UDC 336.74:334.7

Blikhar M.

Doctor of Juridical Sciences, Candidate of Economic Sciences, Associate Professor,
Professor at the Department of Administrative and Informational Law,
Institute of Jurisprudence, Psychology and Innovative Education,
National University Lviv Polytechnic, Ukraine;
e-mail: blikharm@ukr.net; ORCID ID: 0000-0003-2974-0419

Ortvnska N.

Doctor of Juridical Sciences, Associate Professor, Professor at the Department of Law Theory and Constitutionalism, Institute of Jurisprudence, Psychology and Innovative Education, National University Lviv Polytechnic, Ukraine; e-mail: natalius2008@ukr.net; ORCID ID: 0000-0002-5061-5340

Dufeniuk O.

Candidate of Juridical Sciences, Associate Professor, Associate Professor Department of Criminal Procedure and Criminalistic of the Institute of Training Specialists for the Units of the National Police of Lviv State University of Internal Affairs, Ukraine; e-mail: oxpostfb@gmail.com; ORCID ID: 0000-0001-6529-4036

Vinichuk M.

Candidate of Economic Sciences, Associate Professor, Associate Professor of the Department of Finance and Accounting of Institute of Management, Psychology and Security of Lviv State University of Internal Affairs, Ukraine; e-mail: vinichukm@i.ua; ORCID ID: 0000-0002-6588-1254

Matviienko O.

Candidate of Philosophical Sciences, Associate Professor of the Department of Philosophy, Uzhhorod National University, Ukraine; e-mail: matvienkooxana@meta.ua; ORCID ID: 0000-0001-8106-1355

ECONOMIC AND LEGAL MECHANISM FOR COMBATING LEGALIZATION (LAUNDERING) OF INCOME RESULTING FROM TAX EVASION IN THE CONTEXT OF DEOFFSHORIZATION OF UKRAINE'S ECONOMY

Abstract. Growing trends in the shadowing of the international and national economy contribute to the strengthening of legalization of income resulting from tax evasion, using offshore zones, which have favorable fiscal and monetary and financial regimes, with a high degree of protection of banking and trade secrecy, as well as loyalty to institutional regulation. In recent years, the problem of legalization (laundering) of income from tax evasion in offshore zones has become more acute, caused by the violation of Ukraine's national interests due to the reduction of tax revenues to the state budget and the outflow of capital outside the country. The offshoring of the national economy has reached alarming proportions as the country, in a prolonged financial and economic crisis, chronic underfunding of sectors of the national economy and acute shortage of financial resources, invests in highly developed countries. Given this situation, the problem of studying the mechanism of counteraction to legalization (laundering) of income received as a result of tax evasion in offshore zones becomes especially relevant.

The article identifies the features and prerequisites for the functioning of offshore zones, outlines the main problems of effective counteraction to legalization (laundering) of income received as a result of tax evasion in offshore zones. The research of the basic schemes and methods of legalization (laundering) of the incomes received as a result of tax evasion with use of offshore zones is carried out; the economic and legal analysis of normative and legislative maintenance in the field of counteraction to legalization (laundering) of the incomes received as a result of tax

evasion, in offshore zones is performed; the dynamics of the number of criminal offenses in the field of tax evasion with the use of offshore zones is analyzed. Measures of the system of counteraction to legalization (laundering) of incomes received as a result of tax evasion through offshore zones are systematized and improvement of the economic and legal mechanism of counteraction to legalization (laundering) of the incomes received as a result of tax evasion through offshore zones is offered.

Keywords: legalization (laundering) of income, tax evasion, economic and legal mechanism, offshore zones.

JEL Classification H26, O17

Formulas: 0; fig.: 4; tabl.: 0; bibl.: 13.

Бліхар М. М.

доктор юридичних наук, кандидат економічних наук, доцент, професор кафедри адміністративного та інформаційного права Інституту права, психології та інноваційної освіти Національного університету «Львівська політехніка», Україна; e-mail: blikharm@ukr.net; ORCID ID: 0000-0003-2974-0419

Ортинська Н. В.

доктор юридичних наук, доцент, професор кафедри теорії права та конституціоналізму Інституту права, психології та інноваційної освіти Національного університету «Львівська політехніка», Україна; e-mail: natalius2008@ukr.net; ORCID ID: 0000-0002-5061-5340

Дуфенюк О. М.

кандидат юридичних наук, доцент, доцент кафедри кримінального процесу та криміналістики Інституту з підготовки фахівців для підрозділів національної поліції Львівського державного університету внутрішніх справ, Україна; e-mail: oxpostfb@gmail.com; ORCID ID: 0000-0001-6529-4036

Вінічук М. В.

кандидат економічних наук, доцент, доцент кафедри фінансів та обліку Інституту управління, психології та безпеки Львівського державного університету внутрішніх справ, Україна; e-mail: vinichukm@i.ua; ORCID ID: 0000-0002-6588-1254

Матвієнко О. I.

кандидат філософських наук, доцент кафедри філософії Ужгородського національного університету, Україна; e-mail: matvienkooxana@meta.ua; ORCID ID: 0000-0001-8106-1355

ЕКОНОМІКО-ПРАВОВИЙ МЕХАНІЗМ ПРОТИ ДІЇ ЛЕГАЛІЗАЦІЇ (ВІДМИВАННЮ) ДОХОДІВ, ОДЕРЖАНИХ УНАСЛІДОК УХИЛЕННЯ ВІД ОПОДАТКУВАННЯ В КОНТЕКСТІ ДЕОФШОРИЗАЦІЇ ЕКОНОМІКИ УКРАЇНИ

Анотація. Зростаючі тенденції тінізації міжнародної та національної економіки сприяють посиленню процесів легалізації доходів, одержаних унаслідок ухилення від оподаткування, з використанням офшорних зон, на території яких діють сприятливі фіскальний і валютно-фінансовий режими, запроваджено високий ступінь захисту банківської та комерційної таємниці, а також лояльність щодо інституційного регулювання. Упродовж останніх років загострилася проблема легалізації (відмивання) доходів, одержаних унаслідок ухилення від оподаткування, в офшорних зонах, що зумовлено порушенням національних інтересів України у зв'язку зі зниженням обсягів податкових надходжень до державного бюджету і відпливом капіталів за межі країни. Офшоризація національної економіки набула загрозливих масштабів, оскільки країна, перебуваючи в умовах тривалої

фінансово-економічної кризи, хронічного недофінансування секторів національної економіки та гострого браку фінансових ресурсів, інвестує у високорозвинуті країни. Зважаючи на таку ситуацію, особливої актуальності набуває проблема дослідження механізму протидії легалізації (відмиванню) доходів, одержаних унаслідок ухилення від оподаткування, в офшорних зонах.

Визначено особливості та передумови функціонування офшорних зон, окреслено основні проблеми ефективної протидії легалізації (відмиванню) доходів, одержаних унаслідок ухилення від оподаткування, в офшорних зонах. Проведено дослідження основних схем і методів легалізації (відмивання) доходів, одержаних унаслідок ухилення від оподаткування з використанням офшорних зон; здійснено економіко-правовий аналіз нормативного й законодавчого забезпечення у сфері протидії легалізації (відмиванню) доходів, одержаних унаслідок ухилення від оподаткування, в офшорних зонах; проаналізовано динаміку кількості кримінальних правопорушень у сфері ухилення від оподаткування з використанням офшорних зон. Систематизовано заходи системи протидії легалізації (відмиванню) доходів, одержаних унаслідок ухилення від оподаткування, через офшорні зони та запропоновано вдосконалення економіко-правового механізму протидії легалізації (відмивання) доходів, одержаних унаслідок ухилення від оподаткування, через офшорні зони.

Ключові слова: легалізація (відмивання) доходів, ухилення від оподаткування, економіко-правовий механізм, офшорні зони.

Формул: 0; рис.: 4; табл.: 0; бібл.: 13.

Introduction. The negative impact of globalization, megaregionalization and integration causes disproportion in the development of world economic relations, destructive changes in the development of national economies and, at the same time, causes significant differentiation, unevenness and unfair distribution of spheres of influence and access to available resources. In the conditions of modern international social and economic development there is the strengthening of processes of shadowing of national economies, deepening of corruption, intensification of legalization of the incomes received by criminal means that leads to commission of illegal actions by subjects of economic activity and other economic agents and to the development of the international economic crime, which is characterized by the emergence of destabilizing factors of economic development, destructive changes in socio-economic systems, growing tax asymmetry and offshore national economies.

The phenomenon of the global economy is the high level of mobility of financial assets, the growth of the global financial market due to the merger borders of national financial markets and the formation of an integrated international financial system, profitability of operations with financial assets and the expansion of borders for capital movements. In view of this, there is a need to study the problem of forming a modern integrated network of transnational financial centers — offshore zones, which help reduce the share of tax deductions in the income structure of economic entities received from transactions with financial assets and help legalize illegally obtained capital because of the lack of customs benefits, due to the low level of taxation in their territory or its absence, ensuring effective regime of banking and financial secrecy and finding ways to combat legalization (laundering) of income, obtained by criminal means due to tax evasion in offshore areas.

Analysis of research and problem statement. The issue of combating legalization (laundering) of income obtained by criminal means as a result of tax evasion in offshore areas is in the spotlight of both scientists and practitioners. For a long time it was studied by O. Baranovskiy, V. Golikov and B. Paskhaver [1], who understand this concept as actions aimed at masking the true source of these incomes and their involvement in the official sector of the economy. Z. Varnaliy has made a significant contribution to the identification of areas of tax evasion with the use of offshore zones [2, p. 7—8], who substantiates the negative impact of offshore zones on the national economy through unproductive withdrawal of capital in order to optimize taxation, investment, tax evasion

and legalization of «dirty money». Complementing the work of Z. Varnaliy, O. Vlasyuk [3, p. 30] has proved that offshoring is a destabilizing factor in economic development, real GDP growth and causes an increase in the growth rate of unproductive withdrawal of financial capital outside the country. Legal aspects of this issue are substantiated by L. Gula [4, p. 336], which is confirmed by the separation of the ways of legalization of informal income by withdrawal from the criminal and shadow sectors and placement in the legal one. M. Kornienko [5] proves its relationship with the transformation of criminal income into legal assets. However, taking into account the significant developments in the economic and legal field of the studied issues, the problem of combating legalization (laundering) of income obtained by criminal means through tax evasion with the use of offshore zones still remains unresolved.

The purpose of the article is to study the problematic aspects of the economic and legal mechanism for combating legalization (laundering) of income received as a result of tax evasion in the context of deoffshorization of Ukraine's economy.

Results of the research. Ukraine's independence and opportunities for business entities to register subsidiaries in low-tax jurisdictions with a fixed annual fee outside the country have led to the problem of offshore the economy and the intensification of economic crime. Today, the processes of using the latest Internet technologies, computerization of banking, electronic payment systems and the promotion of cybercrime, have intensified, which facilitate the registration of companies and financial institutions remotely over the Internet and conduct transactions simultaneously in the territory of several offshore jurisdictions, while completely avoiding or significantly reducing the amount of taxation of the results of their economic activities, using exceptional confidentiality.

It should be noted that the use of offshore zones for the purpose of legalization (laundering) of incomes received by criminal means, is, in fact, illegal schemes and methods of tax evasion (*Fig. 1*), for the application of which liability is provided.

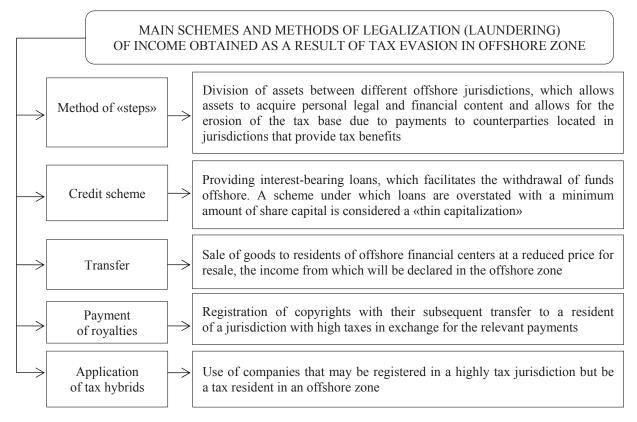


Fig. 1. List of schemes and methods of legalization (laundering) of income received as a result of tax evasion in offshore zones

Source. [6, p. 77].

According to the current legislation of Ukraine, the definition of offshore zones is given in the Tax Code of Ukraine [7], according to which offshore zones are territories that include states or parts of their territories that depend on these states, where business entities with offshore status are created and operate.

Organizational and legal principles of counteracting the legalization of income from tax evasion are regulated by the Law of Ukraine «On prevention and counteraction to legalization (laundering) of income obtained by criminal means, financing of terrorism and financing of proliferation of weapons of mass destruction» [8], and establishing responsibility for committing offenses related to conducting financial transactions with funds and committing illegal acts aimed at concealing, masking illegally obtained income, possession, acquisition of rights to them, sources of origin, location and movement of such income and its use, is provided by the Criminal Code of Ukraine [9].

However, it should be noted that the legal mechanism for regulating the functioning of offshore zones in Ukraine and the process of combating tax evasion with their use, at the present stage, is weak due to the low pace of implementation of global standards of tax transparency and exchange of information in the field of legalization (laundering) of incomes obtained by criminal means in offshore zones. At the same time, the issue of a complex economic and legal mechanism for counteracting the offshorization of Ukraine's economy has not been legally regulated so far, and there is unsystematic, uncoordinated and unbalanced work of public authorities in the outlined direction.

Despite the Decree of the President of Ukraine «On measures to counteract the reduction of the tax base and the movement of income abroad» [10] and the Law of Ukraine «On Currency and Foreign Currency Transactions» [11], which instructed the National Bank of Ukraine and the Cabinet of Ministers to develop a draft law on Ukraine's cooperation in the field of taxation, the necessary legal act is still missing. Under such conditions, the development of international standards to combat the offshoring of the economy and simplification of the procedure for law enforcement access to information that is a banking and trade secret, become extremely important, as well as the introduction of strict control measures and proper monitoring of the offshore financial sector, as criminal investigations with tax evasion (*Fig. 2*) indicates a steady upward trend.

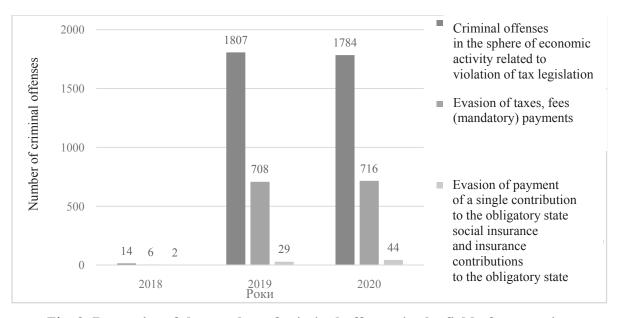


Fig. 2. Dynamics of the number of criminal offenses in the field of tax evasion in Ukraine in 2018—2020

Source. [12, p. 23—24].

At the same time, the emergence of permanent, profound and structural changes in the global financial and economic order causes instability and crisis of the financial system, which

ISSN 2306-4994 (print); ISSN 2310-8770 (online)

intensifies the process of successful integration into the international system of shadow capital, a key place in which offshore zones take. Therefore, in such conditions, combating the legalization (laundering) of incomes obtained by criminal means, including as a result of tax evasion through offshore zones, which must take place in accordance with current legislation, becomes extremely important. The set of measures of the system of counteraction to legalization (laundering) of the incomes received as a result of tax evasion, through offshore zones (*Fig. 3*) is accepted to divide into economic, legal and administrative. Note that certain measures are restrictive, and the effectiveness of their application depends on the coordinated work of economic, legal and administrative entities.

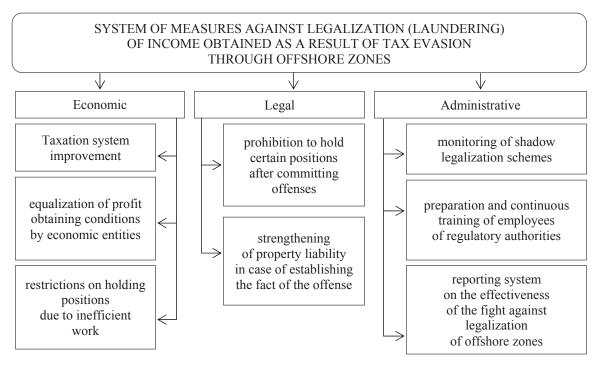


Fig. 3. System of measures to counteract legalization (laundering) of income received as a result of tax evasion through offshore zones *Source.* [13, p. 250].

At the same time, the movement of illegal shadow capital obtained as a result of tax evasion to offshore zones poses a significant threat to the country's socio-economic development due to its transnationality and scale, which requires consideration of global trends and international experience in counteracting it. Most of the proposed measures to combat legalization (laundering) of income received as a result of tax evasion through offshore zones lies in the plane of regulatory support. Therefore, the effectiveness of their application and implementation depends on the legislation. In view of this, the development of an effective economic and legal mechanism for counteracting the legalization (laundering) of income from tax evasion through offshore zones, which we propose in *Fig. 4*, is extremely important.

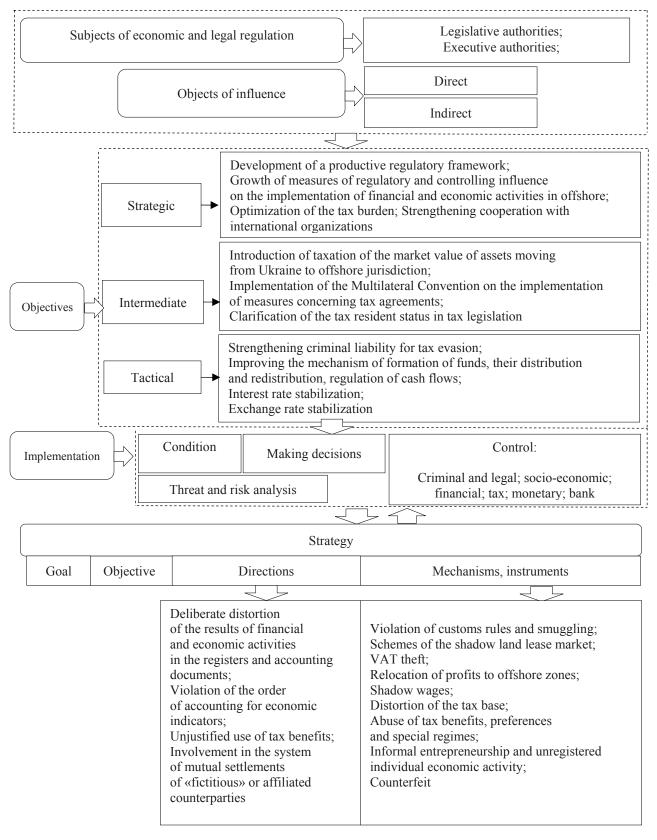


Fig. 4. Economic and legal mechanism for counteracting legalization (laundering) of income received as a result of tax evasion through offshore zones

Source. Author's development.

In addition, the long-term comprehensive program, which includes unification of legislative support, optimization of the tax burden and strengthening of international cooperation in the field of combating legalization in the context of deoffshorization and de-shadowing of the national

economy as interconnected and complementary phenomena, becomes important in the system of counteracting legalization (laundering) of incomes, obtained from tax evasion through offshore zones.

Conclusions. Thus, the results of research on the legalization (laundering) of income from tax evasion in the context of deoffshorization of Ukraine's economy give grounds to conclude that offshore zones are an effective mechanism for legalization (laundering) of income from tax evasion, as they help to hide real volumes of financial and economic activities, provide preferences of customs and fiscal nature. Given the inefficiency, imperfection, ambiguity and inconsistency of tax and anti-legalization legislation, there is a need to improve the economic and legal mechanism to combat legalization (laundering) of incomes from tax evasion through offshore zones, taking into account the strategic and tactical priorities of deoffshorization and de-shadowing of Ukraine's economy.

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Статтю рекомендовано до друку 26.10.2021

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The article is recommended for printing 26.10.2021

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