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NEW ARCHITECTURE OF BUSINESS OFF-SHORIZATION RELATIONSHIPS IN VECTOR: BEPS RULES – CRYPTOCURRENCY

Abstract. *The article analyzes the current practice of organizational and legal regulation of offshore business in the world in the context of unification of the national fiscal and tax system, erosion of the tax base and tax evasion. Based on a study of OECD tax transparency standards, the motivational components of the revision of international agreements on the avoidance of double taxation and the implementation of international rules on taxation of controlled foreign companies (CFC) in the legislation have been identified. The peculiarities of a new type of tax evasion due to the use of cryptocurrency have been studied. Analyzed as the rules of tax transparency are not prepared for the new dimension of finance, in addition to the above, the analysis of the "boom" of cryptocurrency, namely Bitcoin. The directions of introduction of tax practice on restriction of ways of withdrawal of profits in offshore jurisdictions based on provisions of the BEPS Action Plan and rules of CFC in the legislation of Ukraine are revealed.*

Keywords: *taxation, cryptocurrency, OECD, Bitcoin, BEPS rules, offshore, business, Ukraine, globalization, mining, controlled foreign company, double taxation*

Introduction: In 2013, the OECD presented its first report on this issue and proposed a so-called "Action Plan on Base Erosion and Profit Shifting" or abbreviated: "BEPS Plan ». OECD and G20 countries adopted in 2013-2015. 15-point action plan to address the BEPS problem. Regarding tax agreements, the OECD adopted a multilateral document in 2016, and in 2017 issued a new issue "Commentary to the OECD Model Tax Convention on Income and Capital". But as it turned out, these "comments" and rules were not adapted to the new dimension of finance, and especially to the events of 2019-2021. In 2019, the global pandemic

COVID-19 began, which forced people around the world to work from home, and some businesses simply could not work in these conditions, so they were forced to cease their activities. [1] The years 2020-2021 proved to be very progressive for cryptocurrencies and their pricing. Despite this, some countries around the world have begun to stop "mining" cryptocurrencies, and some – have passed laws in which the tax on withdrawn capital reached 40%, and in some countries all 67%. Times are changing and tax evasion schemes are working, this first conclusion is based on a retrospective analysis of Al Capone's money laundering, when the United States adopted new tax rates and mafia structures simply found a scheme to avoid tax evasion. [1] And now we have a situation where high tax rates are forcing crypto-wallet owners to look for places to convert cryptocurrencies into money. Currently, offshore zones are gaining popularity.

Analysis of recent publications: Among the scientific papers on the de-shadowing of offshore business and deoffshorization of national economies, it is worth mentioning the scientific works of domestic and foreign scientists, in particular B. Arnold, K. Bilgren, O. Bozulenko, D. Verlan, Y. Volkova, Y. Gorodnichenko, E. Yevstigneev, V. Egert, A. Yeliseyev, A. Jerome, M. Carlin, T. Karnukh, R. Knapp, Y. Kozak, E. Limban, Z. Lutsishin, D. Mitchell, R. Palan, S. Paley, D. Pinto, J. Robinson, D. Sandler, Y. Umantsiv, T. Frolova, N. Yuzhanina and others. Despite significant scientific work and research, there is currently no consensus on the effectiveness of the existing mechanism for de-shadowing and deoffshorization of national economies by international regulators, tools to combat tax erosion and tax evasion and their impact on micro- and macroeconomic stability. This is especially true after the coronavirus pandemic and the emergence of a new type of money laundering through cryptocurrency and the unpreparedness of the world economy for a new dimension of finance.

Main material:

In recent years, the focus of business units has shifted from simple tax compliance to aggressive tax planning. Departments[1] Corporate tax departments are increasingly seen as profit management centers for obtaining the most favorable tax rates using methods that consider, in addition to tax protection, the structure of tax-enhanced funding and effective tax reorganizations. This corporate practice can sometimes be called an "aggressive tax strategy"

[1] Tax inspectors are distributed in Ukraine, and tax departments in Europe and the United States.

and now it is combined with the new most common phenomenon, which in 2013[2] was called the OECD[3] as an "action plan for the erosion of the tax base and the withdrawal of income from taxation" (BEPS). The OECD and G20 countries adopted a 15-point Action Plan to Combat BEPS (hereinafter referred to as the “Beps Project”) in July 2013 (Table 1) with a view to establishing international tax rules by consensus. In 2014-2015, the OECD published 15 reports in the context of the overall Beps project[4]. Beps are systemic problems facing the international community that need to be addressed through enhanced cooperation and modifications to national corporate tax systems[5].

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[2] OECD (2013), Action Plan on Base Erosion and Profit Shifting, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264202719-en; OECD (2014), ‘Part 1 of a report to G20 Development Working Group on the impact of Beps in low-income countries’, OECD, Paris, www.oecd.org/tax/part-1-of-report-tog20-dwg-on-the-impactof-beps-in-low-income-countries.pdf

[3] OECD (2015), Measuring and Monitoring Beps, Action 11-2015 Final Report, OECD Publishing, Paris.http://dx.doi.org/10.1787/9789264241343-en

[4] There is now a burgeoning literature of the Beps Project, see for example: Yariv Brauer ‘Beps: An Interim Evaluation 10– 39 World Tax J. (2014); Richard Eccleston and Helen Smith, ‘The G20, Beps and the Future of International Tax Governance’, in Global Tax Governance: What is Wrong with it and how to fix it, Peter Diestsch and Thomas Rixen, (eds), pp. 175–98 (ECPR Press 2016); Philip Baker, ‘Is There a Cure for Beps?’, 58 Brit. Tax Rev. 605 (2013); Avi-Yonah, S. Reuven and Xu Haiyan. ‘Evaluating Beps.’ Erasmus L. Rev (2017); Avi-Yonah, S. Reuven and Xu Haiyan, ‘Global Taxation after the Crisis: Why Beps and MAATM are Inadequate Responses, and What Can Be Done About It’, University of Michigan Public Law Research Paper No. 494, (2016) available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2716124; Itai Grinberg, ‘Breaking Beps: The New International Tax Diplomacy’, 1137 Georgetown University Law Center (2015); Yariv Brauner, ‘What the Beps’, 16 Fla. Tax Rev. 55 (2014); Graeme Cooper and Miranda Stewart, ‘The Road Home? Finalizing and Implementing the Beps Agenda’, 69 Bull. Intl. Taxn., 311, (2015); Stephen E. Shay and Allison Christians, ‘Assessing Beps: Origins, Standards, and Responses.’, General Report, in 102A Cahiers de Droit Fiscal International: Assessing Beps: Origins, Standards, and Responses 17 Int’l Fiscal Ass’n (2017); Yariv Brauner, ‘Assessing Beps: Origins, Standards, and Responses–The United States Report for the 2017 Annual IFA Congress, Rio De Janeiro, Brazil.’ (2017); Richard J. Vann ‘Policy Forum: The Policy Underpinnings of the Beps Project-Preserving the International Corporate Income Tax?’ (2014) 62 Can. Tax J., 433–41 (2014); Ana Paula Dourado, 'The Base Erosion and Profit Shifting (Beps) Initiative under Analysis' 43 Intertax, 2 (2015); Allison Christians, Forthcoming pp. 1604–47, ‘Beps and the New International Tax Order’, Brigham Young University Law Review; Kim Brooks, ‘What's up: Beps and the New International Tax Order’, Jotwell J. Things We Like (2017).

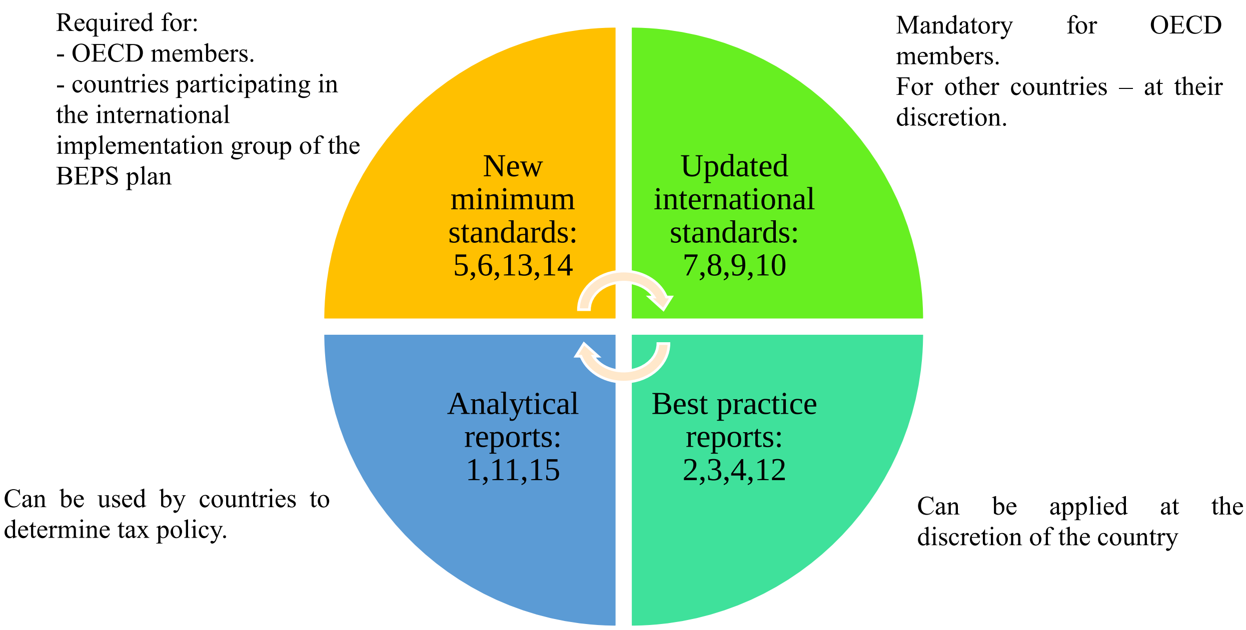
[5] OECD (2015), Mandatory Disclosure Rules, Action 12–2015 Final Report, OECD Publishing, Paris.http://dx.doi.org/10.1787/9789264241442-en; OECD (2015), Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance, Action 5–2015 Final Report, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264241190-en; OECD (2015), Transfer Pricing Documentation and Country-by-Country

Table 1 – Items of the BEPS Plan

№	**Measures to counter BEPS**
1	Regulating the taxation of the digital economy
2	Eliminate differences in the taxation of hybrid instruments
3	Strengthening the rules on controlled foreign companies
4	Limit the erosion of the tax base by deducting interest and other financial expenses
5	Improving measures to combat tax abuse
6	Prevention of abuse of benefits provided by bilateral agreements
7	Prevention of artificial avoidance of the status of permanent representation
8,9,10	Improving transfer pricing rules (TPR)
11	Collection and analysis of information about BEPS
12	Disclosure of information on the mechanisms of aggressive tax planning
13	Recommendations for TPR documentation and country disclosure
14	Improving the Mutual Agreement Procedure
15	Development of a multilateral tool for amending bilateral agreements

Source [2]

Each item of the Plan contains detailed (several tens of pages) explanations of the relevant problem of erosion of the tax base and withdrawal of income from taxation, as well as suggested ways to solve this problem. In fig. 1 shows the distribution of items of the Plan according to their functional purpose.



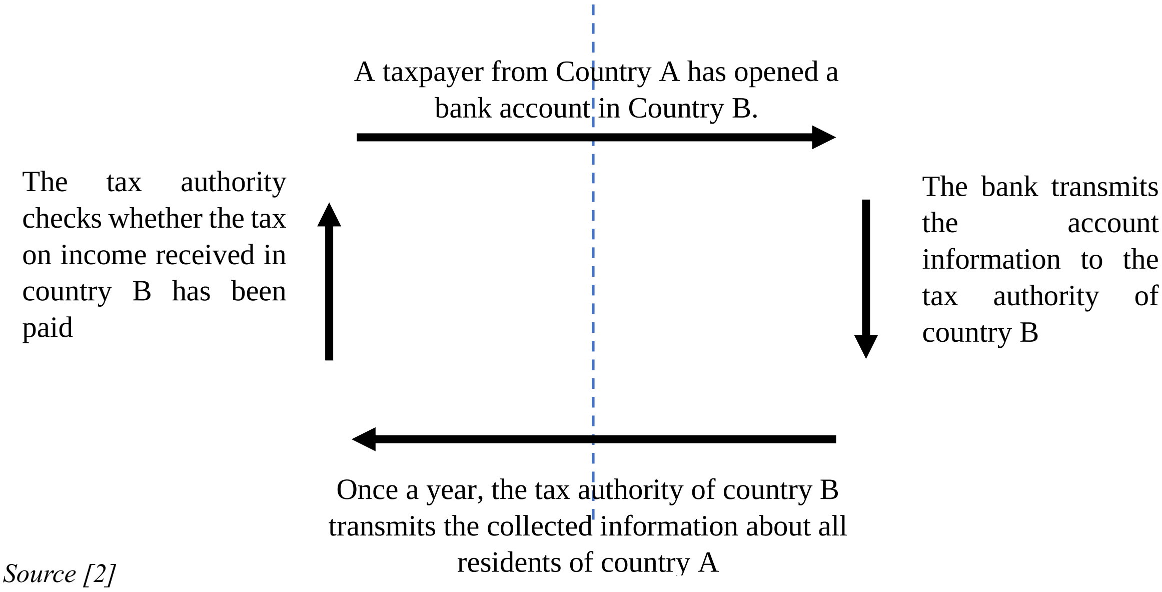
Source [2]

Figure 1 – Functional distribution of BEPS Plan items

The policy proposed by the Beps project to address these systemic problems, on the one hand, advocates the strengthening of information exchange, and on the other hand, offers models of national tax policy. About the exchange of information (actions 12, 5 and 13), it is considered necessary to introduce guidelines on mandatory disclosure, harmful tax competition and transfer pricing documentation.[1] These proposals relate to the measures provided for in the General Reporting Standard ("CbCR") and the Tax Information Exchange Agreement, which is a trend in the exchange of information that is not directly considered by the Beps project. About Beps models for national tax policy, the main policy proposals addressed to national legislators are: CLA Rules (Action 3), interest rate restrictions (Action 4), hybrid mismatch policy (Action 2), and transfer pricing (Action 8-10).[1]

The Beps project in Action 1 also addressed the tax problems of the digital economy and concluded that the digital economy cannot be demarcated because it is part of the overall system. OECD and G20 countries have agreed to monitor developments and analyze data that will become available over time. [2] As a result, Action 1 reviewed a broad overview of Beps in the digital economy, which was followed in 2018 by the Interim Report on Tax Problems Caused by Digitization, which made it possible to formulate the final provisions of Action 1, published in 2019 with additions.

One of the most important tasks of the BEPS Plan is to increase transparency in the conduct of operations of high-tax countries in offshore, for this purpose the system of Automatic Information Exchange was created [2]. Under this system, non-offshore jurisdictions will be able to receive regular and systematic financial information from tax havens on the income and assets of their residents, as well as unconditional access to information on accounts and financial instruments of resident individuals and their controlled companies abroad. The mechanism of cooperation between the two countries, which operates according to the above system, is presented in Fig. 2.



Source [2]

Figure 2 – Exchange of information on foreign clients' accounts

However, the above does not mean that the possibilities of tax planning will be destroyed, on the contrary, in the new circumstances, the "rules of the game" will become stricter. In order not to violate the established rules, schemes of interaction with foreign companies (including the use of classic offshore) should be carefully analyzed and, if necessary, revised.[2]

Implementing a policy to address Beps' systemic problems is a work that will be implemented, and the consequences will be visible only in the coming years, but the OECD, immediately after the completion of the Beps project, has already taken two important actions at the international level to specify tax treaties: in 2016. A Multilateral Document (MLI) was issued, and in 2017, a Commentary to the OECD Model Income and Capital Tax Convention.[1]

Changes to the Treaty model are a long-standing prerogative of the OECD, which actively uses a dual strategy under the Beps Project. First, in 2016, the OECD initiated an international MLI agreement, which ultimately aimed at implementing measures related to the Beps agreement and amending bilateral tax treaties through a complex mechanism. Second, in 2017, the OECD adopted the traditional approach to amending the Model and the Commentary, which will then be reflected in amended or re-concluded bilateral tax treaties.[2]

The reason for this dual strategy is that the changes resulting from the Beps project to the Model 2017, to become directly binding, require changes or revisions to the thousands of bilateral agreements that currently exist, and this creates a real timing problem because the process is time consuming and uncertain. To address this issue, MLI is ultimately aimed at implementing measures related to the Beps agreement and amending bilateral tax agreements.[2]

The country's perspective, namely the definition of investment potential, reveals important aspects of the impact of Beps rules on tax treaties, given that there are now new restrictions on avoiding status PE[6], introduced by Action 7. Until 2017, one of the planning methods for non-resident investors was the actual implementation of activities in the IC to avoid the so-called "PE status", ie to avoid paying taxes in the IC.[1]

After the jubilee 70th CITA[7] in Madrid, namely after the comments, it is time to comprehend the scale of the impact of the Beps plan on the tax system and existing businesses or reap their benefits. And they are already appearing – the so-called "provincial" reporting, for example, (Country by Country reporting), when multinational groups will have to disclose the details of financial performance in each country to a wide range of people. Based on the analysis of BEPS rules, it is appropriate to focus on some comments that may have negative consequences.[2]

First, a set of 15 measures to combat tax evasion is a necessary tool for states to combat large-scale tax evasion by large corporations through international schemes like those used by Apple, Google, MacDonalds and other groups.

But the set of measures is very strict, which is likely to have a negative impact on companies that do not use any schemes but carry out legitimate international business activities. [3, P. 15-20]

Second, Beps are uncoordinated actions to harmonize and eliminate double taxation. This is the strengthening and staffing of tax authorities with new effective tools and methods to combat tax evasion.

Accordingly, taxpayers need to prepare for double, triple, etc. taxation. It is no coincidence that the first plenary session on resolving tax disputes focused on the procedures of mutual coordination between the tax authorities (MAP) of different countries. This is essentially a situation where countries A and B have already taken taxes from company X and agree on which of them will return these taxes to it. And without the obligation to agree. The

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[6] This article focuses on complex modifications of the Model / Comment 2017 and examines countries in terms of investment attraction and investment interest. This perspective reveals important aspects of the impact of Beps rules on tax treaties, that there are now new restrictions on (i) avoiding permanent representation ("PE") and (ii) access to the benefits of a bilateral treaty, in addition to the general ban on double exemption. agreement.
Bilateral tax treaties based on reciprocity and regulating the tax aspects of bilateral investments: in a bilateral tax treaty there are two Contracting States (hereinafter – "COP"). Each COP can act, depending on the situation, either as a country in which the agreement is concluded (hereinafter "AC"), or as a country that facilitates the conclusion of the agreement (hereinafter "CA").

[7] CITA – Congress of the International Tax Association

number of such procedures has increased 2.2 times over the last 8 years, even though Beps has not yet started working in full force[8].

Another danger is the town tax creative. Double taxation agreements cover only direct taxes. If a country decides to charge VAT on interest payments like China or social security payments for the installation of equipment like Brazil, this will lead to double taxation, which is not eliminated by tax agreements. Ukraine has its own examples: for example, the well-known tax on non-resident advertising (20%) or non-resident insurance premiums (up to 12%), and although there is already positive case law confirming that such provisions should not be applied based on non-discrimination provisions. Ukrainian tax authorities continue to persistently apply them in practice. In addition, we should not forget about the military tax, which is absent in the approved taxation system, but is accrued on all income along with CFC[9]. Accordingly, this is another risk factor, apart from Beps. [3, P.10-15]

What is happening at EU level was discussed in a separate seminar. These are primarily the Directive on the disclosure of information by multinational groups (2016/881, 25.05.2016) and the Directive on measures to combat tax evasion (2016/1164 12.07.2016). The last, the subject of serious analysis, but the key provisions for Ukrainian beneficiaries – is the introduction of CFC[10] all EU countries and the introduction of "emigration tax" for companies, briefly described by the famous phrase "entry-hryvnia, exit-two." Together with the creation in the EU of national and publicly available in some countries registers of beneficiaries (UK, France, etc.), this will make EU countries less attractive for Ukrainian tax planning. For Europeans themselves, Beps is seen as a source of significant uncertainty for international companies.[2]

Beps rules are a key theme at every OECD workshop. The discussion focused on the Beps plan as a duty of companies to self-disclose aggressive tax methods to tax authorities, and tax advisors were interested in informing tax authorities about actions aimed at circumventing the rules and combating tax evasion.[1]

After the Panama scandal, the Ukrainian government began emergency preparations to join the automatic exchange of information. The head of the Ukrainian tax service confirmed that everything is ready for this, and the accession itself will take place soon. Along with this, a draft law on the CFC was being actively prepared, which, it seemed to everyone, was to be

[8] Berentsen, Aleksander and Schär, Fabian. Bitcoin, Blockchain und Kryptoassets: Eine umfassende Einführung. Books on Demand, Norderstedt, 2017

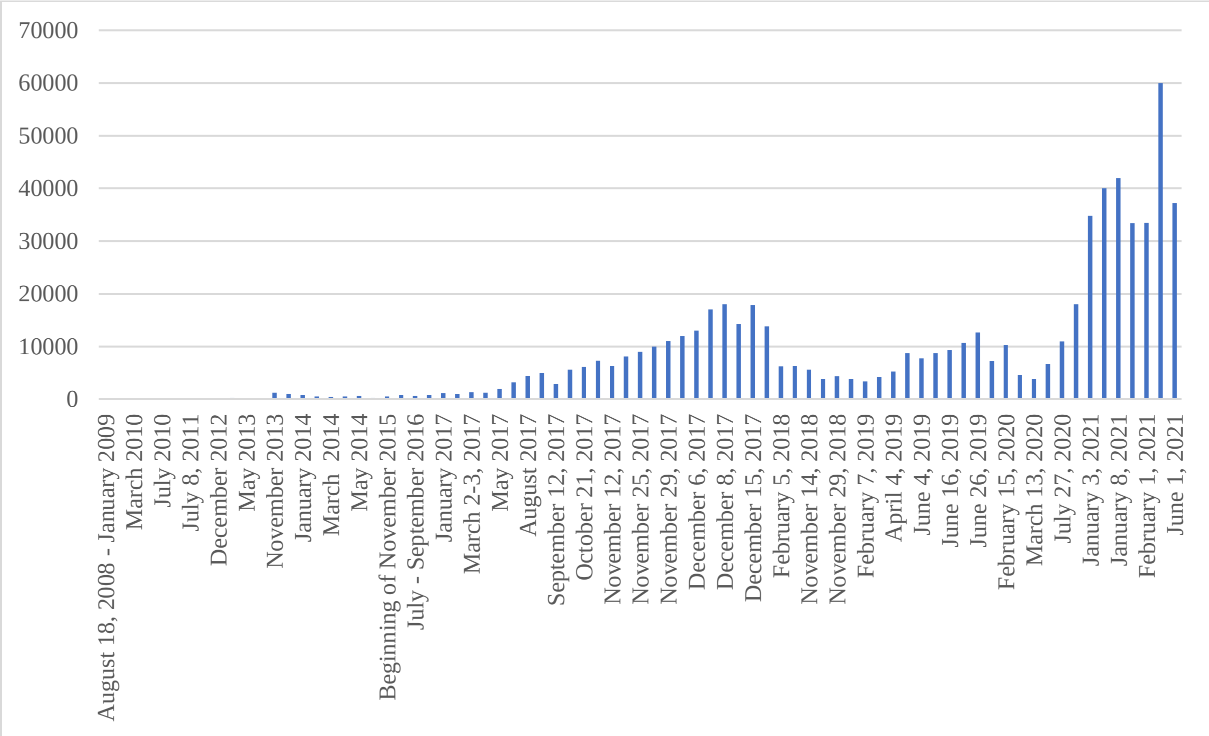
[9] PIT – personal income tax

[10] CFC – controlled foreign companies. In general, the main idea of KIK is to equate the profit of a foreign offshore company to the personal income of its shareholder. The first KIC rules originated in the United States in 1962.

adopted in the summer and work from the beginning of 2017. However, after interest in Panamanian documents passed, it turned out that Ukraine has more pressing problems and no one is not seriously involved in the automatic exchange or implementation of Beps rules. Moreover, it is known from unofficial sources that in terms of automatic exchange, other countries are concerned about the possible leakage of information from Ukraine, and therefore expect that adequate steps will be taken before Ukraine's accession to avoid this. In fairness, it should be noted that some provisions of the Beps in Ukraine have existed for a long time (we are talking about the rule of fine capitalization), and some – in a slightly different form (GAAR, the general rule against evasion, in Ukraine However, Ukraine still lacks CFC rules, in their absence all Ukrainians keep money abroad (of course, these rules can only earn in combination with automatic exchange). [4] It should be noted that in Ukraine, even in the light of the above initiatives, the discussion of the "emigration tax" has not started (according to the Ministry of Finance, this issue is not timely in Ukraine), so we assume that even after the approval of the CFC and automatic exchange from Ukraine will begin mass tax migrations to Cyprus, Monaco, Andorra, etc.

From the above, the question arises in the adjustment of regulations on the taxation of the digital economy?

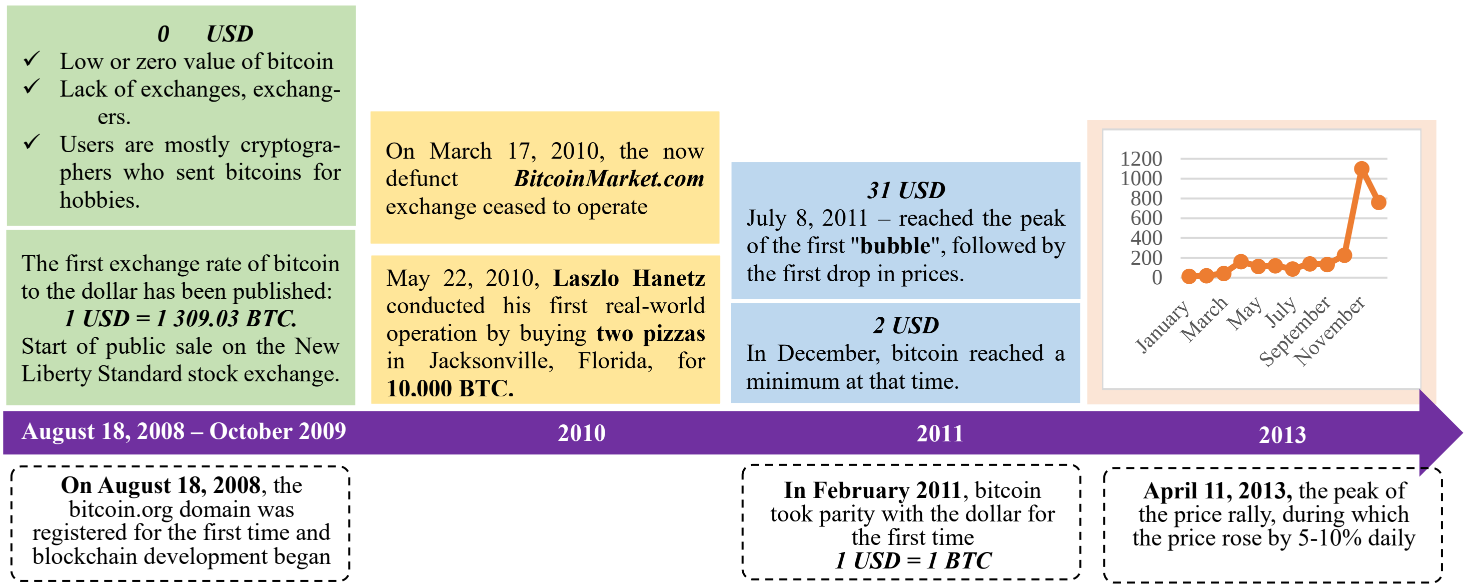
Considering cryptocurrencies, it is appropriate to choose bitcoin as an example, as a currency that has a very interesting history and is the most expensive of all existing cryptocurrencies. And under conditions of growth or decline, bitcoin has remained and remains so far, the most profitable investment in the last decade – perhaps even in world history (Fig. 3). If you had invested in the first available bitcoin exchange in March 2010, one bitcoin would have cost $ 0.003. USA. Now, a little over ten years later, even after the collapse of bitcoin, you would have earned an attractive 289,745,000% return at $ 8,584. USA.[2]

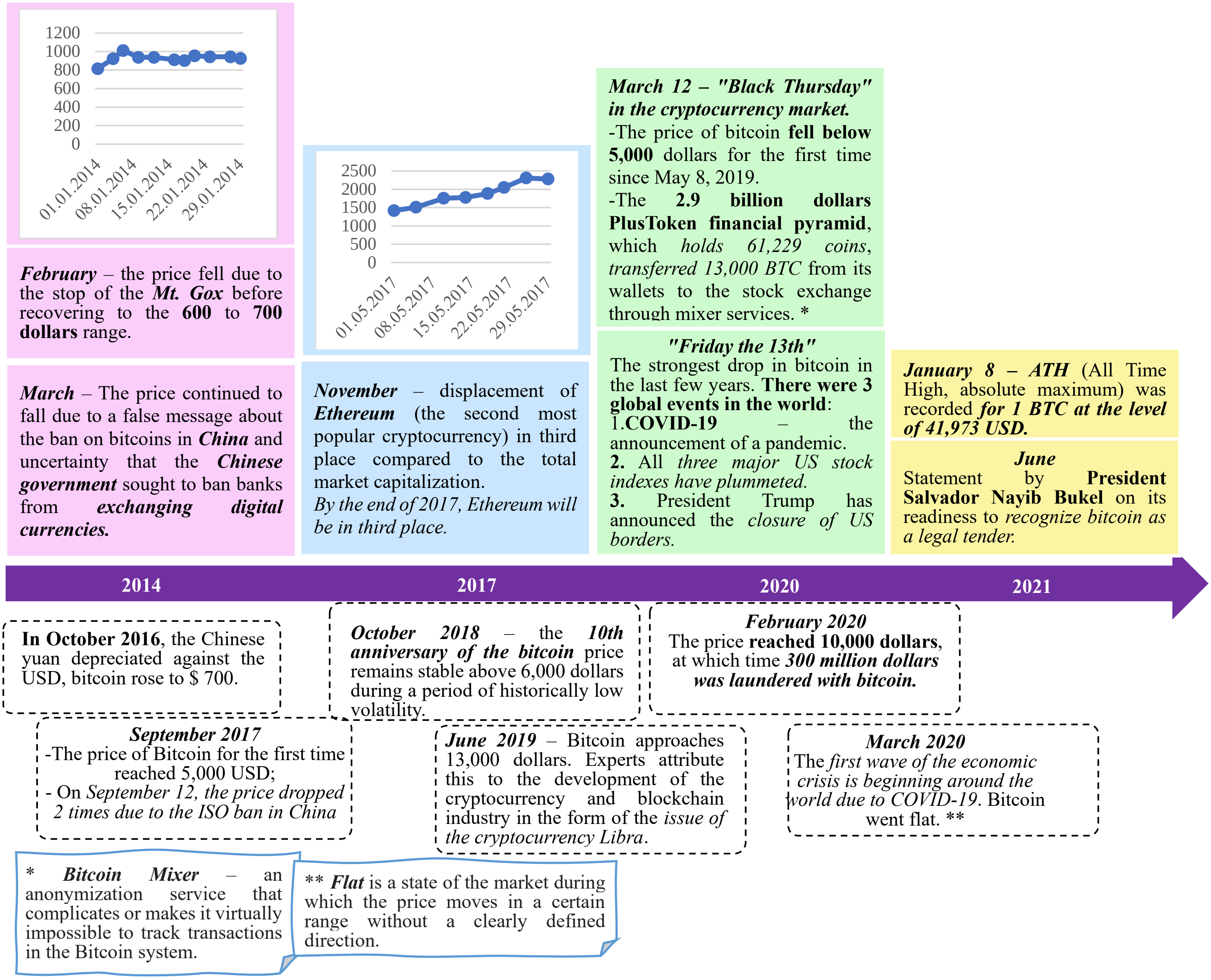


Source: developed by the authors based on statistical data

Figure 3- Bitcoin pricing policy

The historic turning point came in March 2020, when a coronavirus pandemic was announced on Friday, March 13, the United States closed its borders and three major indices collapsed, more info on infographics (Figure 4).





Infographics built by: Katrych O., Lutsyshyn Z., Frolova T., Yuzhanina N.

Figure 4 – Bitcoin price history

By comparison, over the past 90 years, the S&P-500 has received only 9.8% annual returns, and most investors and mutual funds try to surpass or even equal it.

Of course, past profits do not indicate future results, but as key capitalists seek to give their capital where they are best treated, it is worth looking at what the cryptocurrency market has to offer. Cryptocurrency gold fever may have ended a few years ago, but new opportunities for cryptocurrency are being created every day.[4]

The process of running the algorithms that control the blockchain is called mining. This is not just a friendly reference to how most valuable reserves, such as gold and silver, are mined.

And like real-world mining, blockchain mining is very infrastructural. To do this, cryptocurrency miners need proper equipment, cooling capabilities to avoid overheating computers, and access to cheap and plentiful electricity.[2] If a miner runs an instance of software that finds a solution to the cryptographic problem underlying Blockchain, they receive a "cryptocurrency" as a reward.

The caveat is that the more cryptocurrencies of this type exist, the more difficult they are to produce and the fewer tokens a miner receives for finding a solution. For most cryptocurrencies, there are strict limits on the amount that can be produced. For example, bitcoin has a strict limit of 21 million tokens produced.[1]

But the caveat creates the biggest advantage of cryptocurrencies over traditional currencies: there is no risk of hyperinflation. In fact, there is deflationary pressure. So, despite the lack of centralized power, miners have a built-in motivation to run software, because the more crypto market penetration, the more expensive the coin will be, because there are fewer and fewer coins forever – due to the growing number of people. [5, P. 20]

In other words, unlike other currencies that have built-in inflationary pressures, cryptographs experience deflationary pressures due to severe production constraints. Therefore, many consider cryptocurrencies the most destructive financial innovation of the century. How exactly this new currency will work in the long run is still unknown, but most are sure of one thing: it will remain.[2]

At the time of writing, there were 5,392 cryptocurrencies. By market capitalization, the five largest cryptocurrencies are Bitcoin (BTC) $ 128 billion. US, Ethereum (ETH) $ 19.4 billion US, XRP (XRP) $ 8.22 billion United States, Tether (USDT) $ 6.4 billion US and Bitcoin Cash (BCH) $ 4.1 billion USA. Bitcoin was the first cryptocurrency and remains the most important, but each of the thousands of cryptocurrency options has unique characteristics, functions, problems, and benefits. As the cryptocurrency has evolved more than just as a potential alternative to the currency, it is fast becoming its own investment cluster.[2]

For example, startups use Initial-Coin-Offerings (ICOs) to circumvent rules that restrict them from seeking funding from the public. These new "coins" are often intended to be exchanged for future goods and services, although this is not a requirement. There are two types of cryptocurrencies.[4]

Clover coins are tokens that are tied to the value of a good, service or asset. Its value comes from the fact that it can be redeemed for something else, or as an ETF, which functions as an asset representing a basket of various items[11].

Ironically, given the volatility of the cryptocurrency market, as well as the fact that it can be algorithmically pegged, stable coins are often less stable. The largest coin in cryptocurrency is Ethereum, which can be redeemed for computing power.

Because they are tied to other goods and services, stable coins do not eliminate the disadvantages of fiat currencies. However, you can use stable coins for trading, which can be very profitable.

Clover coins also allow you to leave the banking system. So, if you trust the fiat currency (because it has existed for hundreds of years), but want to get out of the banking system, stable coins are a good solution[12].

Free-circulation coins are tokens that determine their value primarily because of their scarcity, difficulties in mining, and market demand. Most coins in this category derive their basic system architecture from bitcoins. In many ways, most coins are just paint-coated bitcoins, given that bitcoin software is open source and therefore freely available.[4]

Not surprisingly, bitcoin remains the largest coin in this category. But many miners have tried to take the Bitcoin project in another direction, creating currency splits. So, there are dedicated coins that are shared by most of the original bitcoin programs, but with key differences. An example of this type of split is the creation of "Bitcoin Cash", which separated from the original Bitcoin and shared the same blockchain until 2017. Bitcoin Cash has also branched out into other coins since then. [5, P. 20]

If you want to get more stability while taking advantage of this technology, then Stablecoins is likely to be the best option[13].

Is cryptocurrency speculative? Is cryptocurrency an investment? Is a cryptocurrency a hedge? In truth, it's all three in one.

In the Western world, there is a war on cash that makes both precious metals and cryptocurrencies an equally important part of any offshore equation. Both assets are a good way to keep money out of the banking system and diversify it well. [5, P. 20] Cryptocurrencies provide another way to protect your investments, so they are naturally compatible with

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[11] Camera, G. (2017). “A Perspective on Electronic Alternatives to Traditional Currencies”, Sveriges Riksbank Economic Review, 2017:1, 126-148.
[12] Huberman, G., Leshno, J. and Moallemi, C. (2017), “Monopoly without a Monopolist: An Economic Analysis of the Bitcoin Payment System”, Working Paper 17-92, Columbia Business School.
[13] Rogoff, K.S., (2016). The Curse of Cash, Princeton University Press.

everything. In the same vein, no one recommends investing all your money in cryptocurrency. The point is to diversify, not to make philosophical statements about government control and the future of the financial world.[4]

People who are deeply in the crypto space spread the distinction between the utopia of what can be a crypto and the reality of what the world looks like now. Some investors are so focused on utopias that they blind the reality of the current financial system.

The above contributed to the speculative nature of cryptocurrency. And it is impossible to get around this: a significant part of the people involved in the cryptocurrency space are there for ideological reasons. The average cryptographer is skeptical of government authority. Until current crypto investors can persuade the average citizen to use them as a currency instead of speculation, cryptocurrencies will never become widespread enough to displace cash. [5, P. 20]

Currently, 64% of bitcoins have not been used in any transaction for several years, indicating that investors view it as a store of value rather than a valid currency.

To understand why bitcoin is almost never used, imagine that you had two coins of the same denomination, but one made of gold and the other of iron. Of course, you would first use iron coins because they have a lower receptive value – in economics this is called "Gresham's law". This is what happens with bitcoins. The deflationary pressure of a cryptocurrency means that if you don't spend it today, it will cost more tomorrow.[4]

So, if you have an equal number of traditional currencies and cryptocurrencies, you will use traditional funds over cryptocurrency. Until this is resolved, cryptocurrency remains an extremely speculative environment, as it will not be used as a currency due to its volatile value.

Currency based on blockchains is also quite speculative simply because it is new to the world. It will take some time for countries to develop the right framework and create the necessary infrastructure so that more people can use it in more ways and elsewhere.[2]

Because of this, the markets are quite scattered, and regulation is not quite. However, there are many opportunities for arbitration and profit for those who want to spend their time studying this topic. Once volatility begins to shrink, cryptocurrency is likely to become a more permanent element of the economic landscape. Until then, it will be used mainly as a store of value, a means to facilitate trade and a way to circumvent a government institution that wants to control everything.[2]

BEPS rules do not regulate the taxation of cryptocurrencies, and crypto regulation in general. After the release of the new FATF recommendations in March 2021, the Ministry of Digital Transformation of Ukraine took additional time to study the new rules and implement them together with other amendments that are currently being discussed. Given further coordination with other regulators, it is now expected that the second reading will take place no earlier than the end of May-beginning of June 2021.[4]

But this does not mean that in the summer the cryptocurrency will be fully enshrined in law – after the adoption of a planned transition period of at least six months. Therefore, the full--fledged new regulation will work closer to 2022. It is now assumed that the market will have three regulators: the Ministry of Digital Transformation of Ukraine, the National Bank of Ukraine and the National Commission on Securities and Stock Market.[4]

Under the current plan, the Ministry of Digital Transformation of Ukraine is responsible for the initial registration of all service providers in the cryptocurrency market (eg, wallets, exchanges, brokers, etc.), as well as maintains their register, formulates market policy. Subsequently, the registration and maintenance of the register can be undertaken by the newly created structure under the Cabinet of Ministers of Ukraine. If the company provides a simple technical solution such as wallets – this will be enough. If you plan to provide more services – you will need a license.

The NBU will license those cryptocurrency market participants who plan to provide financial services. The NSSMC will license cryptocurrencies and brokers that will operate in this market. [5, P. 20]

In addition, an expert council will appear, which should include representatives of the NBU, the NSSMC, the Ministry of Finance, as well as representatives of associations and businesses. The board will assess whether the company needs to obtain a license and, accordingly, to which regulator it belongs. However, this should not be a subjective assessment – it will be conducted based on the characteristics of a particular activity described in the legislation.[2]

Registration from the company will require full disclosure of beneficiaries, by analogy with banking law and BEPS rules. The authorized capital for companies will be approximately 10,000 euros. To register, you will need to apply online. At the same time, for cryptocurrencies, licensing requirements will assume the status of a legal entity, start-up capital – at least 30,000 tax-free minimums.[4]

The current start-up capital figure is the result of a consultation with Estonian regulators, who once set low capital requirements for exchanges. As a result, 4,000 exchanges entered their market, but banks did not work with them due to high risks, because such a license means nothing. They advised setting an approximate range for capital.

It is possible that the company will have several regulators, if, say, a cryptocurrency exchange, which also provides financial services. [4] Then it can be accountable to both the NSSMC and the NBU and will have to obtain licenses for both activities.

Regarding the changes that can be made due to the BEPS rules, first, it is necessary to consider the requirements of the FATF the concept of service provider in the cryptocurrency market, clarified criteria for cryptocurrencies. [4] In addition, due to the "openness of information", wallets can be made non-anonymous, ie all individuals will have to disclose data about wallets. However, there is no technical solution on how to do it yet. It is also possible to make ICO possible only through a broker who will act as an underwriter, by analogy with the stock market.

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