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NEW STAGE OF GLOBAL TAX REFORM

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Abstract. The article considers the new stage of the global tax reform initiated by the OECD/G20 Plan at the end of 2021.The prerequisites and main directions of the new tax plan, its assessment by various parties, international structures and civil society are reviewed. Particular attention is paid to the analysis of positions on the implementation of tax reform in the leading countries: the EU, the USA, the UK. An analysis allowed the authors to come to the following conclusions. The EU is the most active supporter of the global tax reform and ready not only to support the OECD rules, but in some cases to strengthen them. However, due to the diverse interests of 27 countries, there are difficulties and disagreements in adopting the two main Directives in this area. UK policy is more complicated. While expressing its interest in implementing the Pillar II rules, the country's government has so far maintained its own policy on taxing TNCs. The most difficult situation is in the USA. As one of the main initiators of global reform, considering it as an important argument for reforming the taxation system within the country, President Biden faces serious resistance in the Senate. It is still unclear, whether the reform is to be adopted duly. Such delay in the US reform may have a serious detrimental effect on the progress of global reform as a whole, since countries that are the "forefront" in implementing new tax rules may find themselves facing a competitive disadvantage. However the US, EU and UK are not the only parties whose support is integral to the success of the global tax reform. The world's largest rapidly growing economies (China, India and Brazil), as well as other developing countries, will play an important role in the successful implementation of global tax reform.

Keywords: taxes, tax cooperation, global tax reform, OECD, developed countries, EU, USA, UK.

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Аннотация. Рассматривается новый этап глобальной налоговой реформы, инициированный Планом ОЭСР/G20 в конце 2021 г. Исследуются предпосылки и основные направления нового налогового плана, его оценка со стороны различных групп и структур международного сообщества. Особое вни-

мание уделено анализу позиций по имплементации налоговой реформы в ее лидерах: ЕС, США, Великобритании.

Ключевые слова: налоги, налоговое сотрудничество, глобальная налоговая реформа, ОЭСР, развитые страны, ЕС, США, Великобритания.

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For a long time, tax policy was considered the most difficult area for interstate cooperation as it is closely linked to issues of national sovereignty. Nevertheless, the increasing internationalization of production, trade, and finance makes it imperative for governments to cooperate on global tax reform.

CHALLENGES AND DRIVERS OF REFORM

The 2008–2009 global financial and economic crisis (GFC) highlighted the imperative for greater tax transparency by forcing “tax havens” and countries with preferential tax regimes, including international financial centers, to cooperate on information and legal issues. In fact, the question of anti-offshore activity came up. The main working and coordinating body was the Global Forum on Tax Transparency and Exchange of Information for Tax Purposes (GTF), whose main task was and is to ensure the mandatory payment of due taxes by all participants in cross-border transactions [1][1]. In 2012, not only offshore companies but also major multinational companies (MNCs) – tax evaders, among which *Big Tech* companies (in particular, *IT*-giants such as *Google, Apple, Facebook, Amazon*) were put under strong criticism by the media and then international organizations. In 2013, the *G8* and later the *G20* proclaimed compliance with tax laws and the deoffshorization of the global economy as one of their most important goals [source 1, pp. 96-106].

This turn in the policy of the leading Western countries was primarily due to the serious budgetary difficulties caused by the GFC, including the emergency expenditures to keep the largest banks and other financial institutions afloat. In addition, representatives of civil society demanded a fairer distribution of the tax burden.

The official goal of the tax reform is to level the competitive field for all companies, including small and medium-sized enterprises (SMEs). At the *G20* summit in 2013, a joint action plan with the OECD was adopted to combat tax evasion by MNCs through base erosion and profit shifting (Action Plan on Base Erosion and Profit Shifting, *BEPS*) [2]. It consists of 15 actions, a number of which has not yet been implemented. It’s worth to note that *Action 1* provides for changes in the taxation of high-tech companies and e-commerce, taking into account the specifics of their activities.

All OECD members, non-OECD *G20* countries, and developing countries which were involved in consultations, worked on that project. According to *BEPS*, all innovations on tax reform were to be included in the new OECD model convention and existing bilateral tax agreements, including those on double taxation, will be revised on the basis of Convention. The “Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting” (*Multilateral Instrument” or MLI*) was completed in 2016 [3]. More than 100 jurisdictions have signed it, including Russia. There is also an OECD Inclusive Framework on BEPS. *MLI* came into force on January 1, 2019. Each country that has ratified the convention determines for itself which bilateral tax treaties it wants to change (*MLI position*).

According to *BEPS*, an essential part of the plan is the monitoring of the implementation of its measures, as well as their fiscal and economic consequences (Action 11). This requires mandatory disclosure (Action 12) and providing of detailed data on MNCs’ economic activities, revenues, and taxes paid on a country-by-country basis (Action 13). The introduction of the *Automatic Exchange of Information* (AEOI) mode, which took effect in 2018–2019, has played an important positive role in improving tax transparency. The *AEOI* agreement helped create the necessary technological base and ensure a high level of tax administration.

Monitoring using the country-based *Corporate Tax Statistic Database*, launched in 2019, showed that despite some positive results, tax evasion by MNCs continues, first and foremost in digital services. According to the estimates of the international organization *Global Alliance for Tax Justice*, the annual loss of government budgets due to tax evasion

[1] As of the end of 2021, 163 jurisdictions were members of the GFC, including Russia.

amounts to 483 bln dollars, of which transnational corporations (TNCs) account for 312 bln dollars [source 2, p. 6]. That is why the Inclusive Group has been active in developing new global tax standards.

The COVID-19 crisis and its negative financial, economic, and social consequences for all groups of states accelerated this process. In October 2021, OECD published Statement on a two-pillar solution to address the tax challenges arising from the digitalisation of the economy [4]. It was supported by 137 members of the Inclusive Group. The new OECD plan was approved at the *G20* Summit in November 2021, becoming yet another one joint OECD/*G20* document on global tax policy.

MAIN DIRECTIONS OF THE PLAN

The stated purpose of the OECD/*G20* tax plan is to ensure a more fair distribution of profits and tax rights among countries, taking into account the activities of TNCs. Section I, or *Pillar I* of the document provides that MNCs with total annual revenues of more than €20 bln redistribute 25% of their profits to the jurisdictions of their market activities in the part where a profit margin is above 10%. Extractive industries and regulated financial services are excluded from the scope of Pillar I. It is planned to consider the factor of a stable connection (*nexus*), which is the basis for redistributing part of the received taxes in favor of the jurisdiction of the market activity of MNCs, where their goods or services are used or consumed. Pillar I can be seen as a clear extension of the *BEPS* plan to intangible assets and services, especially digital assets.

The second fundamental element (*Pillar II*) contains the Global Anti-Base Erosion (*GLoBE*) rules, which seeks to encourage MNCs to leave offshore. *Pillar II* provides for additional taxation of groups of TNCs with total revenues of more than €750 m if they pay an effective tax rate of less than 15%. The parent jurisdiction of the TNC has the preferential right to collect the missing taxes using the *Income Inclusion Rule* (*IIR*). At the same time, as noted in the document, governments are free to apply *IIR* to TNCs headquartered in their country, even if they do not meet the threshold of €750 m. Pillar 2 of *GLoBE* defines the accounting of income for which the amount of tax payable is understated (*Undertax Payment Rule, UTPR*). State-owned enterprises, international and non-profit organizations, and pension and investment funds that are the ultimate parent companies of multinational enterprises are excluded from the *GLoBE* rules.

It's worth to note that the proposal of a minimum tax rate of 15% as a uniform standard for large MNCs (the result of a compromise reached during the discussions) does not mean the introduction of a uniform corporate tax for all countries. Only the first steps are taken toward harmonization of taxation in individual jurisdictions, including preferential tax regimes.

It is believed that a single minimum rate of 15% should stop the "*global race to the bottom*". Over the past decade, corporate tax rates have fallen significantly in many countries. According to OECD Secretary-General Mathias Cormann, "this package does not eliminate tax competition, as it should not, but it does set multilaterally agreed limitations on it" [5].

The main reason, however, is the need for states to raise tax revenues in their budgets to finance increased spending in the COVID-19 crisis and post-pandemic period. Interstate arrangements will make it easier for governments to increase domestic tax rates and make it harder for companies to exploit tax loopholes. This is especially evident in the United States, as well as in the largest countries of Western Europe.

For the first time, we are not talking just about closing loopholes for legal tax evasion by MNCs, but also about the redistribution of tax rights on an international scale. It should be emphasized that the global tax reform, which originally planned to affect the taxation mainly of digital giants, was eventually extended to all the largest companies in the world and indicated the possibility of coordinating an increase in corporate taxes in general.

During 2022, model rules and multilateral instruments are to be developed for the new rules to take effect in 2023. *BEPS* implementation experience shows, however, that the planned deadlines are not fully met due to the need to agree on numerous technical parameters among a large number of participants. In December 2021, the OECD released Pillar Two model rules for domestic implementation of 15% global minimum tax (*Pillar II*), which are designed to help these countries incorporate *Pillar II* into national legislation in 2022 [6]. The goal is to ensure that MNCs pay the minimum tax in each of the jurisdictions where they produce income, including without a physical presence. In the future, the issue of alignment of the OECD rules with the current tax laws in the countries, in particular the U.S. *Global Intangible Low-Taxed Income (GILTI)* rules, will be discussed.

It's worth to note some important features of the rules. They are not mandatory for the member

countries of the *BEPS* Inclusive Group, but if they adopt them, then the implementation should be based on the general approach stated in them. Application of the rules will require the calculation according to a unified scheme of the effective tax rate for each individual jurisdiction of the MNC, its correlation with the minimum 15% tax rate, and its subsequent inclusion in the tax base for the MNC. Standardization of tax administration in participating countries is also provided.

The public discussion reveals that although the rules contain basic parameters on many issues, different interpretations by individual countries are possible. A stumbling block could be the need to preemptively repeal existing national tax legislation, including those on digital transactions, such as those in the United States, France, and India, or to bring them into compliance with the new agreement.

In February 2022, the OECD has begun publishing sections of the model rules for *Pillar I*, particularly regarding the definition of *nexus* and the calculation of total income. Representatives of international organizations and national governments welcomed the move. Thus, OECD Secretary-General Cormann stressed that "this is a major victory for effective and balanced multilateralism. It is a far-reaching agreement which ensures our international tax system is fit for purpose in a digitalised and globalised world economy." [7].

Pascal Saint-Amans, director of the OECD Center for Tax Policy and Administration, noted that "more than the money, what is at stake is the fairness of the system. If companies don't pay their fair share, if they don't pay what they should be paying by using loopholes, who does pay? The other taxpayers, the individuals..." [source 3]. His statement reaffirms that global tax reform is intended, on the one hand, to help governments secure voters support and, on the other hand, that due today's increasing inequality, civil society should be taken into account.

An important role in reaching a consensus was played by the fact that the interests of the United States and Western European countries converged as much as possible on this issue. Biden's position in support of establishing a minimum tax standard of 15%, as well as earlier U.S. *FATCA* law (*Foreign Account Tax Compliance Act*) for the introduction of automatic exchange of tax information has played a crucial role. "This is more than just a tax deal," Joe Biden said, "it's diplomacy reshaping our global economy and delivering for our people". Janet Yellen, head of the U.S. Treasury, called the agreement "historic," while German Chancellor Angela Merkel called it "a great success" [8].

It is noteworthy that representatives of *Big Tech*, against whom the global tax agreement is mainly aimed, reacted positively to it. *Facebook*, through its vice president Nick Clegg, said the company has long called for reform of the global tax rules. *Google* expressed the hope that the agreement would be "balanced and durable "[source 4].

There are several reasons why *Big Techs* reacted the way they did. First, most of their business is online and within the community, which means that reputation capital plays a significant role. Second, the growing importance of a value system that considers the common good and social responsibility of business, and the demands for greater transparency with respect to global tax policy are affecting corporate governance strategies. Third, representatives of the *IT*-giants have repeatedly stressed that they are interested in a unified system of global taxation of digital services.

At the same time, a number of representatives of non-governmental organizations (criticism from the "left"), as well as businesses (criticism from economic liberalism), were not enthusiastic about the new tax document. For example, the *World Inequality Report*, published in France in late 2021, notes that the 15% minimum tax is insufficient because it is less than what households and businesses pay in most developed Western countries. The result could be another reduction in corporate taxes in countries where they are higher, that is, a return to a competitive race for the bottom for foreign investment. As an alternative, some authors propose to increase the tax rate to 25% [source 5].

Strong discontent is expressed by representatives of developing countries, many of which have existing tax rates above 15%. If they keep them, companies will go to other jurisdictions, and if they reduce them to 15%, they will lose a lot of tax revenues.

In addition to developing countries and jurisdictions with preferential tax regimes, the criticism also comes from legal, including tax, consultants, as well as companies themselves. For example, the press organ of the British business community *City A.M.* wrote that new global tax agreement will be hugely damaging to the United Kingdom, as it will not only entrench higher taxes, but it also risks businesses leaving Britain and costing the Treasury up to £7 bln in lost revenues. According to the author of the article, J. Morris, the tax competition «is not a "race to the bottom", but rather a "*race to the top*" », as evidenced, in his view, by the statistics. Britain reduced its main

corporation tax rate from 28% in 2010 to 19% in 2017. In that time, corporation tax revenues increased from under 2% of GDP in 2010 to over 2.5% in 2019, this was largely due to increases in business activity, including at subsidiaries of multinational companies. [source 6].

Experts from standards-setting organizations and consulting firms, while generally accepting the agreement, raise concerns about the complexities of its implementation. Once the agreement is approved, the challenge is to develop and agree on technical parameters for calculating key indicators, including the amount of taxable income, the tax base for the redistribution of taxes, etc. The document provides for the calculation of income amounts in accordance with the accounting rules, which are different from the rules for calculating taxable income, and there is a need for country-by-country harmonization. Reaching a compromise would not be easy.

EU POSITION

The EU not only supports the tax aspirations of the OECD but also has been working in parallel for a long time, and in some cases reinforces the OECD rules and regulations on European level. At the same time, the EU's tax proposals are closely aligned with its strategic priorities and should support the implementation of the European Green Deal, the New Industrial Strategy for Europe and the Capital Markets Union. In addition, the EU Common Budget will not be left aside – it is proposed to transfer 15% of the revenues received from the implementation of *Pillar I* to its commitments [9].

Although the EU is at the forefront of global tax reform, its ability to enact corporate tax reform is limited. One can recall how slow and problematic the process of adopting the Common Consolidated Corporate Tax Base Directive (*CCCTB*) was, which has been under discussion for almost 12 years since 2011 [source 7, pp. 114-171].

In July 2020, The European Commission (EC) adopted a very ambitious Action Plan for Fair and Simple Taxation Supporting the Recovery Strategy [10], as well as a Communication on Tax Good Governance in the EU and beyond. The Communication proposes to include *Pillar II* in the criteria used to assess third countries under the EU listing process to encourage them to join the international tax treaty.

On December 22, 2021, the EC proposed two draft Directives on global tax reform. The first is the Council Directive on Ensuring a Global Minimum Level of Taxation for Multinational Groups in the Union [11]. The project involves the introduction of a minimum rate of 15% in each jurisdiction where the company is active, in accordance with *Pillar II* of the Agreement. The tax will be imposed on any large company, including the financial sector, regardless of the country of residence, with a annual turnover of more than €750 m. Some experts suggest lowering the turnover bar to annual €500 m but raising the tax rate to 25% to achieve the greatest effect [source 8, p. 37]. State-owned companies, non-profit or international organizations, and pension and investment funds are not subject to this tax, just as in the OECD proposal.

The draft Directive contains some differences from *GloBE*: if *Pillar II* refers to MNCs, then any company (including purely European) will be taxed in the EU. Such a change is necessary to comply with the fundamental freedoms of the EU, in particular the *freedom of establishment*. If the Directive is adopted in time, by June 30, 2023 its rules will be incorporated into national tax laws of the EU and will apply from January 1, 2024.

The Directive requires a unanimous decision by all EU countries, but in early 2022, Poland, Hungary, and Estonia declared their disagreement with the adopted timetable for the introduction of new tax rules (from 2023). There are concerns that the U.S. side will not meet the deadline if President Biden does not receive the support of the Congress for to the introduction of this tax, and then the EU, introducing the tax before the U.S. does, will be in a less competitive position.

The second draft concerns "*shell entities*" and amends the 2011 Directive relating to them [12]. This refers to companies established in the EU not for real activity, but for tax evasion. The changes are aimed at linking such European firms with companies outside the EU. According to the draft, by June 30, 2023, the rules of the new Directive should be considered in national tax laws of the EU and apply from January 1, 2024.

In general, the EC experts note that recent long-term trends (an aging population, attention to environmental issues, etc.) will change the tax balance. The structure of tax revenues, which has remained virtually unchanged since the beginning of the 21st century, is now being significantly transformed. In particular, taxes on income from capital, including corporate income tax, will play an increasingly important role.

UK

The UK is actually leading the effort to find an international solution to the problems of taxation of technological MNCs. In April 2020 a temporary *Digital Services Tax* (DST), was introduced of 2% of gross revenues of large digital companies, which they receive from users in the country, so that MNCs pay tax on sales they make in the UK.

As in other European countries, the *DST* is selectively applied to businesses using both the global and domestic income thresholds, and is motivated by the desire to tax foreign digital companies. The global threshold is £500 m and the internal threshold is £25 m. The *DST* targets only some forms of business (social media services, Internet search engines, and online marketplaces), and its calculation is based on gross revenues, not profits. Although the *DST* has been called a "British success story" (in 2021 it generated £280 m in revenues) [source 9, p. 11], once *GLoBE* takes effect it must be repealed, like other unilateral measures of its kind.

In January 2022, the UK began discussing the *GloBE* agreement, seeking views not only on the domestic application of the global minimum corporate tax but also on a number of broader implementation issues (10 points in all). The corresponding draft is to be published in the summer of 2022 in preparation for the new rules to take effect in April 2023. The government anticipates that the *IIR* will be included in the legislation as early as 2022–2023, while the *UTPR* and the minimum tax rate will take effect no later than April 2024 [source 10, p. 98].

It is proposed that the business would fall under the new minimum taxation system only if its income in the consolidated financial statements exceeds €750 m for at least two years of the previous four fiscal years. The consolidated income threshold is expected to apply only to businesses that operate in more than one jurisdiction. The Ministry of Finance is also exploring the idea of introducing an internal minimum additional tax for companies headquartered in the UK with group revenues of more than €750 m [source 11]. This measure is designed to increase domestic tax revenues and prevent income taxation by foreign jurisdictions.

The UK government, according to its representatives, is interested in implementing *Pillar I*, but the timetable for implementation, in their view, is too ambitious, especially given the political challenges of securing consensus on *Pillar I* in the U.S. Senate. Overall, the government agrees that creating a more stable international tax structure is in the UK's interest and will help it better cope with the challenges of a global economy.

US ROLE

In contrast to the EU, which has almost always followed the OECD proposals, in the U.S. during the presidency of Donald Trump, there was a setback in a number of positions of global financial reform, including tax issues. Now the Congress is considering a new package of proposals that could make significant changes to U.S. tax law. The Biden administration is trying to pass a package of reforms that would allow the U.S. to comply with the basic principles of *GLoBE*. The tax reforms are part of a comprehensive package of changes in the country's economic policy (*The American Jobs Plan*[2]) amounting to about $2 trillion [13].

One of the main elements of the new *Made in America Tax Plan* is to end "global race to the bottom" by encouraging other countries to adopt minimum corporate tax rates similar to those levied in the United States. It's worth to note that the U.S. tax reform proposals include for the first time an appeal to other countries to change their tax laws in line with OECD rules. It is acknowledged that such a move may not be attractive to all governments[3].The approach linking domestic tax reform to a multilateral agreement, to collectively overhauling the global tax system, reflects a major shift in U.S. tax policy.

The main proposal is to raise the federal corporate income tax rate by by 7 p.p. (from 21 to 28%)[4]. In addition, the rate at which U.S. MNCs' foreign profits are taxed under the *GILTI* regime will be increased from 10.5% to 21.0%. It is proposed to abolish the tax on cross-border expenses between the parent company and its subsidiaries (*BEAT*) and replace it with a new provision on *Stop Harmful Inversions and Ending Low-tax Developments (SHIELD)*.

SHIELD would deny MNCs US tax deductions by reference to related party payments subject to a low effective rate of tax, which would be determined by reference to the rate agreed upon in the Pillar 2.

[2] This is the largest part of the *Build Back Better Agenda*, which also includes *The American Rescue Plan* (COVID-19crisis response package) and the *American Families Plan* (social policy package, including welfare systems).

[3] Some EU countries provide examples: Hungary has a corporate tax rate of 9%, Ireland 12.5%, which clearly requires additional incentives to raise rates.

[4] Opponents of the tax increase argue that this would increase the combined tax rate in U.S. states to 32.34%, which is the highest rate in the OECD and is detrimental to the economic competitiveness of the United States [source 13, p. 6].

However, if SHIELD comes into effect before the *GLoBE* is in force, the default rate trigger would be the tax rate on the *GILTI* (21%) [source 12].

Taken into account the Republican position, only part of the reform is expected to be approved[5]. If Democrats succeed in getting a resolution through the Congress, the reform would include terms that would bring U.S. tax law into line with one of the two main elements of *GLoBE*: the establishment of a global minimum corporate tax rate of 15%. However, taxing MNCs' profits would require changes to existing tax treaties as they are based on international cooperation. Delaying legislative decisions in the U.S. could have very serious negative consequences for the implementation of global reform, since the support of the U.S. and Western European countries ensures a significant part of its success.

RESULTS AND CONCLUSIONS

Increased government spending to address the negative socio-economic effects of the COVID-19 crisis has made fiscal policy the centerpiece of the international agenda. A study of the main directions of the new OECD/*G20* Tax Plan showed that it not only expanded the scope of the fight against tax evasion on digital and other intangible services but also introduced two new elements. This is, first, the redistribution of tax rights between the parent countries and the countries of sale (consumption) of intangible services of MNCs. The second is the introduction of a minimum corporate tax rate of 15% for MNCs, which is designed to increase the value of cross-border investments, primarily offshore, and thereby influence the business decisions of investors.

[5] The 100-member U.S. Senate is now split in half between Democrats and Republicans (50 seats each). Biden's proposals require the approval of 2/3 of the Senate. Thus, in addition to the full agreement of the Democrats, the support of at least 17 Republican senators is required, which is unlikely.

Development of model rules and multilateral instruments for implementation of the reform at the national level began in December 2021 and will continue in 2022, so that they will enter into force on January 1, 2023. In the authors' opinion, meeting such an ambitious deadline seems unlikely. This is due both to the difficulty of developing and agreeing on technical parameters among a large number of participants and to the differences in the approaches of individual states to global tax reform, in which there will be both winners and losers undoubtedly.

An analysis of the positions of the leaders of reform – the European Union, the U.S. and the UK – led to the following conclusions. The EU is the most active supporter of global tax reform, ready not only to support the OECD rules but also in some cases to strengthen them within the integration association. However, due to the different interests of the 27 states, there are difficulties in adopting the two main Directives. British policy is less clear-cut. While expressing an interest in implementing the *Pilar II* rules, the government maintains its own policy on the taxation of MNCs.

The most difficult situation is in the U.S. As one of the main initiators of global reform and seeing it as an important argument for domestic tax reform, Joe Biden faced serious resistance in the Congress. Delaying the adoption of relevant laws in the U.S. could have a negative impact on the progress of global reform as a whole, as the "front-runners" in the implementation of the new tax rules could find themselves at a competitive disadvantage. It is clear, however, that the U.S., the EU, and the UK are not the only parties whose support is integral to the success of the deal. The largest fast-growing economies – China, India, and Brazil – and other developing countries will play an important role in the successful completion of global tax reform.

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