of the "Country-by-Country Reporting" (herein the "CbCR") of the MNE Group and the exchange of such reports between tax jurisdictions.

The issue of three-level TP reporting has been studied by foreign and Ukrainian researchers. Murphy R. was the first scholar who introduced the idea of such reporting; he considered it as a source of information about the income earned by multinationals in different jurisdictions and about intragroup transactions, which were necessary for investors, stakeholders and tax administrators (Murphy, 2009).

Table 13. Analysis of the three-level structure of transfer pricing reporting

Requirements	TP reporting		
	(Country-by-Country Report)	Global TP documentation (master file)	TP documentation (local file)
conditions of submission	• Submitted by multinationals with a combined turnover of EUR 750 million or more; • Filed only in the jurisdiction of the parent company; • Submitted annually.	• Submitted upon the request of the tax authority	• Submitted upon the request of the tax authority
purpose of reporting. Звітності	• General information about the Multinational Enterprise Group of companies and all its companies	• A general overview of the economic, legal, financial and tax aspects of the MNE's activities for tax authorities and an explanation of what mechanisms the MNE uses in the TP	• Information on the controlled operations of an individual member of the International Group that is a resident of the relevant local jurisdiction
reporting data	• Aggregate information on revenue (including, separately indicating revenue from operations with members of this international group); • Amount of profit (loss) before taxation; • Amount of calculated tax; • Amount of tax paid; • The amount of capital as of the end of the reporting period; • The amount of accumulated profit as of the end of the reporting period; • Number of employees for the reporting period;	• The structure of capital participation and control of an international group of companies; • Markets of goods (works, services) on which members of an international group of companies carry out their main activities (in the form of schemes); • Activities of an international group of companies (factors affecting the financial result, a brief description of significant transactions, a brief functional analysis, information on restructuring);	• Information about the local member of the Group; • (management system, detailed description of business activity and strategy, carried out restructuring, main competitors); • Detailed information on controlled operations; • Financial information.

Requirements	TP reporting		
	(Country-by-Country Report)	Global TP documentation (master file)	TP documentation (local file)
reporting data	• The amount of tangible assets as of the end of the reporting period; • Identification information about each member of the international group, including the state (territory), the state (territory) of tax residency and the main types of activity of each member of the international group of companies	• Intangible assets; • Financial performance of the group.	

Source: developed by the authors based on Transfer Pricing Documentation and Country-by-Country Reporting (OECD, 2015a).

Hanlon M. studied Country-by-Country Reporting Requirements and application issues, limitations or a possible misinterpretation of its data (Hanlon, 2018); he emphasized the need to analyze changes to IAS/IFRS accounting standards when analyzing CbC reports. Professor Spengel C. investigated the public release of Country Report data as an effective anti-evasion measure (Spengel, 2021). Longhorn M. Rahim M. and Sadiq K. concluded that the Country Report is an important tool for providing useful information for geographic decision-making (Longhorn, Rahim, Sadiq, 2016). According to the results of the research, Joshi P. P. concluded that the introduction of the Country-by-Country Reporting contributed to the growth of effective tax rates on income tax by 2-4 percent (Joshi et al., 2020).

Foley S. and Martin M. R. investigated the possible use of CbC reporting data for the planning of MEG activities at the strategic and operational levels (Foley et al., 2020). Professor Clausing K. A. analyzed the published data of CbC reporting and emphasized the significant impact of the shifting of MNE Group profits to low-tax jurisdictions on the amount of US tax revenues and the need to introduce a mandatory minimum tax liability for MNE Group (Clausing, 2020), later it became the basis for the implementation of the initiative Tax Rule Pillar 1 of the Extended Cooperation Program on Countering BEPS of the OECD/G20 (OECD, 2021).

The scholars also say that the disclosure of information by the taxpayer to the tax authorities increases the risk of detection of a violation of tax legislation, therefore

it requires the taxpayer to increase the costs of developing strategies for aggressive tax planning, which may lead to a decrease in the level of tax evasion (Joshi et al., 2020). Therefore, the introduction of CbC reporting may be a preventive measure to increase tax compliance.

The basis for a jurisdiction to join the exchange according to the CbC Standard is the signing of the Multilateral Competent Authority Agreement (herein "MCAA CbC"). The agreement establishes obligations for the participating countries to automatically exchange CbC Reports submitted by the MNE Group on an annual basis to the tax authorities of the jurisdiction of the tax residence of the parent company of the MNE Group, with the tax authorities of all jurisdictions where the MNE operates.

Exchange of CbC reports is carried out annually, it is made automatically through the use of the CTS, the OECD special platform for the exchange. The first exchange of information was in June 2018 and as of 22 November 2022, 93 countries signed the MCAA CbC and 100 countries implemented legislative rules for submitting CbC at the national level (OECD, 2022e).

The OECD has developed and approved a number of legal documents that regulate the procedure for preparing the CbC Report, the specifics of the CbC Standard implementation, the exchange procedure and the specifics of the use of CbC Report data (Table 14).

Table 14. International legal acts regulating the exchange according to the CbC Standard

International legal act	The content of the document
Multilateral Competent Authority Agreement (MCAA CbC)	• Provides an international legal framework for the automatic exchange of information according to the standard; • It is the legal basis for the introduction of CbC at the national level.
Transfer Pricing Documentation and Country-by-Country Reporting, Action 13—2015 Final Report	• An approach to the preparation of three-level documentation from TP; • A form of *Country-by-Country Reporting*; • Rules for the introduction of three-level documentation with TP jurisdictions.
Guidelines for proper use of CbC information	• Purposes for which CbC information may be used; • Recommendations on the development of internal procedures of the tax administration for the proper use of CbC information; • Responsibility for improper use of CbC information; • Limited access to CbC information.

International legal act	The content of the document
Country-by-Country Reporting Status Message XML Schema: User Guide for Tax Administration	• Structure of CbC XML message schema; • Practical recommendations for using the XML schema.
Guidelines for effective risk assessment	• Risk assessment methodology and identification of risk identifiers in CbC data by tax authorities and taxpayers.
Country-by-Country Reporting (CbCR) Risk Assessment Tool	

Source: (OECD, 2015c, 2017a, 2017b, 2019b).

The OECD developed and approved the CbC Implementation Guide, which is a practical guide to CbC implementation for tax administrations and MNE Group (OECD, 2019d).

Global Forum annually assesses the implementation status of the automatic exchange of tax information according to the CbC Standard and its effectiveness, and publishes a report based on the results of the assessment (Figure 15). According to the latest assessment, some countries have delayed the implementation of the CbC Standard due to the COVID-19 epidemic, but in general countries carry out their obligations.

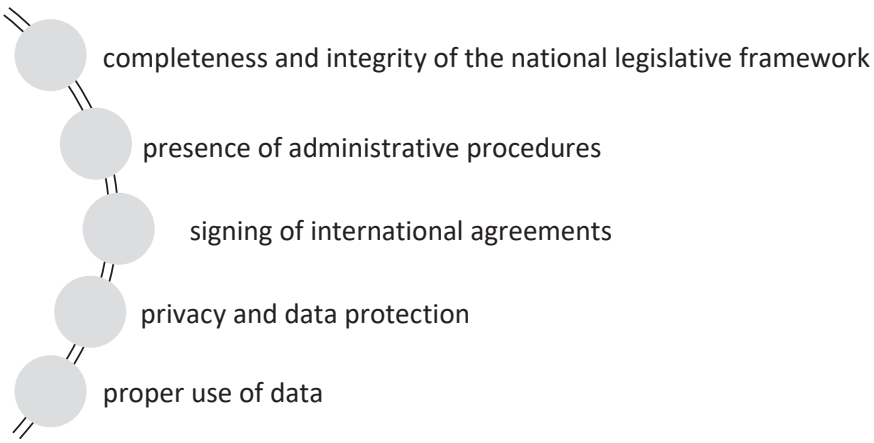

Figure 15. Aspects of the Global Forum's expert assessment of the implementation status of the CbC Standard by jurisdictions
Source: (OECD, 2021d).

The USA Tax Administration and the OECD periodically publish aggregated CbC data, which are used for high-level analysis of the role of low-tax jurisdictions, trends in international tax planning, effective income tax rates, and conducting scientific research on TP (IRS; OECD, 2017c).

Proper use of CbC report data according to the OECD Guidelines is a prerequisite for obtaining and using data within the framework of the CbC Standard exchange. In addition, the exchange participating jurisdiction's obligation to use CbC information appropriately should be included in the CbC MCAA. The OECD guidelines on the proper use of CbC information contain restrictions on the use of information from CbC reports for the purpose of high-level risk assessment of MNE Group and determination of potential risks of the tax base erosion and profit shifting and may not be considered as evidence of aggressive tax planning (OECD, 2017b).

The participating country's tax authority must develop and approve written policies on the use of CbC report data to ensure the proper use of CbC information. This policy should also determine the rules and procedure for access by tax administration's officials to the CbC data.

It is important to emphasize that a jurisdiction may not require local CbC reporting unless it meets confidentiality, consistency and proper use requirements.

Research by Muzychuk M., Fomina O. postulates using the information obtained according to the CbCR standard for the following tax control measures: data comparison with the income report of local legal entities; identification of foreign trust companies, holding companies related to local legal entities; usage for BEPS purposes; verification of transfer pricing obligations in reporting; determination (detection) of undisclosed associated foreign companies; use to expand the network of a group of companies; detection and investigation of transactions (invoices) among the MNE Group in real time regime (Muzychuk, Fomina, 2021).

In 2016, requirements envisaged by Action 13 of the BEPS Plan on submission and exchange of CbC reporting were introduced for EU member states by adopting amendments to Directive 2011/16/ which provided for the introduction of mandatory automatic exchange of information in the area of Country-by-Country Reporting. EU Directive 2016/881 of 25 May 2016 on the automatic exchange of CbC reports (herein "DAC 4") (Council Directive (EU) 2016/881 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation, 2016) was the legal act that introduced these changes.

The DAC 4 sets out requirements for MNE Group (that are located or operate in the EU and their total annual consolidated revenue is equal to or more than EUR 750 million) to submit CbC reports to the tax authorities annually from 2017.

The reasons for implementing the procedure for exchanging CbC reports between tax authorities of EU countries are:

– leakage of information on the application of tax avoidance schemes, known as the LuxLeaks international tax scandal (Brunsden, 2017);
– ineffective spontaneous exchange of information upon request;
– cross-border tax evasion, aggressive tax planning and unfair tax competition are major concerns in the EU and at the global level;
– issuance of preliminary tax approvals (decisions) and conclusion of advance pricing agreements (Advance Pricing Agreement—APA), which contribute to the consistent and transparent application of legislation, is a common practice in many EU member states;
– increasing transparency and taking preventive measures.

EU countries exchange CbC Reports data through the Common Communication Network (CCN) of the European Commission.

In addition, there has been a heated debate about the need for publication of CbC report data for the general public to ensure high tax transparency in the EU countries since the introduction of CbC reporting. However, scientists have different opinions on the positive effect of such publication.

In particular, Murphy R. proposed the idea of publishing such data (Murphy, 2003). German scholars Schreiber U. and Voget J. concluded that the CbCR publication gave society the opportunity to assess whether the MNE Group followed the principles of social responsibility (Schreiber, Voget, 2017). Groterr S. suggested that the reputational risks, associated with the publication of CbCR reporting data, encouraged MNE to reduce the use of aggressive tax planning and to adhere TP (Grotherr, 2016). Research by Professor Spengel C. and Dutt V. showed that the costs of companies for public reporting may exceed the overall positive benefits of such publication (Ed. Stiftung Familienunternehmen, 2020).

In November 2021, the EU Parliament adopted the Public Country-by-Country Reporting (CBCR) Directive, which introduced the disclosure of information on the income tax paid by certain enterprises and branches (herein "the CbC Public Reporting Directive") (Schranz, Yakimova, 2021). The provisions of the Directive contain requirements for MNE Group with an annual income of more than EUR 750 million to publicly disclose in a special report the amount of income tax paid by them in:

– every country member of the EU;
– each third country listed in Annex I of the Council on the EU (the list of non-cooperative jurisdictions for tax purposes (the so-called "black list") (EU list of non-cooperative jurisdictions for tax purposes, 2022);
– each country listed for two consecutive years in Annex II of these Council conclusions (the so-called "grey list") (EU list of non-cooperative jurisdictions for tax purposes, 2022).

It is important to prepare this report according to the approved form in a machine-readable format and publish it on the official website of the MNE Group parent company.

Implementation of CbCR in Ukraine

Muzychuk M., Fomina O. (Muzychuk, Fomina, 2021), Lovinska L. G. (Lovinska, Oliinyk, Kucheriava, 2020) and Lehenchuk S. F. (Lehenchuk, Zhyhlei, 2022) studied implementation of the automatic exchange of tax information according to the CbCR Standard in Ukraine.

In Ukraine, the rules of TP were introduced on 1 September 2013, and the Law of Ukraine "On Amendments to the Tax Code of Ukraine on Transfer Pricing" came into force (Law of Ukraine № 408-VII, 2013). Then, over several years, the domestic rules of TP were constantly revised and improved, implementing the best international practices of the OECD.

The introduction of three-level reporting from TP in Ukraine and the automatic exchange of tax information by Ukraine according to the CbC Standard was implemented through the adoption of the Law of Ukraine dated 16 January 2020, No. 466-IX "On Amendments to the Tax Code of Ukraine regarding the improvement of tax administration, elimination of technical and logical inconsistencies in tax legislation" (The Law of Ukraine No. 466-IX) (Law of Ukraine № 466-IX, 2020), which made appropriate changes to the TCU.

The Law of Ukraine No. 466-IX has introduced three-level reporting from TP and it requires the following information:

i. a report on controlled operations (local file) (it must be sent by taxpayers who carried out tax audits in the reporting year);
ii. notification on of MNE Group participation (they must be sent by taxpayers who carry out the controlled transactions in the reporting year);
iii. Country-by-Country Reporting provides a set of rules for determining the necessity of the requirement to submit a CbC Report;
iv. global documentation from the TP (master file) (it is sent by taxpayers at the request of the STS) (Law of Ukraine № 466-IX, 2020).

The Country-by-Country Report is a subject of the automatic exchange of tax information according to the CbC Standard. Therefore, Ukraine will send the Country-by-Country Reports prepared by Ukrainian companies and receive reports from other jurisdictions where MNE operates. In November 2022, Ukraine signed the MCAA CbC to join the CbC Standard exchange procedure (*Ukraine has joined the*

Multilateral Agreement of Competent Authorities on the Automatic Exchange of Reports by Country). In addition, the STS is currently developing the IT subsystem "Automatic exchange of tax information CbC/CRS," through which the STS will exchange Country-by-Country Reporting with other jurisdictions (*Priamuiemo Razom*, EU4PFM).

CbC Reporting

The analysis of the terms of the reporting periods and deadlines, the dates of the first submission of the notifications on participation in the MNE Group and the CbC Report is shown in Table 15.

Table 15. Analysis of the reporting requirements of the Notices of participation in the MNE Group and the CbC Report

Report	Deadline for submission	Reporting period	Date of the first sending
Notifications on participation in an MNE Group	• Until 1 October of the year following the reporting year	Calendar year	• In 2021 for 2020
(Country-by-Country Report)	• Within twelve months after the end of the financial year established by the parent company of an MNE Group; • In the absence of information about the financial year established by the parent company of MNE Group—within twelve months after the end of the calendar year.	Financial year	• Applied for the first time in relation to the financial year in 2021; • But not earlier than in the year in which the competent authorities concluded the MCAA CbC; • No earlier than 31 December 2022.

Source: (Law of Ukraine № 466-IX, 2020)

According to the provisions of the domestic tax legislation. The taxpayers (the MNE Group members) have to send the Country-by-Country Report in the case they meet the following criteria:

1) the criterion of the level of income: a consolidated revenue of the MNE of at least for the financial year, preceding the reporting year, and exceeds the equivalent of EUR 750 million;
2) circumstances criterion

2.1. the taxpayer is the MNE Group parent company;

2.2. the MNE Group parent company authorizes a taxpayer, a resident of Ukraine, to send a Country-by-Country Report to the tax administration;

2.3. in accordance with the legislation of the country where the parent company of the MNE Group is located, the parent company of this group does not authorize another member of the international group to send a report in another foreign jurisdiction where its reporting is provided;

2.4. an international agreement has been signed between Ukraine and the relevant foreign jurisdiction (the parent company of MNE Group or another member of this group, authorized by the parent company of such group) to send a Country-by-Country Report that may provide for the possibility of exchanging tax information, but:

a) the procedure for exchanging reports across countries has not come into force;
b) there are facts of systematic failure to comply with this order (Law of Ukraine № 466-IX, 2020).

The STS must publish a list of such foreign jurisdictions on its official web portal no later than 60 calendar days before the deadline for submission of the CO report on controlled transactions.

Experts emphasize that it is quite difficult to prepare Country-by-Country Report. Thus, Brennan B. argues that the preparation of a Country-by-Country Report has a potential impact on the global tax profile of a multinational, and it is a matter of strategic risk management of an MNE Group (Brennan, 2015).

The researchers consider that the tasks of the Country-by-Country Report determine:

– the countries in which an MNE Group operates;
– a list of all members of the MNE Group with their organizational and legal forms;
– jurisdictions where members of the MNE Group are tax residents;
– the scope of the MNE Group activity in each country;
– the amount of investments of the MNE Group in each country;
– tax jurisdictions in which the MNE Group generates profits and in what amounts;
– tax jurisdiction in which the MNE Group pays taxes and in what amounts;
– the volume of intragroup transactions in the MNE Group;
– whether the level of activity and the size of profits differ greatly within the MNE Group;
– how widely the MNE Group applies low-tax jurisdictions;

– how the use of low-tax jurisdictions in the business model of the MNE Group affects the reduction of the overall tax rate of the MNE Group;
– whether the MNE Group activity is stable (Murphy, 2009).

The Ministry of Finance of Ukraine approved the form of the Country-by-Country Report by Order No. 764 dated 14 December 2020 (On the approval of the form and the Procedure for filling out the Report by country of the international group of companies, № 764, 2020), which corresponds to the OECD XML schema and is modeled after the template in Appendix III of the Final Report BEPS Action 13 Final Report, which contains a diagram of the Report structure, instructions and definitions of terms (OECD, 2015c).

The report is a collection of separate reports for each country (or territory that has tax autonomy) where MNE Group has operated during the reporting year. Therefore, the total number of reports in the Country-by-Country Report should correspond to the number of jurisdictions where the MNE Group operates. When compiling reports, it is important to follow the consistency principle—the same data sources should be used consistently from year to year. Changes and their consequences should be noted when circumstances require a change in the data source. The analysis of the structure of the report is shown in Table 16.

Table 16. The analysis of the Country-by-Country Report structure

Information type	Report indicators
General information about the MNE Group	• The name of the MNE Group; • The status of the taxpayer in submitting the Report; • The reporting period (financial year).
General information about Country-by-Country Report (for each country)	The name of the country where the MNE Group operates
	Chapter I • The currency of the parent company; • The main indicators of the MNE Group activity in the country (analysis in Annex 3).
	Chapter II. The list of all members of the MNE Group who are the country's tax residents: • Name; • Business structure; • Adress; • Tax identification number; • Other registration number; • Type of economic activity.
	Other Relevant Information

Source: (OECD, 2015c; On the approval of the form and the Procedure for filling out the Report by country of the international group of companies № 764, 2020).

The taxpayer should send the following information in the Chapter "Other Relevant Information" of the Country-by-Country Report:

- a brief explanation of which data sources were used in the preparation (consolidated financial statements of MNE Group, annual reports of MNE Group participants, internal reporting for management purposes, financial reporting for regulatory purposes);
- a change of the data source, reasons and consequences of the change;
- a currency exchange rate that is used to calculate the reporting of the MNE Group participants, which is different from the reporting currency of the MNE Group parent company;
- the method of determining data on the MNE Group participants (on the last date of the financial year or the reporting period);
- identification of the MNE Group members who joined or left the MNE Group during the reporting period;
- a change in the method of determining data on the MNE Group participants and the reason for the change;
- a change of tax jurisdiction during the reporting period;
- an application of a different reporting period (in the case when the financial reporting period is different than 12 months);
- an explanation of negative amounts and ambiguity of their interpretation in the Report;
- an explanation whether the accumulated profit includes negative value and the identification of the tax jurisdiction where it was generated;
- dividends paid to other MNE Group members (if they are included in the calculation of profit before taxation in Chapter 1);
- accrued tax on dividends paid to other members of the MNE Group (if they are included);
- a description of the nature of the economic activity, if in Chapter 2 the main economic activity of the MNE Group participant is identified as "other";
- other information about assessment of the TP risks and risks associated with tax base erosion and profit shifting.

The taxpayer should collect, analyze and summarize information about all MNE Group participants and the countries where they carry out their activities to prepare Country-by-Country Report. It is advisable to systematize such information in the Report about the MNE Group activities for the financial year for the purposes of TP (its form is proposed in Annex 4). We recommend an enterprise to use this proposed form to prepare information for filing the CbC report.

In order to prepare Country-by-Country Report, the MNE Group must establish a standardized and reliable process for collecting tax data all over the world. It is

necessary to collect and systematize data from various sources, structure the flows of economic transactions in order to highlight supply chains and transactions between the MNE Group participants and ensure the data in all reporting documents of the three-level reporting with the TP (Figure 16).

The amount of revenue of the MNE Group in the Notification on participation in the MNE Group = The amount of revenue in the CbC Report = Amount of revenue (Global documentation)
Revenue from the transactions with related persons in the Country-by-Country Report = the amount of payments to related persons in local files (Report on Controlled Transaction in Ukraine)
The amount of income received from related persons in the local file of the income recipient = the amount of payments to related person in the local files of related persons, parties of the controlled transaction

Figure 16. Compliance of indicators of three-level TP reporting
Source: developed by the authors.

At the global level, there is a need for an MNE Group to follow the Rules for the implementation of the three-level reporting model from TP of all jurisdictions where the MNE Group operates, including the date of the first submission of the Country-by-Country Report in these jurisdictions, threshold values for the submission of the TP reporting, deviations from the OECD guidelines. Under certain conditions, an MNE Group may be required to send a Country-by-Country Report in several jurisdictions. In order to ensure compliance with the rules for submitting the Country-by-Country Report in accordance with the countries' legislation where the MNE Group operates, the MNE Group should monitor all Bilateral and Multilateral Conventions on the Avoidance of Double Taxation Relations, including agreements on the tax information exchange, mutual assistance conventions, EU directives and agreements of competent authorities. It is necessary to analyze tax jurisdictions that will receive the Country-by-Country Report according to the tax information exchange procedure and in what jurisdictions the authorized participants have the right to send Country-by-Country Report.

At the same time, careful analysis of information during the preparation of the CbC report helps to eliminate discrepancies in advance, anticipate requests from tax authorities, and identify the real tax rate in each jurisdiction.

The company's preparation of a Notification on participation in the MNE Group needs special attention. According to Article 2 of the Model Convention on Coun-

try-by-Country Reporting, the tax administration is informed by enterprises (the MNE Group members) about the submission of CbC Report and who should send it (the parent company or an authorized MNE Group member) (OECD, 2015b). Countries that have joined the BEPS Action Plan 13 may independently decide on the implementation of a Notification. Mostly all countries have introduced the requirement to send such information (OECD, 2021e).

Since 2021, taxpayers (which carried out controlled operations in the reporting year) are required to submit a Notification on participation in an MNE Group by October 1 of the year following the reporting year (Tax code of Ukraine № 2755 VI, 2010). The procedure and form of a Notification on participation in the MNE Group member are approved by the Order of the Ministry of Finance of Ukraine dated 31 December 2020 No. 839 (On the approval of the form and procedure for drawing up the Notice of participation in an international group of companies№ 839, 2020).

Table 17. Algorithm of filing a Notification on participation in an MNE Group

Paragraph of the report	Required information
The status of a member of an MNE Group	• Is the enterprise a member of the MNE? • An explanation of the non-extension of the definition of an 'MNE Group participant" on the member.
Aggregate consolidated revenue of an MNE Group for the financial year preceding the reporting one	The code of the revenue amount interval according to the three-level model is indicated: • less than EUR 50 million; • from EUR 50 to EUR 750 million; • exceeds EUR 750 million. Currency: • in EUR; • currency in the reporting of the MNE is indicated for reference. Currency conversion: • at the average exchange rate for the reporting year. Calculation: • is made according to the accounting standards applied by the parent company of the MNE Group; • in the absence of the information—in accordance with international accounting standards.

Paragraph of the report	Required information
The date of the end of the financial year	a) The last day of the financial year for which the consolidated financial statements of the MNE Group are prepared; b) The date of the end of the financial year in accordance with the internal regulations of the parent company of a MNE Group, if consolidated financial statements of the MNE Group are not prepared. 1) Whether the financial period used by the MNE Group coincides with the calendar year (the reporting period for the purposes of the TP); 2) To count the deadline for submitting the CbC Reporting, if the MNE Group meets the requirements for its submission for the relevant financial year in the relevant jurisdiction.
Data of the MNE Group	• Name of the MNE Group; • If it does not have a specific name, enter the name of the main parent enterprise of this group.
Status of submission of the Country-by-Country Report	a) The report is submitted by the ultimate parent company; b) The report is submitted by an authorized member of the MNE Group; c) In accordance with the requirements of the legislation of the location of the parent company of the MNE Group, such an MNE Group is not required to submit a report, and at the same time, the parent company of such a group does not authorize another member of the MNE Group to submit a report in another foreign jurisdiction where its submission is provided.
Data on the parent company an MNE Group	• The full legal name of the parent company of the MNE Group, including the internal designation of the legal form; • The country where the parent company is established or registered (if it is different from the country of tax residency); • Tax registration number; • Other identification numbers (company registration number, or global legal entity identification code).

Paragraph of the report	Required information
Data on the member of the MNE Group authorized by the ultimate parent entity to submit a report by country	• The name and code of the relevant country (territory) of tax residency; • Full legal name including the internal designation of the legal form; • The country where the participant is established or registered (if it is different from the country of tax residency); • Tax registration number; • Other identification numbers (company registration number, or global legal entity identification code).
Countries, according to the legislation of which an MNE Group does not submit a Country-by-Country Report	• Is filled in if the MNE Group is not required to submit a report due to the lack of requirements, or under the condition of exemption from such submission in accordance with the legislation of other countries; • All countries (territories) in which the MNE Group carries out its activities where the MNE Group is not required to submit the report.

Source: (On the approval of the form and procedure for drawing up the Notice of participation in an international group of companies № 839, 2020).

It is necessary to choose correctly the financial year for which the calculation of the company's consolidated revenue is carried out (if an enterprise is required to file a Country-by-Country Report and the master file in accordance with the requirements of domestic tax legislation). The date of the end of the financial year of an MNE Group is important for calculating the time periods in which the controlling authorities may send a request for the submission of global documentation (Master file). This is the example of determining of the total consolidated revenue of an MNE Group for the financial year preceding the reporting year (if the financial and reporting periods do not coincide) and a preparation of a Notification for 2021:

– the financial year defined by the an MNE Group parent company runs from 1 October to 30 September;
– for calculation purposes, it is necessary to take into account data for the financial year that ended on 30 September 2020;
– data for the financial year from 1 October 2020 to 30 September 2021 will be taken into account when making a Notification for the reporting year 2022.

It is very important to determine if a taxpayer is an MNE Group member, and the amount of the total consolidated revenue of the MNE Group for the financial year preceding the reporting year (this information is necessary for filing a Notification

on participation in the MNE Group). So, this criterion defines if an MNE Group or a taxpayer is required to submit TP Documentation and a CbC Report. The OECD guidelines for the implementation of CbC reporting under BEPS 13 (herein: the Guidelines for CbC reporting) recommend applying IFRS or other internationally recognized financial reporting standards to solve the following issues:

– including the results of the activities of entities without the status of a legal entity in consolidated financial statements;
– minority stakes in consolidated reporting for the purposes of determining threshold criteria;
– determination of affiliation to the MNE Group and consolidated revenue if the taxpayer owns and/or controls of more than one unrelated to the MNE Group;
– application of consolidation methods;
– identification of membership in the MNE Group and consolidated income in case of changes in ownership due to mergers, acquisitions or divisions, etc., in a particular year.

According to IFRS 10 "Consolidated Financial Statements," the main condition for consolidation is the control. IFRS 10 defines the rules for determining the presence of investor control over the investment object and the need for consolidation of this object and requirements for the preparation of consolidated financial statements (IFRS, 2022).

It is necessary to clearly identify the parent company to ensure the correct filling of the Notification on participation in the MNE Group. Multi-level structures of the MNE Group have models in which the following business structuring are used: companies combine into subholdings according to a certain principle, subholdings are combined into a holding. In this case, the parent company of the MNE Group is the parent company of the holding.

In this paragraph, we will consider the application of the combined financial statement. A beneficial owner of several holdings prepares combined financial statements. IFRS 10 does not outline the requirements for the preparation of combined financial statements. If the shares of one of the companies of the holding are quoted on the stock exchange, the holding will be required to prepare the consolidated financial statements. Thus, the parent company of the holding is the parent company in this case. Therefore, the information in the combined financial statements, as a set of financial statements of a group of enterprises controlled by one investor, is not used to fill the Notification on the participation in an MNE Group.

We propose to apply the following approaches to determine the revenue of the MNE Group for the Notification on participation in the MNE Group (Table 18 and Table 19).

It is necessary to determine all participants during the preparation of the Notification on a participation in the MNE Group. BEPS Action 13 Final Report identifies the following participants of the MNE Group (for the purposes of preparation of three-level reporting on TPc):

1) any separate subdivision of the MNE Group, which is included in the consolidated financial statements of an MNE Group for the purposes of financial reporting or will be included if the shares of corporate rights of the subdivision of the MNE Group are quoted on the stock exchange;
2) any entity that is excluded from the consolidated financial statements of the MNE Group on the basis of size or materiality;
3) any permanent establishment of separate subdivision of the MNE Group included in (1) or (2) above, provided that the subdivision prepares separate financial statements for such establishment for the purposes of financial reporting, regulatory, tax reporting or internal control (OECD, 2015c).

The authors believe that for the preparation of the Notification to determine the amount of revenue it is necessary to follow the same approach as in the case of filing of Country-by-Country Report. The OECD Final Report provides that revenues should include revenues from the sale of stocks and property, services, royalties, interest, premiums and any other sums (OECD, 2015c).

According to OECD Guidance on the Implementation of Country-by-Country Reporting, "In determining whether the total consolidated group revenue of an MNE Group is less than EUR 750 million (or near equivalent amount in local currency as of January 2015), all of the revenue that is (or would be) reflected in the consolidated financial statements should be used.

Table 18. Algorithm of calculation of the consolidated data of an MNE Group

Information on	Scenario 1	Scenario 2	Scenario 3
Status of preparation of consolidated reporting by the Parent Company of the MNE Group	Shares of the parent company of the MNE Group are listed on stock exchange.	• Shares of the parent company of the MNE Group are not listed on stock exchange; • The parent company of the MNE Group, in accordance with the legislation of the jurisdiction in which it is registered, is not obliged to prepare Consolidated Financial Statements; • The parent company prepares the Consolidated Financial Statements in accordance with the policy of the MNE Group.	• Shares of the parent company of the MNE Group are not listed on stock exchange; • The parent company of the MNE Group, in accordance with the legislation of the jurisdiction in which it is registered, is not obliged to prepare Consolidated Financial Statements; • The parent company of the MNE Group does not prepare such reporting in accordance with the policy of the MNE Group.
Information about the revenue of the MNE Group	The revenue is indicated in the published Consolidated Financial Statements of the parent company of the MNE Group, including the auditor's report.	The revenue is indicated in the Consolidated Financial Statements of the parent company of the MNE Group.	The taxpayer performs the analysis according to the algorithm given in Table 19.

Source: developed by the authors.

Table 19. Analysis algorithm in the case when the parent company does not prepare consolidated financial statements

Stages	Actions of the taxpayer	
Step 1	Definition of the organizational structure of the MNE Group: • all participants; • organizational and legal forms; • ownership structure (indicating shares of ownership); • countries and territories where the participants carry out their activities.	
Step 2	Identification of the parent company of the MNE Group.	
Step 3	Assessment whether it would be mandatory to prepare consolidated financial statements of the MNE Group if the shares (corporate rights) of the parent company were listed on stock exchange.	
	Scenario A The parent company of the MNE Group is not required to prepare consolidated financial statements of the MNE Group.	Scenario B The parent company of the MNE Group is required to prepare consolidated financial statements of the MNE Group.
	The taxpayer, for the purposes of filing the Notification, concludes that it is not part of the MNE Group.	The total consolidated revenue of the MNE Group for the financial year preceding the reporting year is calculated by the taxpayer independently according to the IFRS.

Source: developed by the authors.

A jurisdiction where the Ultimate Parent Entity resides is allowed to require inclusion of extraordinary income and gains from investment activities in total consolidated group revenue if those items are presented in the consolidated financial statements under applicable accounting rules (OECD, 2019d).

Chapter III of the Notification is filed if an MNE Group is not required to submit a Report in accordance with the legislation of other jurisdictions (On the approval of the form and procedure for drawing up the Notice of participation in an international group of companies № 839, 2020).

DAC 3 Tax Ruling Exchange

Step 5 of the BEPS Plan establishes rules for implementing a transparency framework, which provides for the exchange between countries that have joined BEPS Action 5 on information on tax rulings that relate to favorable tax conditions:

– agreements relating to preferential regimes;
– unilateral ARA or other cross-border unilateral resolutions in the field of TP;
– cross-border agreements involving a downward adjustment of taxable income;
– agreement on issues of permanent representation (PE);
– coordination for conduit structures of related entities;
– any arrangement identified by the Forum on Harmful Tax Practices (FHTP) which creates BEPS.

The information on tax rulings is exchanged in accordance with the following:

1) information gathering process;
2) information exchange process;
3) ensuring the confidentiality of the received information;
4) keeping statistics (OECD, 2015a).

According to the general rules, the information is exchanged between:

a) the tax jurisdiction countries of all related entities with which the taxpayer carries out a transaction in respect of which a tax ruling has been made or the country where the profit received by related parties benefiting from preferential treatment arises (this rule is also applied in the context of TP);
b) tax jurisdictions of the Ultimate Parent Entity and the parent company.

Annex C to Step 5 of the BEPS Plan sets out the form of the document to be used for the exchange of information (OECD, 2015). The information on tax rulings is exchanged through the OECD platform CTS—Common Transmission System (*Priamuiemo Razom*, EU4PFM), and the OECD has issued Instructions for filling in and XML-schema used in the exchange (OECD, 2019c).

The OECD annually carries out an expert assessment of the implementation of the exchange of information on tax rulings according to the established methodology (OECD, 2021c), and publishes reports based on the results of these reviews (OECD, 2020c). According to the results of the 2019 report, 124 tax jurisdictions adopted 20,000 tax decisions (rulings), which are the objects of the process of information exchange and 36,000 relevant exchanges between jurisdictions were made (OECD, 2020c).

Ukraine has joined Step 5 of the BEPS Plan, so it is also included in the annual review. However, the domestic tax legislation provides only one type of tax decisions to be exchanged—advance pricing agreement (APA), and the other agreements have not been concluded yet, so the country's data are not being provided.

EU countries have introduced a procedure for exchanging information on tax rulings that relate to favorable tax conditions. The procedure is established in accordance with EU Directive 2015/2376 of 8 December 2015 (herein "DAC 3") (Council Directive (EU) 2015/2376 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation amending Directive 2011/16/EU on the mandatory automatic exchange of information in the field of taxation, 2015)).

The object of the automatic exchange of information is any agreement, communication, other instrument or action (signed, changed or extended in the context of a tax audit) that have similar effects and meet the following conditions:

– have been issued, amended or renewed by or on behalf of a government or tax authority of an EU Member State or by territorial or administrative divisions of an EU Member State, including local authorities, regardless of whether it is applied in practice;
– have been issued, changed or extended to a specific person or group of persons and on which that person or group of persons has the right to rely;
– relate to the interpretation or application of a legal or administrative provision relating to the administration or enforcement of domestic taxation laws of a Member State or territorial or administrative subdivisions of a Member State, including local authorities;
– relates to a cross-border transaction or to the question of whether or not activities carried on by a person in another jurisdiction create a permanent establishment.

The term advance pricing agreement (APA) according to the DAC 3 means any agreement, communication or any other instrument or action *between a taxpayer and tax authority determining the transfer pricing methodology for pricing the taxpayer's international transactions*, which meets the following conditions:

– has been issued, modified or extended to a specific person or a group of persons and on which that person or group of persons has the right to rely;
– determines, prior to cross-border transactions between associated enterprises, an appropriate set of criteria for the determination of the transfer pricing for those transactions or determines the attribution of profits to a permanent establishment (Directive 2011/16/EU on the mandatory automatic exchange of information in the field of taxation, 2011; Council Directive (EU) 2015/2376 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation, 2015, 2014).

The competent authority of the EU member country which issued, amended or renewed the previous international agreement (ruling) or APA after 31 December 2016, informs the competent authorities of all other member countries about it

through automatic exchange of information, as well as the European Commission (part of the information).

The information is exchanged within three months after the end of six months of the calendar year during which previous international agreements (rulings) or advance pricing agreements are issued, changed or renewed.

Information required to be exchanged:

a) identification of a person who is not a natural person and, in appropriate cases, does not belong to the group of persons;
b) summary of the content of the previous cross-border agreements or APA, including a description of the relevant commercial activity or an operation or a series of operations, presented in abstract terms, which do not lead to the disclosure of a commercial, industrial or professional secret or commercial process, or information, the disclosure of which could harm public order;
c) the dates of issuance, amendment or renewal of the advance cross-border ruling or advance pricing arrangement;
d) the starting date of the advance cross-border ruling or advance pricing arrangement, if it is indicated;
e) the end date of the period of validity of the advance cross-border ruling or advance pricing arrangement, if it is indicated;
f) type of preliminary cross-border agreements or APA;
g) the amount of a transaction or a series of transactions provided for by a previous cross-border agreement or an advance pricing agreement, if such an amount is mentioned in these documents;
h) a description of the set of criteria used to determine transfer pricing, or the transfer price itself in the case of an advance pricing agreement;
i) identification of the method used to identify the transfer pricing in the case of an advance pricing agreement;
j) identification of other EU member countries that may be concerned by the advance cross-border agreement or advance pricing agreement;
k) identification of any person, except a natural person, EU member countries that may be affected by the previous international agreement or advance pricing agreement (indicating with which EU member states the relevant persons are connected);
l) an indication of the information to be transferred is based on a previous cross-border agreement or an advance pricing agreement (Council Directive 2011/16/EU on the mandatory automatic exchange of information in the field of taxation, 2011; Council Directive (EU) 2015/2376 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation, 2015, 2014).

Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy/DAC7

An Implementation Objective

Digitalization has undergone rapid development over the last two decades. Digital technologies have spread rapidly; the launching of the online markets is a distinctive feature of the XXI century. More and more companies are providing their services or selling own products over the Internet and use all advantages of online trading. Online platforms greatly facilitate various transactions between users (within different countries and continents), simplify purchase and sale procedures, tracking and calculation of transactions or financial results. Such platforms have a significant impact on business profitability, facilitate marketing campaigns, and bring buyers and sellers closer together. The implementation of online platforms has become more relevant than ever during the COVID-19 pandemic. Global isolation has forced most small and medium-sized businesses to introduce virtual trading and protect themselves from bankruptcy. In the era of digitalization, it is difficult to find a company that does not take advantage of the Internet environment.

Thus, online trading has become an integral part of individual economies, opened up new prospects for business development, and at the same time revealed many controversial issues related to accounting and taxation. Tax authorities face the problem of inconsistency of existing tax strategies with modern realities, and therefore there is a need to increase the number of taxpayers receiving taxable income through digital platforms. On the other hand, the increase in the number of sharing platforms opens up other opportunities for tax administrations and facilitates the control of tax payments. Businesses that previously worked in the "shadow" must register their transactions in electronic form in the online environment. The same relates to customer payments for services or goods. Thus, it is very important to develop the right strategy, regulatory and technical support because tax authorities can use such information to verify the activities of digital platform operators. The possible advantages include increased transparency and minimization of the burden of compliance for administrations and taxpayers.

However, due to the expansion of digital business and the popularity of the principles of the sharing economy, it has been recognized that income generated by entrepreneurs selling goods or services through online digital platforms can also evade taxation due to difficulties for local tax authorities in assessment of the relevant taxpayers. At the same time, tax administrations or taxpayers may not always have access to these platforms. This is due to the fact that the development

of socio-economic processes leads to a transition from traditional labor relations under employment contracts to the provision of services by individuals on an independent basis (the so-called "freelancing"). These changes cause risks of distorting competition with traditional enterprises and reducing declared taxable income. For these reasons, local tax authorities in some European countries have already tried to shift the burden of reporting taxpayer information to the competent tax authorities, e.g., the short-term rental legislation that has been approved in several countries (Italy and Belgium). Tax authorities can exchange the received information and use it as a data source for possible further audit activities. However, it should be noted that the transfer of such information is a burden for the digital platform operators, increasing the administrative burden on enterprises, which is not part of their main business activities.

Businesses on the online platforms are mainly focused on developing technologies to facilitate digital commerce, providing a trading platform for efficient access to (cross-border) markets and communication between suppliers of goods and services and users, etc.

Every country develops and implements its own tax policy, takes into account the change in the economic environment. However, the EU legal framework has been developed adhering to common rules and regulations. The exchange of tax information is an important aspect of cooperation, the implementation of tax policy by various countries of the world, including the EU.

Tax authorities have various methods of collecting and exchanging information. The DAC7 is one of such mechanisms that ensures compliance with tax rules and tax legislation (Council Directive (EU) 2021/514 amending Directive 2011/16/EU on administrative cooperation in the field of taxation, 2021). In fact, the DAC7 aims to provide equal conditions of taxation between those who offer their goods or services through a digital platform and those who work offline. The EU has fought against tax evasion, for fair taxation, control over the payment of taxes by all entities without exception for a long time, so it became the prerequisites for the introducing of DAC7. Thus, the DAC7 combines the need to achieve transparency and exchange of information for the purposes of taxation of digital platform operators that may collect information in the context of their business activities. Digital platform operators are required to support tax authorities in fighting against tax evasion and promoting honest business practices.

It should be emphasized that the DAC7 is not the first attempt to establish the exchange of tax information within the EU and other countries. DAC7 for the sixth time makes changes to Council Directive 2011/16 15, which was introduced to improve the efficiency of the exchange of information for tax purposes between member states for the purpose of assessment of tax violations. Council Directive 2011/16

has been changed over the years considering the evolution of business models, transferring to the EU level the concepts developed by the OECD as part of the BEPS project: Step 12 from 2015 recommends the countries to adopt the International Standard for Mandatory Data Submission, the so-called Mandatory Disclosure Rules, in order to increase tax transparency and counter abusive international practices (OECD, 2021g). The Electronic Commerce Directive 2000/31/EC of 8 June 2000 (Directive 2000/31/EC of the European Parliament and of the Council on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market, 2000) prohibits member states to require disclosure of information by operators of digital platforms, except in very specific circumstances. Thus, it is clear that DAC7 goes beyond the framework for the modernization of the existing information exchange rules, so it significantly affects all interested parties of the digital business industry, such as sellers or digital companies operating platforms. The latest amendments concern the digital economy and must be implemented by member states by the end of 2022.

Thus, DAC7 has a double purpose: on the one hand, to satisfy the need of tax authorities to transfer the disclosure of information to the parties involved in a certain transaction, and on the other hand, to exchange relevant information between competent tax authorities. This aspect is still subject to analysis and practical testing due to the recent implementation of DAC6, which introduced a similar disclosure of information for intermediaries (such as consultants, lawyers, financial institutions) who advise or implement an agreement that may be potentially harmful to taxation).

The OECD also published a report on 3 July 2020, Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy (herein: the "Model Rules") and considered these issues (OECD, 2020d). The standard rules are to:

– ensure that taxpayers and tax administrations receive timely access to high-quality and up-to-date information about the remuneration received by platform sellers in order to increase compliance and minimize the compliance burden for tax administrations and taxpayers;
– promote the standardization of reporting rules between jurisdictions to help platforms meet their reporting obligations in different jurisdictions by allowing them to follow broadly similar processes for collecting and reporting information about the transactions and identities of platform sellers;
– ensure the reliability of information that is collected, transmitted and exchanged. Information should be relevant and high-quality to tax administrations: the due diligence and reporting requirements of the Model Rules were designed to collect and submit only high quality and relevant information and relate the to the work of tax administrations;

– promote international cooperation between tax administrations to ensure access of tax administrations to information about income received by sellers of resident platforms, including platforms located in other jurisdictions;
– provide a reporting regime that can also be used for other purposes related to taxation;
– contribute to the development of new technical solutions to support the conduct of due diligence: the Standard Rules provide for the possibility of confirming the identity and tax residency of the seller through the so-called state verification service;
– ensure effective and targeted area: the Model Rules include the rental of real estate and personal services, including the provision of transport and delivery services.

According to the OECD, on 9 November 2022, 22 jurisdictions signed the Multilateral Competent Authority Agreement for the automatic exchange of information under the OECD Model Rules for Reporting by Digital Platforms (also known as the DPI MCAA) (OECD, 2022e).

Therefore, the prerequisites for the establishment and implementation of the DAC7 directive were: rapid digitalization of economies; growth of the market of digital operators; the importance of increasing the level of transparency and relevance of countries' tax policies; deepening the fight against unscrupulous taxpayers, residents and non-residents of the EU; deepening the cooperation of the countries' tax authorities in the exchange of tax information, and in issues concerning inadequacy and unreasonableness of the existing rules, norms, and principles; constant change in the business environment. First of all, the DAC7 directive extends tax transparency rules to digital platforms by requiring: (i) operators of reporting platforms to collect and report proposed information on accountable sellers who use their platforms for certain commercial activities, and (ii) EU member states to automatically share this information. DAC7 broadly follows the OECD model rules for platform operators' reporting on sellers in the sharing economy, although the area of reporting activities under DAC7 covers a wider range of issues.

Legal Framework and Exchange Rules

On 22 March 2021, the Council of the European Union adopted Directive 2021/514 amending Council Directive 2011/16/EU on administrative cooperation in the field of taxation known as DAC7 (Council Directive (EU) 2021/514 amending Directive 2011/16/EU on administrative cooperation in the field of taxation, 2021). The DAC7 introduces a new reporting obligation for digital platform operators that do business in the EU. In addition, opportunities for information exchange between EU member

states are expanding. DAC7 came into force on 1 January 2023, therefore digital platform operators should inform about sales of certain types of goods and services on their platform.

The main objective of DAC7 is to support tax transparency and prevent tax evasion in business activities carried out using digital platforms. It should be emphasized that DAC7 measures are aimed at the fair taxation of the incomes of persons working through online platforms (the so-called sellers) and not at the profits of the platform operators.

Standardization of reporting requirements for Platform Operators at union level should avoid excessive administrative burden due to individual tax administration requirements and unilateral reporting obligations introduced by some country members. The exchange of information between tax authorities will allow platform operators to comply with reporting obligations on income received by sellers using a digital platform in the same member country.

In European countries, different institutions are responsible for the implementation of DAC7:

1. In the Czech Republic, the Ministry of Finance is responsible for the implementation of DAC7. The Ministry prepared Act No. 164/2013 "About International Cooperation in Tax Administration". Under the proposed law, the new rules will come into force on 1 January 2023 (VATupdate, 2022).
2. In order to implement DAC7 into national law, the Hungarian Parliament adopted an amendment to Act No. 37 of 2013 "On the Rules of International Administrative Cooperation on Taxes and Other Duties", which will come into force on 1 January 2023 (Asquith, 2021).
3. The Romanian Ministry of Public Finance has transferred the requirements stipulated by DAC7 to the Romanian Tax Code (e.g., platform operators will be required to report transactions made by sellers). However, the procedure for submitting such reporting should be regulated. As a rule, these new requirements will be applied on 1 January 2023 (Asquith, 2023).
4. In order to introduce DAC7 into national legislation, the Ministry of Finance of the Slovak Republic adopted amendments to Law No. 442/2012 On International Assistance and Cooperation in Tax Administration. It will come into force on 1 January 2023 (KPMG, 2022).

Platform operator is an organization that provides a platform to sellers on the basis of a concluded contract. However, the form of the contract is not specifically negotiated, it can be in any form (not only in writing). Natural persons are excluded from DAC7 platform operators (Council Directive (EU) 2021/514 amending Directive 2011/16/EU on administrative cooperation in the field of taxation, 2021).

According to DAC7, the term "platform" means any software, including a website or its part, as well as an application, including mobile application, that is accessible

to users and allows sellers to connect with other users for the purpose of performing relevant activities directly or indirectly for such users. It also includes any arrangements for the collection and payment of fees of the relevant activity (Council Directive (EU) 2021/514 amending Directive 2011/16/EU on administrative cooperation in the field of taxation, 2021).

The operators of the platform carry out the relevant activity; a relevant activity is defined as carrying out the following activities:

– rental of real estate, including residential and commercial property, as well as any other immovable property and parking space;
– personal service;
– sale of goods;
– rental of any mode of transport.

The seller acts as an employee of the Platform Operator or a related person of the Platform Operator (it is not classified as "relevant activities").

There are different types of platforms:

– platforms for providing personal services—delivery, repair, cleaning, professional services (TaskRabbit, Handy, etc.);
– platforms for the sale of various products and goods (Amazon, eBay, AliExpress, etc.);
– platforms for providing transport services (Uber, Bolt, Lyft, etc.).

A wide range of digital platform operators should fulfill the DAC7 obligations:

– digital platforms available to users and sellers for the sale of goods and certain types of services (the definition of platform covers both websites and mobile phone applications);
– platforms that have legal or commercial presence in the EU;
– platforms that are used by sellers to carry out relevant activities.

Figure 17 shows the functioning of DAC7 in the EU.

The DAC7 reporting obligations are applied only to (i) platform operators that are tax resident or established in the EU (through registration or a permanent establishment) and (ii) foreign platform operators that carry out commercial activities in the EU but have no legal or tax presence in the EU (Council Directive (EU) 2021/514 amending Directive 2011/16/EU on administrative cooperation in the field of taxation, 2021).

Qualified non-Union platform operators do not send reporting as they comply with the reporting obligation in a qualified non-EU member country that cooperates with EU countries and applies automatic exchange of equivalent information. If an operator that would have to report information (in advance and on annual basis) to the competent authority of the member country that the platform business model has no reportable sellers, it will be excluded from the reporting obligation.

The competent authorities are Specialized Tax Inspection (the Czech Republic), National Tax and Customs Administration (Hungary), National Agency of Public Finance (Romania), Financial Directorate (Slovakia).

Reported information must be submitted to the tax authority no later than 31 January of the year following the calendar year in which the reportable seller is identified. The deadline for the first reporting by platform operators is 31 January 2024. Sellers who have carried out less than 30 relevant activities on the digital platform for the sale of goods and for which the remuneration received does not exceed EUR 2,000 (USD 2,400) during the reporting period will also be exempted from reporting as registered organizations, public authorities and sellers in the rental property sector, if their limits are not exceeded (Council Directive (EU) 2021/514 amending Directive 2011/16/EU on administrative cooperation in the field of taxation, 2021).

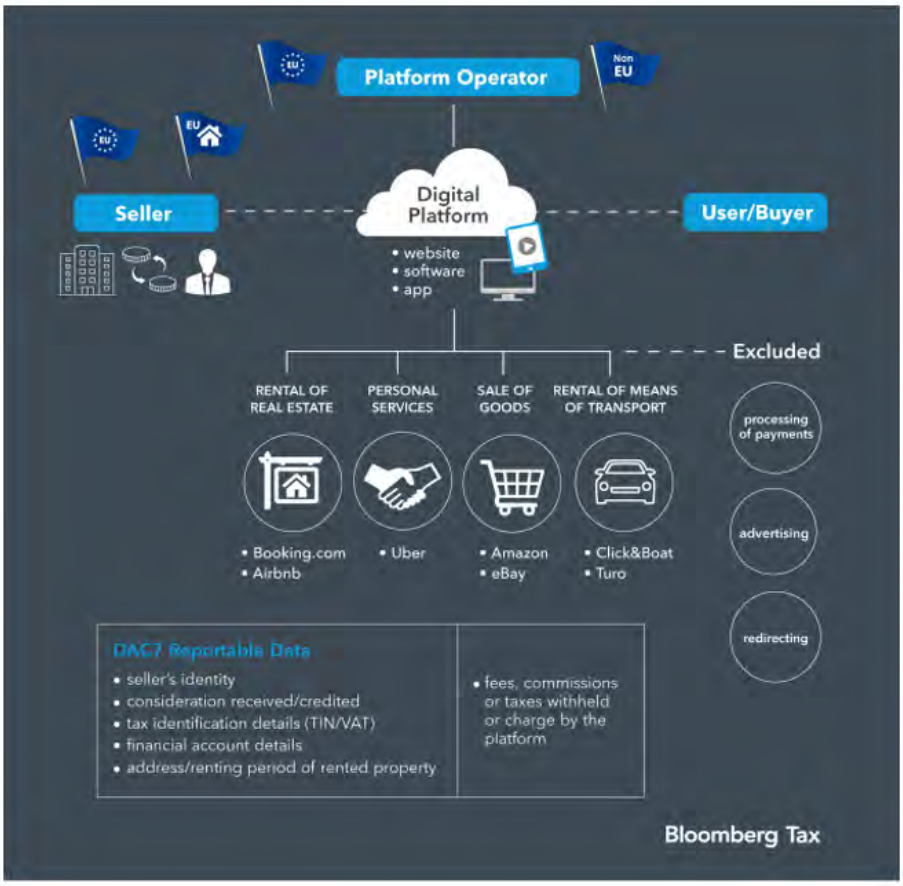

Figure 17. Exchange under the DAC7
Source: (Bloomberg Tax, 2021).

The platform operator must submit a report to the competent tax authority of the EU country. This is determined by the DAC7 and will generally apply where the operator is a tax resident. If the platform operator carries out its activities in more than one EU country, the operator must choose the tax authority of the country it will report to. Non-EU platform operators are generally required to register in and report to a selected EU country. However, they may be exempted from reporting to the EU if equivalent information is exchanged under an agreement between the country in which the operator is located and the Member State where the operator carries out its activities.

The adopted DAC7 covers broad reporting by platform operators. It includes not only digital platforms that facilitate transactions between their customers and small/medium enterprises (SMEs) offering services, but also e-commerce platforms and social media platforms, networking sites and streaming platforms. Taking into account the broad coverage of the proposal and its possible impact on information society services, influencers, content creators and the way SMEs conduct their business, analysts believe that these provisions should be discussed with SMEs, European platforms and European digital economy experts, so that they do not jeopardize the European digital transformation. The consultation would ensure coherence of European law on digital platforms, which is of great importance in light of the future regulation of the Digital Single Market (by the Digital Services Act).

In order to ensure that information about a reportable seller is effectively exchanged with the jurisdiction (in which the reportable seller is resident or has provided relevant real estate services), the reportable seller must also have such status in the jurisdiction in which the operator platform provides reporting. It can be the usual jurisdiction or a partner jurisdiction that has similar rules.

Figure 18 shows that Platform Z is operated by two Platform Operators: Platform Operator 1 (resident of Jurisdiction 1) and Platform Operator 2 (resident of Jurisdiction 2), with Jurisdiction 2 being a partner jurisdiction of Jurisdiction 1. Platform Z is used by three categories of sellers: Seller A (resident of Jurisdiction 1), Seller B (resident of Jurisdiction 3) and Seller C (resident of Jurisdiction 4). Jurisdiction 4 is a reporting jurisdiction in both Jurisdictions 1 and 2, Jurisdiction 3 is a reporting jurisdiction only in Jurisdiction 1 and not in Jurisdiction 2. Platform Operator 2 provides most of the seller-related functions and Platform Operator 1 relies on Platform Operator 2 to complete due diligence procedures; Platform Operator 2 will complete due diligence procedures for Platform Operator 1 in accordance with the regulations in Jurisdiction 2.

Platform Operator 1 complies the reporting requirements, Platform Operator 2 assures that it fulfills its reporting obligations for Seller C, therefore Platform Operator 1 does not report information about Seller C to the tax administration of

Jurisdiction 1. Platform Operator 1 must report information about Seller A to its (domestic) tax administration. Platform Operator 1 must also report information about Seller B, as Seller B is not an reportable seller to Platform Operator 2 due to the absence of an exchange agreement between Jurisdictions 2 (jurisdiction of residence of Platform Operator 2) and 3 (jurisdiction of residence of Seller B).

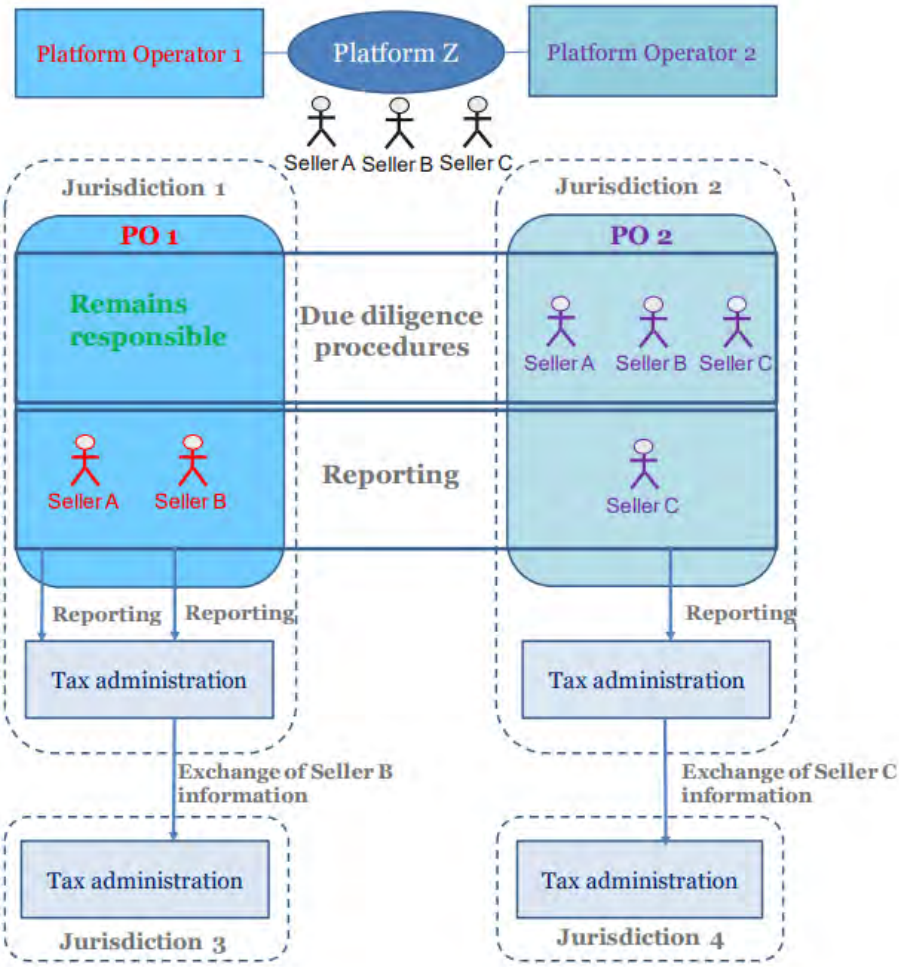

Figure 18. Exchange of tax information of digital platforms according to the OECD rules
Source: (OECD, 2020d).

DAC7 also amends existing provisions on exchange of information and administrative cooperation.

1. Exchange of information upon request: conditions for the request:

– Foreseeable relevance and exhaustiveness. The foreseeable relevance of the information requested by one-member country from another determines whether or not the requested member country shall be required to comply with the request for information, and thus constitutes one of the legal bases of the information order addressed by that member state to a relevant person and of the penalty imposed on that person for failure to comply with the information order. The aim of DAC7 is to clearly define the standard of foreseeable relevance, to ensure effectiveness of the exchanges of information and prevent unjustified refusals of requests, as well as to provide legal clarity and certainty to both tax administrations and taxpayers.

For these purposes, DAC7 provides for a definition of the standard of foreseeable relevance under which "the requested information is foreseeably relevant where, at the time the request is made, the requesting authority considers that, in accordance with its national law, there is a reasonable possibility that the requested information will be relevant to the tax affairs of one or several taxpayers, whether identified by name or otherwise, and be justified for the purposes of the investigation." A request for information may refer to one or more taxpayers if they are individually identified. In this context, DAC7 clarifies that the foreseeable relevance standard should not be applied to requests for additional information after an exchange of information relating to a prior pricing arrangement.

The DAC7 also lays down procedural requirements which the requesting authority must observe. Thus, "with the aim to demonstrate the foreseeable relevance of the requested information, the requesting competent authority shall provide the information to the requested authority about the tax purpose for which the information is sought, and a specification of the information required for the administration or enforcement of its national law."

The DAC7 also clarifies that before requesting information, the requesting authority must use all sources of information and all available means. However, if the requesting authority faces difficulties and risks, the obligation is not applied. The requesting authority may refuse to provide information.

Group requests. Considering there is sometimes a need for issuing requests for information that concern groups of taxpayers which cannot be identified individually but are instead described by a common set of characteristics, DAC7 addresses the issue of group requests in the context of a request for information. In that respect, DAC7 provides for the possibility for tax administrations to make group requests for information. In such a case, the requesting authority has to provide the requested authority with a set of information including a comprehensive description of the characteristics of the group and an explanation of the applicable law and of the facts and circumstances which led to the request.

– Standard form. According to DAC7, the standard information request form must include at the following information, which is provided by the requesting tax authority: the identity of the requested or investigated person, a detailed description of the general characteristics of the group (for the group requests), the tax purpose for the requested information.

Review of the legal framework for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy is provided in the Table 20.

Table 20. Legal framework for reporting by Platform Operators

EU framework	OECD framework
• Council Directive (EU) 2021/514 of 22 March 2021 amending Directive 2011/16/EU on administrative cooperation in the field of taxation (DAC7); • Model domestic rules; • EU exchange framework; • Rules for non-EU Platform Operators; • Implementing Regulation; • XML User Guide.	• Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy; • Model Reporting Rules for Digital Platforms: International Exchange Framework and Optional Module for Sale of Goods; • Model Rules for Reporting by Digital Platform Operators XML Schema and User Guide for Tax Administrations; • Multilateral Competent Authority Agreement on Automatic Exchange of Information on Income Derived through Digital Platforms (DPI MCAA)—signed by 23 jurisdictions (as of 9 November 2022); • Code of Conduct.

Source: (Directive 2011/16/EU on the mandatory automatic exchange of information in the field of taxation, 2011; Council Directive (EU) 2021/514 amending Directive 2011/16/EU on administrative cooperation in the field of taxation, 2021; OECD, 2020a;2020d, 2021g, 2022d; 28 Jurisdictions Sign International Tax Agreements to Exchange Information with Respect to Income Earned on Digital Platforms and Offshore Financial Assets, OECD).

Although the Directive and the OECD Model Rules are directly aimed at the creation of an international exchange framework, they could also be used in domestic context (e.g., a Ukrainian platform operator reports on Ukrainian sellers).

The intention of the Code of Conduct is to facilitate a possible standard approach to co-operation between administrations and platforms on providing information and support to platform sellers on their tax obligations while minimizing compliance burdens (OECD, 2020a).

According to DAC7, from 1 January 2023, reporting platform operators must identify reportable sellers and collect information on all non-excluded sellers which carry out relevant activities. The platform operators are also required to carry out due diligence and reporting obligations of the collected information (Bloomberg Tax, 2021).

The main aspects of due diligence and reporting obligations by platform operators are presented in Figure 19.

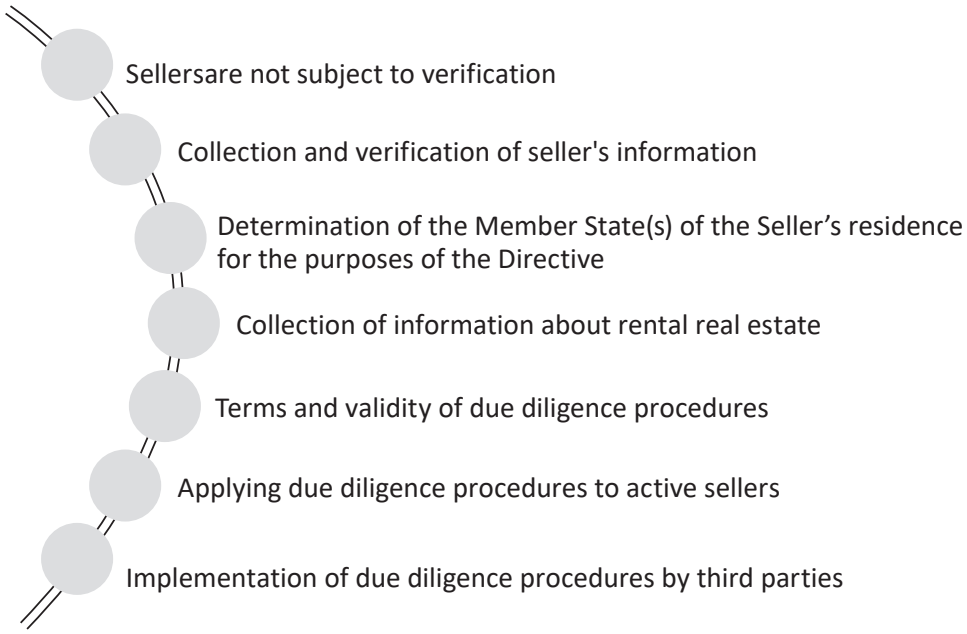

Figure 19. Basic aspects of performing due diligence procedures according to DAC-7
Source: developed by the authors based on *Council Directive (EU) 2021/514 of 22 March 2021 amending Directive 2011/16/EU on administrative cooperation in the field of taxation* (Council Directive (EU) 2021/514 amending Directive 2011/16/EU on administrative cooperation in the field of taxation, 2021).

The first step of the due diligence procedures is to identify the Excluded Sellers. The DAC7 defines the Excluded Seller as any seller:

– that is a Governmental Entity;
– that is an Entity the stock of which is regularly traded on an established securities market or a Related Entity of an Entity the stock of which is regularly traded on an established securities market;

– that is an Entity for which the Platform Operator facilitated more than 2,000 Relevant Activities by means of the rental of immovable property in respect of a Property Listing during the Reporting Period; or
– for which the Platform Operator facilitated less than 30 Relevant Activities by means of the sale of Goods and for which the total amount of Consideration paid or credited did not exceed EUR 2,000 during the Reporting Period (Council Directive (EU) 2021/514 amending Directive 2011/16/EU on administrative co-operation in the field of taxation, 2021).

The following sellers could be defines as Excluded:

– Governmental Entities;
– Publicly traded Entities and their Related Entities;
– Entities with more than 2,000 rentals of immovable property;
– Sellers with less than 30 sales of goods for less than EUR 2,000.

In order to determine the excluded status, the Reporting Platform Operator may rely on: publicly available information, confirmation from the Seller or its available records (depending on the exception). The option to rely on a government-offered verification service (for example, through an API solution integrated in the Platform) aims to accommodate the use of new technology solutions that are already in place in some jurisdictions for purposes of identifying and reporting Sellers.

The Reporting Platform Operator collects information about each seller who is an individual or a legal entity and is not an Excluded Seller. The information relates to clearly specified Seller credentials and is collected in its entirety. The Reporting Platform Operator has the option of using an identification service provided by a member country or the EU to verify the Seller's identity and residence for tax purposes. The Reporting Platform Operator has the right not to require the identification number of the taxpayer, if the country, where the Seller is a tax resident, does not issue and require the collection of the identification number of the taxpayer.

The tax authority requires information about the Seller (full name and address), country of residence in the EU, financial account details, taxpayer identification number, VAT/business registration numbers, remuneration that is paid or credited per quarter, any fees, commissions or taxes are kept by the Reporting Platform Operator.

If the Seller's activities are related to the rental of real estate, the Platform Operator collects each address from Property List and the corresponding land registration number, if any. If the Reporting Platform Operator has facilitated more than 2,000 leases of the same Seller, it will collect supporting documents, data or information that the property from this Listing is held by the same owner.

The Reporting Platform Operator determines the EU member country of which the Seller is a tax resident for the purposes of DAC7 according to the following rules:

1) the Reporting Platform Operator must consider the Seller a resident in the jurisdiction of the Seller's primary address;
2) the country that issued the taxpayer identification number, if it differs from the country of the Seller's primary address;
3) the country where the Seller has a permanent representative office;
4) any other country confirmed by means of electronic identification.

The Reporting Platform Operator determines whether the information collected is reliable using:

– all records available to the reporting platform operator;
– access to databases provided by the member country or the EU for free use to check the validity of the taxpayer identification number.

If the Seller provides inaccurate information, the Reporting Platform Operator requires to correct it, as well as to provide reliable supporting documents, data or information from an independent and reliable source.

The Reporting Platform Operator must carry out due diligence procedures by 31 December of each reporting period. Existing Sellers registered on 1 January 2023 have a two-year deadline to complete due diligence. The Reporting Platform Operator must update the due diligence data every 36 months.

Reporting Platform Operators may choose to apply due diligence procedures only to active sellers. They also may use a third-party service provider to perform due diligence procedures. However, the operator of the platform is still responsible for following the rules of the due diligence procedure and providing reliable information.

In order to comply with the General Data Protection Regulation, the Reporting Platform Operator must also inform individual Sellers that their information is collected and shared in accordance with DAC7.

Any processing of personal data carried out within the framework of Directive 2011/16/EU should continue to comply with Regulation (EU) 2016/679 of the European Parliament and of the Council (Regulation (EU) 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC, 2016) and Regulation (EU) 2018/1725 Regulation (EU) 2018/1725 of the European Parliament and of the on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, 2018). Data processing is set out in Directive 2011/16/EU solely with the objective of serving the general public interest, namely the matters of taxation and the purposes of combating tax fraud, tax evasion and tax avoidance, safeguarding tax revenues and promoting fair taxation, which strengthen opportunities for social, political and economic integration

of the Member States. Therefore, in Directive 2011/16/EU, the references to the relevant Union law on data protection should be updated and extended to the rules introduced by this Directive. This is of particular importance for the purpose of ensuring legal certainty for data controllers and data processors within the meaning of Regulations (EU) 2016/679 and (EU) 2018/1725 while ensuring the protection of the rights of data subjects.

EU member states are obliged to exchange the submitted information within two months after the end of the reporting period. Digital platform operators established in a non-EU jurisdiction that has reporting obligations equivalent to the DAC7 rules are exempt from reporting under DAC7. The European Commission is developing a list of jurisdictions that it considers having equivalent reporting obligations (Arends, Peeters, Kolkman, 2022).

In the cases of non-compliance with DAC7, reporting platform operators will be subject to sanctions that are similar to the sanctions imposed for violations of DAC6. Although every EU member state is required to impose effective and deterrent sanctions, and there is no uniform set of sanctions across the EU.

The reporting platform operators will be forced to close the user's account of any Reportable Sellers who have been reminded twice to provide the relevant information and failed to do so. Such closure shall occur if 60 days have passed since the last reminder without a response from the Seller, and re-registration shall be blocked until the Seller has disclosed the requested information.

This means that sanctions may vary between EU member states, but the penalties must be deterrent and effective in each EU member state. In the Netherlands, an administrative penalty up to a maximum of EUR 900,000 may be imposed on the Platform Operator, as well as prosecution (Arends, Peeters, Kolkman, 2022). In the Czech Republic, it is possible to impose a fine of up to CZK 1.5 million (about EUR 60,000) for failure to comply with obligations to provide information. The amount of the penalty for failure to comply with obligations to provide information to the National Tax and Customs Administration of Hungary and due diligence procedures is not more than HUF 5 million. According to the Tax Procedure Code of Romania, failure to comply with the reporting obligation may result in a penalty from ROL 2,000 to 14,000, depending on the type of organization operating the platform. However, it may be amended as the implementation of DAC7 in national legislation is still ongoing. The Ministry of Finance of the Slovak Republic proposes a penalty of EUR 10,000 for non-compliance with obligations to provide information to the competent authority of the Slovak Republic and due diligence procedures, which may be imposed repeatedly (Accace, 2022).

Review of the Literature

The field of taxation has been studied by domestic and foreign scholars. Modern scientific research is focused on the problems of the shadow economy, overcoming the problem of tax evasion, double taxation, as well as taxation of online business. Many studies have explored the relevance and necessity of research in the field of taxation due to the variability of the economic environment, the emergence and rapid development of new industries, as well as new methods of tax evasion. Brodzka A. has emphasized that "a number of initiatives at the national and international levels show that the changes in financial transparency and information exchange is a constant trend. Measures taken by countries and international organizations allow the automatic exchange of information to become a standard not only in EU member states and in relations between the EU and the USA, but, in the near future, in the global business environment" (Brodzka, 2015).

The development of the market of digital platforms stands out as a separate area of the research. Adamski D. has studied the analysis of the application of the regulatory approach in the activities of digital platforms in the domestic market. The author emphasizes that the regulatory approach to technology companies in the domestic market is in the process of reorientation from maximizing economic benefits to minimizing social and political costs. He systematized the basic economic and political benefits, as well as the costs of creating a European market for online activities, and the results of positive integration in this area before and after the implementation of the single digital market strategy in 2015. One valuable practical aspect is the clarification of the European Court's position on Uber, as well as highlighting unsubstantiated legal decisions and legal conflicts. The scholar has suggested that the creation of a single digital market in the EU has negative impact on the member states; he has also explained this impact through the prism of the level of economic development of each of the participating countries. Thus, the author also thinks that the highly developed countries will benefit from the digital market, while the developing countries will significantly leg behind (Adamski, 2018). We agree with the author's opinion about the negative consequences of the creation of a single digital market, however, stressing that there are many advantages for all Member States and candidate countries.

Strauss H., Schutte D. and Fawcett T. have expressed an interesting opinion about the ongoing debate at the global level regarding tax administration and reform within the framework of the digital economy. Their study summarizes, analyzes and evaluates the global tax response to various elements that have emerged with the development of digital economies.

In the researchers' study, a global and holistic overview of the current tax reform for all major types of taxes is affected by the digitalization of the economy. The scientists conducted research based on actual data collected for 120 countries of the world. They have concluded that "while the digital economy is seen as limitless and efficient, current international responses are still influenced by country borders and traditional tax principles, which have led to a global tax reform that is complex, expensive and difficult for highly multinational companies to comply with digitization." The researchers consider that the international tax response to the digitization of the economy does not take into account and recognize the hybrid nature and digital environment of business models related to the digital economy (Strauss, Schutte, Fawcett, 2021).

The impact of the development of digital platforms on the economy has been studied by such scholars as Di Porto F., Zuppetta M. and Notes A. F. They emphasize that "with digital platforms gaining dominant intermediating role and exerting regulatory functions vis-à-vis small and medium-sized enterprises (SMEs) through algorithms, EU institutions have started considering to rely on their analytical capacity to regulate the myriads of market transactions occurring within and through them". Most of the time, the EU suggests recurring to light-tough disclosure duties. Hence, the European model falls short in rebalancing information asymmetry and unequal bargaining power plaguing the SMEs. In practice, the EU model consists either in pure delegation of self-regulatory powers (codes of conduct) or non-enforceable co-regulatory schemes (with technical standards established by the platforms themselves). Other models have been suggested that rely on the regulator's access to the platform's data. In particular, to tackle the multifaceted risks associated with algorithmic decisions by digital platforms, while at the same time avoiding suppressing innovation, they make three suggestions: (1) information disclosures should also be done by an algorithm (2) that is pre-tested in a co-regulatory process, that involves the regulator and stakeholders and (3) enforced through legal and other empowerment tools, rather than solely through fines (Di Porto, Zuppetta, Notes, 2021).

Lane M. has presented different direction of the research. Although sharing opinion on the effectiveness of digital platforms, as well as the importance of their development, she singles out the problem of compliance with rules, norms and standards for employees. The scholar focused on such issues as working conditions on digital platforms, in particular, how to ensure guaranteed work and income, access to social protection, general career growth and collective bargaining rights, fair collection of taxes and legal employment (Lane, 2020).

Many studies are based on the experience of specific countries. Fanea-Ivanocci M., Musetescu R., Pana M. and Voicu C. have concluded that "the fight against corruption and increasing tax compliance with the help of digital public services are

key factors for increasing sustainable development in Romania." Tax regulation can affect the level of tax compliance due to the additional costs it generates. The use of digital public services reduces costs for entrepreneurs and increases their trust in public institutions due to a higher level of transparency (Fanea-Ivanocci et al., 2019). The scholars put forward several hypotheses to explain the cause-and-effect relationships between digital platforms and tax policy (Figure 3):

– Hypothesis 1 (H1): Business taxation increases entrepreneurs' costs of tax compliance with Romanian tax regulations;
– Hypothesis 2 (H2): The growing costs of tax compliance can be correlated with corruption occurrence or spread in Romania;
– Hypothesis 3 (H3): The spread of corruption endangers the process of sustainable development in Romania;
– Hypothesis 4 (H4): Digitization improves tax compliance and reduces corruption, both of which lead to increased sustainable development in Romania.

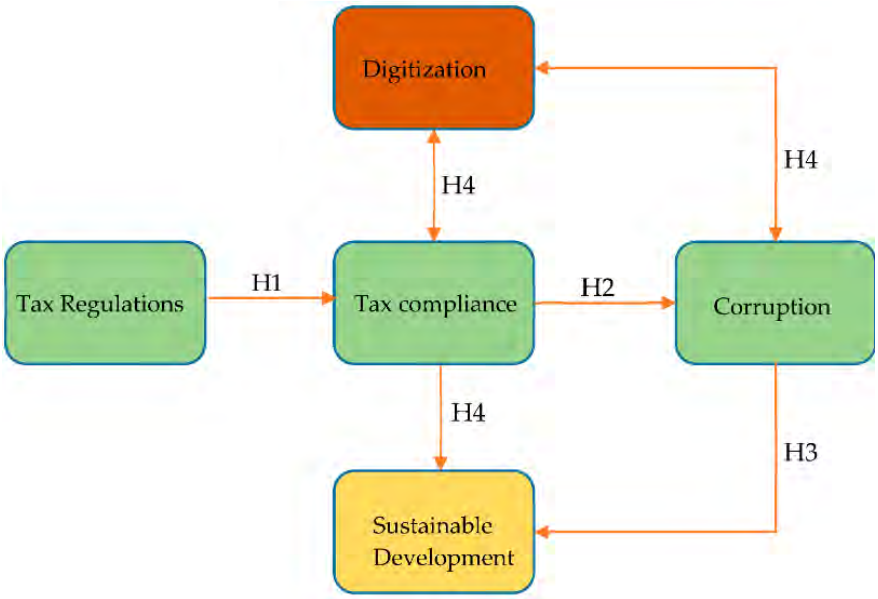

Figure 20. Map of arguments
Source: (Fanea-Ivanocci et al., 2019).

The global pandemic and its impact on socio-economic processes in the global environment have been studied by different scientists. Bilotta N. N. has emphasizes that the COVID-19 pandemic has shown how important digital platforms are for the functioning of the world economy (Bilotta, 2020). Big Tech companies are likely going to emerge stronger from the COVID-19 pandemic due to the massive surge in

demand for public, retail and corporate digital services. This megatrend has consolidated the dominant market position of digital multinationals—almost all of them from the US—in the EU markets, raising critical questions ranging from the EU's ambition for technological sovereignty to the much more urgent issue of how Big Tech's profits should be taxed. The "digital tax" issue—already the source of a heated international debate before COVID-19—has gained in prominence as it would be an important instrument for governments in dire need of raising money to finance the post-pandemic economic recovery (Bilotta, 2020).

Digitalization has done more to shape the 21st century than virtually any other phenomenon. However, international tax law has seemingly failed to keep pace with rapid technological developments, which has likely led to inequalities between the tax burden of traditional and digital business models. Thus far, there has been no consensus regarding the issue of fair taxation of the digital economy at the international and EU level. As European policymakers have begun to experience noticeable amounts of pressure to act, several EU countries have pushed forward and introduced unilateral measures to ensure they receive a fair share of the tax revenues pie. Geringer S. considers that "it is unclear whether national digital taxes can overcome the tax challenges stemming from the increasing digitalization of the economy. Thus, newly proposed and implemented national digital taxes in Europe are thoroughly elaborated in the context of their relationship with double tax treaty law, the perils of double/multiple taxation, their coherence with European law, their global and regional impact on competition and competitiveness, their contribution to tax revenues and the establishment of fair taxation conditions" (Geringer, 2021). The member states are introducing unilateral measures to solve the taxation problems of companies in the digital economy. The EU's actions are necessary to mitigate the fragmentation of the single market and the creation of distortions of competition within the EU through the adoption of such unilateral actions at the national level (Hak, Devcic, Budic, 2021).

Finck M. examines digital data-driven platforms and their impact on contemporary regulatory paradigms. Lawmakers around the globe including the European Commission are currently trying to make sense of these evolutions and determine how to regulate digital platforms. In its 2016 Communication on Online Platforms, the European Commission proposed various options for regulating the platform economy, including self-regulatory and co-regulatory models. The Commission's assumption that self-regulation or co-regulation can replace top-down legislative intervention in the platform economy forms the background of this paper, which examines these three options to determine their respective suitability. Finck has concluded that as command-and-control regulation as well as self-regulation raise significant problems in their application to the platform economy, co-regulation emerges as the most adequate option if certain conditions are complied with (Finck,

2017). Therefore, numerous researches in the field of development of digital platforms and the problems of regulation of their activities, in particular, tax issues, are quite popular among foreign scholars. As for Ukraine, this topic became popular only a few years ago, when digital platforms began to operate. However, it is important to review the works of domestic scientists in order to understand how Ukraine is ready for its integration into the EU.

Many works of the domestic experts have been devoted to the problems of effective integration and harmonization of regulatory and legal support, transformation of institutions and preparation of business entities for possible future changes. Pakhnenko O. and Semenoh A. have studied the basic principles of the EU tax policy and concluded that "the tax system in the EU countries has the relative autonomy of national governments regarding the formation of their own tax policy, under the condition of compliance with the established requirements in the tax field, designed to ensure effective functioning of the pan-European market and the free movement of goods and services, capital, labor and technologies. The main tasks of the tax policy of the EU countries, which are solved at the pan-European level, include the fight against tax evasion, tax fraud, avoidance of double taxation of incomes of individuals and legal entities earned on the territory of different EU countries" (Pakhnenko, Semenoh, 2016). Rainova L. has investigated the experience of approximation of Poland's tax legislation to EU directives. Poland is Ukraine's closest partner and the member of the EU since 2004, so studying its experience is extremely important for building an effective tax system in Ukraine. The researcher has underlined that "Poland was one of the ten countries of the fifth wave of EU expansion of 2004 that managed to negotiate the largest list of special provisions (positions) in order to ensure gradual changes in tax legislation and, thus, limit their negative economic and social consequences" (Rainova, 2017).

It should be noted that the topic of tax policy is quite popular among researchers. They pay more and more attention to the problems of tax evasion, double taxation, tax fraud, facilitating the formation and submission of tax reports, and automatic exchange of tax information. The analysis of scientific research made it possible to single out certain common features. In particular, there is a similar approach to explaining and justifying the place of digital platforms in the digital economy and the importance of implementing an effective tax policy in relation to the activities of the platforms. There is also a common conclusion regarding the advantages of introducing automatic exchange of tax information and deepening administrative cooperation within different countries of the world. In addition, experts are focusing on the digitalization of the economy, and at the same time, they are increasingly exploring new innovative solutions to overcome the problems of taxation and tax compliance of digital platforms. It is clear that further research will be aimed at resolving the issues related to the adoption of DAC7.

Implementation in Ukraine

For the aligning Ukrainian tax legal and administrative framework with EU requirements it is recommended to start actives on drafting legislation on administrative cooperation in direct taxation in 2023, in particular on e-Platforms for selling goods and services. The provision of DAC7 say that "non-EU platform operators must also comply with DAC7 if they facilitate relevant activities of sellers who are residents in the EU or they rent out immoveable property located in the EU" (Council Directive (EU) 2021/514 amending Directive 2011/16/EU on administrative cooperation in the field of taxation, 2021). Thus, DAC7 affects not only EU member states, but also companies around the world, including Ukrainian ones.

The EU Directive on reporting obligations for digital platform operators known as DAC7 builds on the OECD rules. As the OECD Model Rules for Reporting by Digital Platforms corresponds with the EU initiative DAC7, it is advisable to implement the OECD's model reporting rules for digital platforms in order to build the administrative capacity for the introduction of the information exchange under DAC7.

For completing Ukrainian commitments on implementation of the OECD standards and the EU acquis on taxation in the mentioned fields, Ukraine should:

- develop and adopt tax framework to enforce the collection and verification requirements laid down in Section II of the Model Rules;
- develop and adopt amendments to tax legislation on requirements for Reporting Platform Operators to keep records of the steps undertaken and any information relied upon for the performance of the due diligence procedures and reporting requirements and adequate measures to obtain those records;
- design and introduce administrative procedures to verify compliance of Reporting Platform Operators with the due diligence procedures and reporting requirements;
- design and introduce administrative procedures to follow up with a Reporting Platform Operator where incomplete or inaccurate information is reported;
- develop and introduce effective enforcement provisions to address non-compliance (penalties);
- deploy the IT solution for obtaining the reports submitted by the Platform Operators and for carrying out exchange.

Besides the adoption of the legislative framework and deployment of IT solutions for the exchange, to ensure the implementation of Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy, the STS needs to design the new business processes (Table 21).

Table 21. Functions and processes to be established at the tax administration under the DAC7/DPI framework

Functions	Business processes
Receipt and validation of the data	• Recurrent action; • Automated processes should be established; • Usually involves the IT department and the Competent Authority.
Storage and Matching of the data	• Recurrent action; • Automated processes should be established; • Manual matching; • Usually involves the IT department and the Competent Authority.
Use of the data	• Recurrent action; • IT solutions should be established; • Usually involves various business functions of the tax administration.

Source: developed by the authors.

Use of information under DAC7

DAC7 came into force on 1 January 2023, and digital platform operators doing business in the EU should assess whether they fall under DAC7. If DAC7 reporting obligations are applied to a platform operator, it was important to set up a process to collect relevant information from reportable active sellers on the platform from 2022.

This process should include:

– assessment of the volume and quality of available current data (compared for registration, payment, VAT accounting and other purposes);
– studying the capabilities, systems and processes necessary for collection, verification, management, testing, transmission and possibly even analysis of data;
– studying the use of public interfaces for data verification and/or the possibility of outsourcing due diligence procedures;
– addressing a large number of sellers trading through the platform and possibly informing them of their tax obligations;
– review of contractual relations with sellers;
– assessment of any consequences for data protection;
– compliance with data storage rules;
– determining the place of registration for DAC7 purposes.

The reported information will be subject to automatic exchange of information between tax administrations. Failure to comply with these new reporting obligations will result in significant penalties.

The earliest reporting deadline for Platform Operators will be 31 January 2024 (for the calendar year 2023). Furthermore, platform operators should also determine whether changes to their IT systems and technologies are required to allow reporting under DAC7.

Platform operators should prepare to collect and manage a significant amount of data about businesses using their platforms, including confidential data such as: the bank account to which the payment was received and any additional information of a financial nature; the total amount of remuneration paid or credited during each quarter of the reporting period; any fees, commissions or taxes withheld or charged by the platform; in the case of rental immovable property, if any, cadastral data and the number of days during which each property was rented during the reporting period.

On the other hand, taxable entities that use platform operators to conduct their business activities should confirm that their information will be transferred to the tax authorities of all member states. Therefore, they should be very careful about their own compliance activities, as member states' tax authorities will send out questionnaires and cross-check to verify the correctness of the data and identify potential tax evasion.

It is necessary to consider General Data Protection Regulation (GDPR) issues in relation to the level of information requested. While DAC7 asks Member States to comply with the protection of collected data in accordance with relevant EU legislation, a thorough review of the implementing rules will be required.

Furthermore, businesses need to consider the impact of DAC7 on contractual relationships with sellers and prepare an action plan to address this issue in the future. An important aspect is to identify any implications for data protection. The new rules do not provide for non-compliance with domestic legislation, therefore businesses should monitor the implementation of domestic legislation with a view to expanding its scope and assess any necessary follow-up actions.

It is important for operators to remember that the information they provide should be used by tax authorities to calculate both income tax and value added tax (VAT).

Conclusions

The reason for the introduction of the automatic exchange of tax information was the need to have effective tools to combat tax evasion and profit shifting to low-tax jurisdictions. Implementation of automatic exchange of information is standardized and regulated at the international level in order to ensure its efficiency of administration. The automatic exchange of tax information is coordinated and regulated at the level of the OECD and the EU. The procedures for the automatic exchange of tax information in the EU countries correspond to the OECD initiatives, and therefore the implementation of the exchange according to the OECD Standards by the jurisdiction is an important preparation for the harmonization of legislation and procedures under the EU rules. The application of exchange procedures contributes to the growth of state budget revenues, ensures tax transparency and fairness, and also increases the effectiveness of tax control.

Since the first years of its independence, Ukraine has been on its path to the European integration. Despite the Russian military aggression, Ukraine continues to implement and popularize European standards in different fields. Significant results were achieved within a short time in the tax area, too. The active phase of the war accelerates the introduction of tax information exchange procedures in Ukraine; CRS is being introduced now. The implementation of this Standard, in addition to the development and adoption of the legal framework, requires the creation of necessary IT solutions, new business processes and procedures concerning the tax authority. It is also important to communicate with financial institutions and train them to use the CRS rules in practice. The implementation of CRS also requires the review of business processes and the introduction of additional procedures by financial institutions. Special attention is paid to the development and implementation of the methodology for using CRS data for the purposes of tax control, because their effective use will increase tax compliance, and will also be an effective tool for detecting tax evasion and protect the tax base. Implementation of the CRS is important for Ukraine as an EU candidate country in harmonizing of national legislation process to the EU acquis. The introduction of the CRS will significantly simplify the implementation of the DAC2 rules for public authorities and businesses, as the Directive generally provides for similar procedures.

In order to carry out the exchange according to the CbC Standard, Ukraine has already adopted the regulatory and legal documents and signed the CbC MCAA, and necessary software is being developed. It is important to take measures for the protection and proper use of data.

The functioning of the international exchange of tax information in the post-war period in Ukraine is important for ensuring revenues to the state budget, increas-

ing tax compliance, minimizing corruption risks, raising Ukraine's reputation as a transparent tax jurisdiction, as well as fulfilling European integration obligations.

The aim of Reporting by Platform Operators is the taxation of the incomes of persons operating through online platforms, the so-called sellers, rather than the taxation of the profits of the platform operators themselves. The initiative is focused on voluntary compliance, including through the active participation of the Platform Operators. It is expected that its implementation will improve the transparency and tax compliance of certain sectors of the economy and tourism, such as holiday apartments/properties rentals by non-residents. DAC7 is also aimed at improving voluntary compliance by providing data for pre-filling of annual tax returns of the Sellers. This will minimize the risk of tax evasion and the burden of carrying out control activities. Reporting by Platform Operators will allow customers to verify the identification and quality of Sellers as well.

In order to implement DAC7 and Model Rules for Reporting by Platform Operators, Ukraine needs to adapt the current domestic legislation to the requirements of DAC7 and Model Rules by amending the Tax Code of Ukraine, adopt the necessary by-laws that will regulate the exchange process, build administration processes in the tax authority, and create an IT system that will enable such exchange and processing of data.

We also think that the field of tax information exchange and compliance will be a topical issue in the coming years. We believe that further investigation could focus on evaluating the effectiveness of the use of data obtained as part of the exchange procedure, the quantitative and qualitative impact of the introduction of Exchange Standards on the receipts of state budgets, and the identification of schemes and mechanisms that are used to avoid the exchange.

Annex

Annex 1. Main EU legal acts in field of taxation to be transposed into Ukrainian tax legislation

Indirect taxation	Direct taxation	Administrative cooperation and mutual assistance
EU VAT Directive	Convention on the Elimination of Double Taxation and Code of Conduct	EU Council Regulation on Administrative Cooperation in Field of VAT
EU VAT Exemptions directives	EU Directive on Interests and Royalty Payments	EU Council Regulation on Administrative Cooperation in Field of Excise Duties
EU VAT Refund directives	EU Anti-Tax Avoidance Directive	EU Recovery Directive
EU Excise Directive (general arrangements)	EU Parent-Subsidiary Directive	EU Administrative Cooperation Directive
EU Directive on Fiscal Marking of Gas Oils and Kerosene	EU Directive on Tax Dispute Resolution Mechanisms	
EU directives on Taxation of Excise Goods	EU Directive on Hybrid Mismatches	
EU Directive on the Charging of Heavy Goods Vehicles		

Source: (*Priamuiemo Razom*, EU4PFM).

Annex 2. Algorithm of due diligence procedures for new accounts

Steps		Mechanism of implementation
Step 1	Self-certification documents must be obtained after opening the account to determine whether the account holder is a reportable person, unless it is established that the account holder is not a reportable person	• For example, according to available information or information held by the reporting financial institution, the account holder is a government agency. There is no need to request self-certification documents to determine whether an account holder is a reportable person; • The self-certification document must be signed/confirmed, dated and include the name of the account holder; residence address; tax jurisdiction(s); etc.; • It may contain additional information if the account holder is a passive non-financial entity (Step 3-4).
Step 2	Confirmation of self-certification	• The self-certification document must be compared with other available information about the account opening (e.g., documentation that is collected to meet the requirements of anti-money laundering legislation); • If the information turns out to be unfounded, a new self-certification document must be requested.
Step 3	Verification of Passive NFEs: this may be an account holder, despite the fact that the account holder is defined as a reportable person	• A self-certification document must be obtained to determine whether the account holder is a Passive NFE, unless it is based on information held by the Reporting Financial Institution (RFI) that the account holder is not a Passive NFE.
Step 4	Identification of the controlling persons of the Passive NFE	• A reportable financial institution may rely on AML/KYC information if it complies with the 2012 FATF Guidelines. If not, the self-certification document must be used. Trusts: it is necessary to have identification details of all relevant controlling persons (no 25 percent threshold for beneficiaries)—if not, self-certification document must be obtained.
Step 5	Identification of the controlling person's tax residency	It is necessary to obtain a self-certification document from the controlling person(s) or account holder of the organization.

Source: developed by the authors.

Annex 3. Algorithm for preparation of Chapter I of the Country-by-Country Report

	Indicator of activity of the MNE Group in the tax jurisdiction	Filing
1	Revenues from transactions with related parties	For the reporting period: • Includes revenues from the sale of goods and property, services, royalties, interest, bonuses and others; • It does not include payments received from other participants of the MNE Group, which are considered as dividends in the country of tax residence of the taxpayer.
2	Revenues from transactions with unrelated persons	
3	Revenues from transactions with unrelated persons	
4	Profit (loss) before taxation	For the reporting period: • Profit must include all extraordinary items of income and expenses; • Profit/loss may include dividends received from other business entities; • If dividends are included, this should be noted in Chapter 3 of the Report.
5	Corporate income tax	• CIT paid by members of the MNE Group who are tax residents in the relevant state for the reporting financial year; • Includes all extraordinary items of income and expenses; • Includes tax paid by the business entity to the tax residence jurisdiction and to other tax jurisdictions; • Includes withholding tax paid by other enterprises (related/unrelated) in respect of payments to the member of the MNE Group. e.g., the amount of repatriation withholding tax that is paid by a taxpayer in Ukraine when paying income to a tax resident in Germany is included in the amount of taxes paid to the MNE Group in Germany.

	Indicator of activity of the MNE Group in the tax jurisdiction	Filing
6	Accrued tax	For the reporting period: • Current tax expenses include only transactions in the reporting year; • It does not include deferred taxes or provisions for repayment of tax liabilities. Tax on dividends is included only on the condition that the corresponding dividends are included in the amount of the calculation of CIT before taxation and information about them is indicated in Table 3 of the report.
7	Shared capital	At the end of the reporting period: It includes all business entities for tax purposes in the tax jurisdiction. For permanent representative offices, information on the size of the authorized capital must be reported as part of the information on the participant of the MNE Group to which such permanent representative office belongs, with the exception that the permanent representative office has regulatory requirements in regard to the allocation of part of the authorized capital to such permanent representative office. Amounts of authorized capital for each participant must be the balance of equity after deducting amounts that are accumulated profit (or retained earnings). When determining these amounts, it is possible to follow the accounting standards of a member of the MNE Group.
8	Accumulated retained profit	At the end of the reporting period: • The total amount of undistributed profit of all members of the MNE Group who are tax residents of the relevant state as of the end of the reporting financial year; • For permanent establishments, the amount of undistributed profit is included in the data of the participant of the MNE Group to which such permanent establishments belongs; • The amount can have a negative value; • In the case of several companies in the same jurisdiction, negative amounts must be eliminated with positive ones (the net result is indicated).

	Indicator of activity of the MNE Group in the tax jurisdiction	Filing
9	The number of employees	At the end of the reporting period: • The total number of employees in the full-time equivalent of all members of the MNE Group who are residents of this state; • It is determined at the end of the year based on the average employment level for such year; • It is determined on any other basis that is applied from year to year when providing information for all countries; • Independent contractors, natural persons who perform work, provide services to the member of the MNE Group, may be included; • Rounding is possible on the condition that it does not lead to a distortion of the distribution of employees between different states; • For Ukraine's tax residents, it is defined as the average number of employees in accordance with the Instruction on statistics of the number of employees [130].
10	Balance value of assets	At the end of the reporting period: • The sum of the net value of tangible assets of all members of the MNE Group of the relevant state; • Information on the balance value of assets of permanent establishments is reported as part of information about the state where the representative office is located; • It does not include cash or cash equivalents, intangible assets, financial assets.

Source: developed by the authors on the base of Transfer Pricing Documentation and Country-by-Country Reporting (OCED, 2015c); (On the approval of the form and the Procedure for filling out the Report by country of the international group of companies № 764, 2020).

Annex 4. Report on the activities of the MNE Group for the financial year for the TP purposes

Data of the MNE Group member													
Country of tax jurisdiction	Name	Country A		Total Country A	Country B		Country B		All members of the MNE Group who do not have tax residency		Total of participants without tax residency	MNE Group	
		Company A1	Company A 2		Company B1	Company B2		Company X1	Company X2				
	Organizational and Legal Form			X			X					X	
	Taxpayer Identification Number			X			X					X	
	Other taxpayer number			X			X					X	
	Location			X			X					X	
Currency	The currency of the parent company												
	The MNE Group member currency												
	Everage rate of recalculation												
Profit from the transactions with related persons	The currency of the MNE Group's member												
	The reporting currency												

Data of the MNE Group member																					
Country of tax jurisdiction	Name		Country A		Total Country A	Country B		Country B		All members of the MNE Group who do not have tax residency		Total of participants without tax residency	MNE Group
			Company A1	Company A 2		Company B1	Company B2			Company X1	Company X2		
Profit from the transactions with unrelated persons	The currency of the MNE Group's member												
	The reporting currency												
Total profit	The currency of the MNE Group's member												
	The reporting currency												
Profit (loss) before taxation	The currency of the MNE Group's member												
	The reporting currency												
Dividents received from other MNE Group members	The currency of the MNE Group's member												
	The reporting currency												
Paid CIT	The currency of the MNE Group's member												
	The reporting currency												

Data of the MNE Group member																				
Country of tax jurisdiction	Name																			
		Country A		Total Country A		Country B		Country B		All members of the MNE Group who do not have tax residency		Total of participants without tax residency		MNE Group						
		Company A1	Company A 2		Company B1	Company B2		Company X1	Company X2											
Accrued CIT	The currency of the MNE Group's member																			
	The reporting currency																			
Including dividend tax	The currency of the MNE Group's member																			
	The reporting currency																			
Shared capital	The currency of the MNE Group's member																			
	The reporting currency																			
Accumulated retained profit	The currency of the MNE Group's member																			
	The reporting currency																			
The number of employees																				

Data of the MNE Group member											
Country of tax jurisdiction		Country A		Total Country A	Country B		Country B	All members of the MNE Group who do not have tax residency		Total of participants without tax residency	MNE Group
Name		Company A1	Company A 2		Company B1	Company B2		Company X1	Company X2		
Balance value of assets	The currency of the MNE Group's member										
	The reporting currency										
Type of economic activity				X			X			X	X
Data sources											
Other											

Data specified in the Report

Primary data for calculation

Source: developed by the authors.

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