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ЄВРОПЕЙСЬКЕ ЗАКОНОДАВСТВО ПРО ДЕРЖАВНУ ДОПОМОГУ СУБ'ЄКТАМ ГОСПОДАРЮВАННЯ ТА ПОДАТКОВІ ПІЛЬГИ В УКРАЇНІ

З 1 січня 2016 р. набрала чинності Угода про асоціацію між Україною та ЄС, відповідно до якої Україна повинна імплементувати та дотримуватися європейських правил стосовно державної допомоги. Хоча ці правила не мають на меті якимось чином регулювати податкову політику як країн – членів ЄС, так і України, вони обмежують можливості для застосування податкових пільг. Зважаючи на те, що Україна не є членом ЄС і не має перспективи стати ним у найближчому майбутньому, виникає багато питань щодо того, яким чином правила стосовно державної допомоги суб'єктам господарювання будуть застосовуватися в Україні, як це контролюватиметься на національному рівні та якими для України будуть наслідки у разі, якщо вона цих правил не дотримуватиметься. Стаття присвячена дослідженню особливостей застосування податкових пільг з огляду на імплементацію європейського законодавства щодо державної допомоги в Україні, з урахуванням того факту, що Україна не є членом ЄС.
Проаналізовано європейські правила державної допомоги та їх застосування в податковій сфері. Визначено, які саме податкові заходи можуть підпадати під дію європейського законодавства про державну допомогу. Спрощена система оподаткування, що є одним із найбільш серйозних податкових стимулів в Україні, не підпадатиме під дію правил про державну допомогу. А можливості застосування податкових пільг для великих компаній, навпаки, будуть обмежені. В результаті проведеного дослідження було встановлено, що Антимонопольний комітет України може мати серйозні труднощі у припиненні та поверненні незаконної державної допомоги. Автор доходить висновку, що у випадку недотримання Україною своїх зобов'язань у цій сфері найбільш імовірно її чекатимуть тривалі переговори з ЄС, а також запровадження мит на субсидовані товари з боку ЄС. До 2023 р. Україна перебуватиму у перехідному періоді стосовно правил щодо державної допомоги і за цей час їх імплементація має серйозно вплинути на податкову сферу в Україні[1].

Ключові слова: державна допомога суб'єктам господарювання, податкові пільги, Угода про асоціацію між Україною та ЄС

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EUROPEAN STATE AID LAW AND TAX INCENTIVES IN UKRAINE

On January 1, 2016, the Association Agreement between Ukraine and the EU came into force, according to which Ukraine should implement European Union rules on state aid. Although these rules are not intended to regulate in any way the tax policy of either EU member states or Ukraine, they limit the possibilities for applying tax incentives. Ukraine is not EU member state and for this moment has no perspective to become a member. That is why some questions arise concerning the way of state aid rules application to economic entities in Ukraine, their monitoring at the national level and consequences for Ukraine if it does not comply with these rules. The article contains a research on the peculiarities of the application of tax incentives in view of the implementation of the European state aid legislation in Ukraine. The author analyzes the European rules of state aid and their application in the tax area. The author has defined what tax measures may fall under the European law on state aid. A simplified taxation system, which is one of the most important tax incentives in Ukraine, will not fall under the rules on state aid. But the possibility of applying tax incentives for large companies will be limited. As a result of the study, it was found that the Anti-Monopoly Committee of Ukraine could have serious difficulties in stopping and returning illegal state aid. The author concludes that, in case of Ukraine's non-compliance with its state aid obligations, the most probable scenario will be long negotiations with EU and simultaneous introduction of customs duties on the relevant commodities. By 2023, Ukraine will be in a transitional period for state aid rules application, and during this time, their implementation will have a serious impact on taxation in Ukraine.

Keywords: *state aid to companies, tax incentives, EU-Ukraine Association Agreement*

According to Article 107 of Treaty on the Functioning of EU "…any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favoring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market" [1]. Thus, any aid is considered incompatible with the internal market, except for some exclusion. The reason for this is that free competition is one of the important conditions of the common European market.

EU state aid legislation was not primarily aimed at regulation of the tax policy in EU member states. However, current EU practice in state aid regulation expanded for a number of tax issues, including tax incentives applicable upon international trade and even for some measures not connected to international activity, like production of local goods and services.

Considerable impact on research of fiscal state aid issues were made by the many European researchers, including, Lang M, Quigley C., Rust A., Micheau C., Szudoczky R. and other. But some questions related to the use of European state aid law in Ukraine, which is not an EU member state, still need to be investigated. Among them is the use of tax incentives in Ukraine according to European state aid rules.

Article 262 of the Ukraine–EU Association Agreement (AA) follows article 107 of TFEU "Any aid granted by Ukraine or the Member States of the European Union through state resources which distorts or threatens to distort competition by favoring certain undertakings or the production of certain goods is incompatible with the proper functioning of this Agreement insofar as it may affect trade between the Parties" [2].

Therefore, a measure (either tax or non-tax one) is recognized as "prohibited" under EU or Ukrainian law, if the following conditions are met:

- the measure creates an advantage to its addressees.
- it is granted by the state or through state resources;
- it favors "certain undertakings or the production of certain goods", i.e., it meets selectivity criteria;
- the measure distorts or threatens competition, or affects trade between Ukraine and member states (under AA).

The term "state aid" does not have a clear definition in European treaties. However, the concept of state aid is broader than just subsidies. Any measures reducing tax liabilities of business (where tax would have been payable under normal conditions) may constitute state aid.

Below we examine in detail the following criteria of "prohibited" state aid.

Advantage. According to the Commission Notice on the application of the State Aid rules to measures relating to direct business taxation (98/C/384/03) [3], "the measure must confer on recipients an advantage which relieves them of charges that are normally borne from their budgets". The advantage may be provided through a reduction in the firm's tax burden in various ways, including:

- a reduction in the tax base (such as special deductions, special or accelerated depreciation arrangements or the entering of reserves on the balance sheet),
- a total or partial reduction in the amount of tax (such as exemption or a tax credit),
- deferment, cancellation or even special rescheduling of tax debt.

The Commission opined that where state aid is granted in the form of tax measures, the amount of such aid should be calculated based on a comparison between the tax actually paid and the amount which should have been paid if the generally applicable rule had been applied [3].

Consequently, the advantage of tax measures exists when the enterprise actually pays less tax than it would have paid under usual terms. Applying this concept may be problematic, since it is not always possible to determine what amount of taxes would have been payable by the company under "normal" conditions.

Granted by the state or through state resources. At first glance, "by the state" or "through state resources" are the same. However, the practice of the European Court of Justice (ECJ) shows that these can imply different scenarios. "Provided by the state" assumes that the decision on assistance was made by state, whereas "from state resources" means that the benefit to the taxpayer should lead to losses from the state (or local) budget. ECJ practice includes cases when only one of these conditions was fulfilled. In the case *T-351/02 Deutsche Bahn AG vs Commission*, ECJ came to the conclusion that tax exemption for excise duties on mineral oils was not granted by the Member state, as such exemption was implemented under Article 8(1) (b) of Directive 92/81 on the harmonization of the structures of excise duties on mineral oils. Thus, in opinion of the ECJ, the Member State did not grant any aid but only followed its obligation stemming from the EU Treaty, even though the exemption was granted through state resources [4].

Thus, any tax measures (including tax exemptions, reductions and deferments), which Ukraine has to implement due to its obligations under international agreements, will not fall under the scope of state aid legislation.

Selectivity criteria. Selectivity in tax measures applies when certain enterprises are taxed in a way that reduces their obligations in comparison with the usual or normal regime [5, p. 109]. Selectivity is the most problematic feature of state aid in assessing tax measures. In order to be selective, a measure should concern some, but not all, taxpayers and discriminate certain taxpayers.

In some cases, selectivity is obvious. When tax exemptions are given to enterprises from a particular sector (for example, aircraft industry, shipbuilding industry or renewable energy production) they are selective, because firms from other sectors can not use them. Simplified tax system for SMEs is also selective, because it reduces tax obligation for SMEs in comparison with large firms. And the same situation will be with tax exemption for particular territory (regional state aid).

In other cases, selectivity can be not so obvious. For example, any firm from all the sectors can use R&D tax credit, but more innovative firms would have more benefits from it.

The benefits from general measures of economic policy, which are provided for all economic operators, do not constitute state aid, as selectivity criteria are not met. In Case 140/13 Netherlands Maritime Technology Association v Commission European, Court of Justice considered the implementation by the Kingdom of Spain of a tax scheme permitting the early depreciation of certain assets acquired through financial leasing (this measure was very beneficial for Spanish shipyards) [6]. The Court supported the position of European Commission that the measure was applicable to all the companies, which are subject to income tax in Spain without distinction according to sectors of activity, places of establishment, size or legal status [6, paragraph 28]. That is why the selectivity criteria did not apply.

However, general tax measures sometimes involve criteria that can be de facto met by a limited amount of enterprises. In such cases, similar measures can constitute state aid. In the tax case of the Basques, state aid was recognized as a tax credit applied only to enterprises that invested in fixed assets more than 2,500 million pesetas. The court decided that the measure was selective because only large companies with access to significant financial resources could enjoy this measure [5, P. 118].

According to European state aid practice, it does not matter whether tax exemption is used by 1% of enterprises or 90%. From 2006, Sardegna established a regional tax on stopovers for tourist purposes by aircraft or recreational craft for the environmental protection purpose. Some vessels were exempt from this tax, inter alia vessels which make a stopover in order to take part in sporting regattas, rallies of vintage and monotype boats and in sailing events, including non-competitive sailing events, where the organizers have given the maritime authorities advance notification of the event; recreational craft which are moored throughout the year at harbor installations of the region; technical stops, limited to the time necessary for those purposes [7, paragraph 7]. ECJ decided that exemption from environmental duty leads to selectivity, even though it would have been possible that 90% of all companies transporting people from and to Sardegna were local. [8, P. 110] According to ECJ, all natural and legal persons are in comparable situation with regard to the tax in terms of the consequences for the environment [7, paragraph 37].

ECJ expressed a similar opinion on selectivity in case of Gibraltar tax reform C-106/09 and C-107/09 P. The Government of Gibraltar planned to repeal all its corporate tax laws and introduce an entirely new corporate tax regime for all Gibraltar companies [9, Paragraph 8]. The contemplated system of taxation will be applicable to all companies established in Gibraltar and consisted of a payroll tax, a business property occupation tax and a registration fee [9, Paragraph 12]. Since offshore companies registered in Gibraltar did not have employees and property, it is clear that they would pay, if the reform were implemented, only a registration fee. Thus, the fact that offshore companies, which constitute a group of companies with regard to the bases of assessment adopted in the proposed tax reform, would avoid taxation precisely on account of the specific features characteristic of that group gives reason to conclude that those companies enjoy selective advantages [9, Paragraph 107]. The Court concluded that tax reform was selective even though 99% of undertakings established in Gibraltar could receive advantage from this tax measure [10, Paragraph 55].

The experience of tax reform in Gibraltar leads to unexpected conclusions that even tax reforms that are aimed at the complete transformation of the tax system, or the abolition and introduction of new taxes, should not give a selective advantage to any group of taxpayers.

Distort or threaten to distort competition and either to affect trade. These are two different but necessary elements of state aid. In practice, however, these criteria are often treated jointly in the assessment of state aid as they are, as a rule, considered as interconnected [12, paragraph 186].

"A measure granted by the State is considered to distort or threaten to distort competition when it is liable to improve the competitive position of the recipient compared to other undertakings with which it competes. For all practical purposes, a distortion of competition within the meaning of Article 107(1) of the Treaty is generally found to exist when the State grants a financial advantage to an undertaking in a liberalized sector where there is, or could be, competition." [12, paragraph 187].

According to the EU practice, it is not necessary to demonstrate that competition is actually being distorted, but only to examine whether the aid could distort competition [10, P. 172].

From an economic point of view, a distortion of competition occurs when, as a result of tax measures, the company produces more goods than it would have produced without such aid. For example, VAT exemption for books makes these books more attractive for consumers and boosts the demand for them. Thus publishing companies raise the amount of published books, which otherwise would be lower.

Distortion of competition also arises when company makes an investment in the project that would have not been eligible for investment in absence of state aid. For example, in case of tax credit for R&D, a company could invest money in some innovations that without state aid would not be made.

Another situation where competition is distorted, occurs when a company is able to continue entrepreneurial activity solely due to state aid (i.e., the company would shut down in absence of state aid).

EU Commission does not restrict state aid of negligible volume that meets de minimus rule. A little amount of aid does not significantly affect trade and thus such measures do not meet the requirements of article 107 of the Treaty. De minimus rule exempts €200 000 per undertaking over a three year period from state aid regulation [11]. This rule should not be applied to the sectors of primary production of agricultural products, fishery and aquaculture. €200 000 appears to be not so large an amount for EU businesses; however this volume of aid may be quite considerable for Ukrainian enterprises.

Any measure could be considered as a "state aid" according to the article 107(1) of TFEU only if "it affects trade between Member States". In this regard, it is not necessary to establish that state aid actually had an impact on trade between Member States, but only whether the aid could have had such an effect. "In particular, the Union Courts have ruled that "where State financial aid strengthens the position of an undertaking as compared with other undertakings competing in intra-Union trade, the latter must be regarded as affected by the aid." [12, paragraph 190] Ukraine has committed to adhere to EU secondary legislation under EU-UA Association Agreement. Thus, it may be expected that Ukrainian authorities will have the same approach when deciding whether a particular type of state aid affected trade between Ukraine and the EU.

At the same time, EU Commission does not consider measures that had only local impact (i.e., no effect on trade between Member states) as a state aid [10, P. 181]. For example, such measures include incentives for swimming pools, other leisure facilities, museums and culture infrastructure, hospitals and health care facilities, news media and conference centers, where the service recipients are primarily local individuals [10, P. 181].

However, if the infrastructure is used in activities involving direct cross-border competition (for example airport competition for passenger traffic) and if the infrastructure selectively favors individual enterprises and industries, support for such facilities can be considered as state aid.

According to above mentioned criteria three, the following types of fiscal measures are usually recognized as state aid:

1. State aid schemes in the form of tax advantages or special tax regimes that can be used by a significant number of enterprises.
2. Individual tax measures, which may be used by one single enterprise.
3. Tax reforms (to date, there has been registered one such case, namely, the Gibraltar tax reform, which was canceled by the European Court of Justice due to violation of the state aid legislation).

Any negotiations between taxpayers and state authorities on tax issues may be recognized as individual fiscal aid. If, in daily practice, tax laws need to be interpreted, such interpretation should not leave room for ambiguous interpretation, since this would necessarily lead to the placement of taxpayers in unequal conditions [13, P. 141].Under certain conditions, the following instruments may be treated as containing state aid elements:

- Advance pricing agreement (APA);
- Cooperative compliance programs (CCPs);
- Customs valuation agreements;
- Tax rulings;
- Deferment, cancelation and even special rescheduling of tax debt.

If an APA or CCP does not provide for any tax advantages or tax deductions and in practice does not result in paying less tax than if these agreements did not exist, then such measures should not be subject to state aid law. However, if there are any installments or reductions in tax liabilities, then such arrangements are at risk of being considered as state aid. Any reduction of tax burden is a loss of tax revenue for the state and hence may qualify as state aid [14].

In 2014 EU Commission investigated some aggressive tax planning cases (Amazon, Apple, Starbucks, Fiat), when international companies used advance tax rulings in transfer pricing for decreasing their tax obligations. Aggressive tax planning was made through individual tax decisions concerning transfer pricing. Since the profits received by the enterprises did not correspond to the profit that they would have received under market conditions, this resulted in reduction of taxable profits of companies. This method of reducing tax liabilities was available only for taxpayers from multinational groups, thus these tax measures were considered as selective [15, p. 15].

In Starbucks case, Commission came to the conclusion, that the Dutch tax authorities had accepted the taxpayer's transfer pricing documentation, which was inconsistent with normal international rules established in accordance with the relevant OECD guidelines [5, P. 107].

In Apple case, according to the Commission, Irish tax authorities did not provide any benchmarking study, but instead agreed fixing a narrow range of taxable profit [16].

The Commission's decision on Amazon proved that calculations used for Amazon's APA did not correspond to any OECD-approved methods. The royalty was not linked to the volume of manufacture, sales, or profits, but rather was calculated as residual profit above a certain fixed level. It was also unusual that the APA was never revised since its conclusion in 2003 [16].

In order for APAs with individual taxpayers not to be subjects of the state aid law, they must be in full compliance with the arm's length principle.

Deferment, cancellation and restructuring of tax debt also can be considered as state aid in certain conditions. EU Commission in Refractarios Especiales S.A case of tax debt rescheduling in Spain [17] and ECJ in Frucona Kosice case of deferrals of payment of its tax debt came to the conclusion that such measures constituted state aid. According to ECJ opinion, when public authorities grant such debt rescheduling, private creditor test must be applied [18]. The "private creditor" test examines whether debt renegotiations by public creditors involve State aid, by comparing the behavior of the public creditor to that of hypothetical private creditors in similar situations [12, paragraph 74]. When public authorities do not act as in the same way as a private creditor, the "private creditor" test is failed.

Private creditor test is part of a broader concept of "market economy investor principle". Market economy investor principle is met when "economic transactions carried out by public bodies (including public undertakings) do not confer an advantage on its counterpart, and therefore do not constitute aid, if they are carried out in line with normal market conditions" [12, paragraph 74].

Tax debt restructuring can be a form of state aid for rescue and restructuring of businesses. It may be allowed and recognized compatible with the internal market, if such restructuring meets certain conditions. One of them requires submitting a feasible, coherent and far-reaching restructuring plan to restore the undertaking's long-term viability. For instance, in 2015, EU Commission approved the restructuring plan for Kem One SAS in France, which inter alia included a write-off of tax and social security debts [19].

According to the Ukrainian law "On State Aid", write-off of tax debt and its restructuring can also be part of state aid for rescue and restructuring of businesses. Such a measure must be notified to Anti-Monopoly Committee of Ukraine (article 7 of The Law on State Aid to Undertakings of 01.07.2014 No. 1555-VII).

Favorable taxation of small and medium-sized enterprises (SMEs). Small and medium-sized enterprises are beneficiaries of significant part of state aid measures in the EU. There are no specific rules for state aid for SMEs in EU, but SMEs can use all categories of state aid accepted in EU. For some type of state aid measures, SMEs can also benefit from additional privileges like more intensive aid level [20]. Commission Regulation No 651/2014 of 17 June 2014declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty [21] contains some specific measures applicable only for SMEs, including: investment aid for SME, aid for consultancy for SMEs, aid to SMEs for participation in fairs, aid for cooperation costs incurred by SMEs participating in European Territorial Cooperation projects, risk finance aid, aid for start-ups, and aid to alternative trading platforms specialized in SMEs. All mentioned measures are used for solving two types of SME's issues: availability of finance for investment projects and financing of start-ups. In so doing, EU tries to eliminate the asymmetric information problem on capital markets for SMEs.

In Ukrainian conditions, it is important to check whether special tax regimes for SMEs are compatible with European state aid law. Special tax regimes are definitely selective, national authorities decide to provide them, thus such type of measures are granted by the state or through state resources and they can affect trade between Ukraine and EU (except of the SMEs producing local services). Hence, special tax regimes for SMEs qualify as state aid. However, a lot of special tax regimes for SMEs exist in various EU member states: Belgium, Spain, France, Hungary etc. [22, P. 15]. EU Commission usually does not raise any objections concerning such measures because they meet de minimus aid criteria under EU law.

In Ukraine, authorities granting state aid are not obliged to notify the Anti-Monopoly Committee of Ukraine about insignificant state aid (article 9 of the Law on State Aid to Businesses of 01.07.2014 No. 1555-VII). State aid is deemed to be insignificant "… where its aggregate amount to an entity, irrespective of its form and sources, does not exceed, in any three-year period, an amount equivalent to 200 thousand euros" (article 1 of the Law on State Aid to Businesses of 01.07.2014 No. 1555-VII). That is why simplified tax system is not likely to constitute state aid measure according to existing state aid legislation.

But EU Commission researches on tax regimes for SMEs show that special tax rates, which are the most predominant tax measure to support SMEs, have certain unfavorable traits compared to other forms of relief and should not be considered as good practice [22, P.16]. That is why simplified tax regime in Ukraine should be reconsidered from effectiveness standpoint, rather than for compliance with state aid legislation.

Control. Anti-Monopoly Committee of Ukraine is responsible for state aid control in Ukraine according to the Law on State Aid to Businesses of 01.07.2014 No. 1555-VII. Anti-Monopoly Committee of Ukraine receives and reviews notifications on new state aid, determines whether relevant measures constitute state aid, and is entitled to decide on termination and return of the state aid to the budget if it is considered incompatible with competition (article 8 of the Law on State Aid to businesses of 01.07.2014 No. 1555-VII).

The state authority introducing any new fiscal aid measure has to notify this measure to Anti-Monopoly Committee. Anti-Monopoly Committee analyses if such measure is in line with Ukrainian state aid law and decides if it is compatible with competition. Any fiscal aid measure granted without notification to Anti-Monopoly Committee is unlawful and has to be returned to budget (article 14 of the Law on State Aid to Businesses of 01.07.2014 No. 1555-VII).

However, there are some nuances that make it difficult to return unlawful state aid to budget. If the decision of Anti-Monopoly Committee on return of unlawful state aid is not observed, AMCU have to file a lawsuit to District Administrative Court (article 14.3 of the Law on State Aid to Undertakings of 01.07.2014 No. 1555-VII) on recognition of the relevant legal or individual act illegal. But the procedure of litigation can last for a long time.

In case when unlawful state aid is granted according to the law (in case of fiscal aid, it is usually the Tax code), AMCU has to appeal to the Cabinet of Ministers of Ukraine and request to initiate changes in the relevant law (article 14.4 of the Law on State Aid to Businesses of 01.07.2014 No. 1555-VII). Since changes to the legislation are a matter of political agreements, the termination and return of state aid in this case is unpredictable.

Sanctions. What will happen if Ukraine will apply unlawful state aid and fails to stop it? According to Article 477 of EU-Ukraine Association Agreement, "when a dispute arises between the Parties concerning the interpretation, implementation, or good faith application of this Agreement, any Party shall submit to the other Party and the Association Council a formal request that the matter in dispute be resolved. The Parties shall endeavor to resolve the dispute by entering into good faith consultations within the Association Council" (article 477.2). And, according to Article 478,"a Party may take appropriate measures, if the matter at issue is not resolved within three months of the date of notification of a formal request for dispute settlement according to Article 477 of this Agreement and if the complaining Party continues to consider that the other Party has failed to fulfil an obligation under this Agreement".

It is unclear how this provision will work in reality. If EU will have any concerns about state aid application in Ukraine and such state aid measures will affect trade between parties, then EU will initiate consultations within the Association Council and use all possible tools of political pressure to resolve the dispute.

There have been cases where European Commission recognized as unacceptable state aid measures harmful for trade between EU and countries, with whom EU had Association agreements. In 1993, EU introduced customs duty on the gearbox manufacturing produced by General Motors in Austria, because EU opined that Austria granted state aid to the company [23]. Austria was not an EU member state at that time, but it had free trade agreement with EU and its state aid to General Motors violated this agreement.

In both cases, introducing the duty was made on particular commodity produced by particular company. The same kind of sanctions (customs duty on particular commodity) may occur if Ukraine uses any harmful for EU-Ukraine trade tax exemptions and EU decides that they are state aid in the meaning of the article 262 of EU-Ukraine Association Agreement.

There are more cases that are complex when the overall tax regime in the country constitutes state aid. In 2007, EU Commission decided that some tax regimes for holding companies in Swiss Cantons constituted state aid incompatible with functioning of the Free-Trade Agreement between Switzerland and EU of 1972 [24]. EU Commission argued that these tax regimes created unfair tax privileges for companies in Switzerland that received income in EU. Commission asked Switzerland to change these tax regimes and started negotiation about this. It should be noted that EU Commission did not require (and was not entitled to do so according to agreement with CH) to return the unlawful state aid, but only to eliminate such tax measures.

First Switzerland refused formal negotiations with the Commission, and EU Commission on 06.12.2012 issued recommendations to EU member states to blacklist non-EU countries that do not comply with EU internal Code of Conduct on Business Taxation guidelines (2012/772/EU) [25]. As a result, Italy included Switzerland to black list of countries with privileged taxation [26]. In 2016, after the signing of the additional protocol of 23.02.2015, which amended the Agreement on Avoidance of Double Taxation between Italy and Switzerland, Italy excluded Switzerland from the black list [27].

In 2014, after long negotiations, Switzerland and EU came to solution that Switzerland intends to take measures aimed at removing harmful tax regimes and to adopt draft legislation in line with generally accepted international standards developed by the OECD [28]. However, in early 2017, the citizens of Switzerland voted on referendum against the corporate tax reform that was to adopt corporate tax system in line with above mentioned obligation.

Tax dispute between the EU and Switzerland continues for over 10 years, but has not yet been resolved and tax exemptions are still in force, although Switzerland still tries to change its corporate taxation and bring it in line with OECD principles [29]. The negotiation mechanism in the free trade agreements does not provide an effective instrument for resolving tax disputes. If one of the parties applies harmful tax measures, the other party has not so many opportunities to protect their interests. In the case of Switzerland-EU tax dispute, EU had not so much influence on the opposite party. However, if a similar situation will happen with Ukraine, EU may have more tools for political pressure.

In case of Ukraine's non-compliance with its state aid obligations, the most probable scenario will be long negotiations with a simultaneous introduction of customs duties on the relevant commodities.

Prospects EU-Ukraine Association agreement contains strict deadlines for the development of state aid legislation in Ukraine:

1) Ukraine shall in particular adopt national state aid legislation, and establish an operationally independent authority, which is entrusted with the powers necessary for the full application of Article 262 of this Agreement within three years of the entry into force of this Agreement (the preliminary entry into force of the economic part of Agreement took place from

01.01.2016). On 02.08.2017 came into force the Law on State Aid to Businesses of 01.07.2014 No. 1555-VII. Ukraine met this obligation in advance of the deadline in the AA/DCFTA. All new State Aid measures must be notified to the State Aid control body (the AMCU) [30]. However, some legislative document with "compatibility criteria" still has to be adopted.

2) Within five years of the entry into force of this Agreement, Ukraine shall establish a comprehensive inventory of the existing aid schemes (until 01.01.2021).

3) Ukraine shall align aid schemes with the criteria referred to in Articles 262 and 264 of this Agreement within a period of no more than seven years from the entry into force of this Agreement (till 01.01.2023).

Ukraine is currently in a transitional period whose main task is to develop and implement state aid legislation. All existing state aid schemes can still be legitimately applied, but should be gradually revised and aligned with EU rules. But any new state aid measures, in particular new tax incentives and individual decisions by tax authorities regarding taxpayers' obligations, must comply with Ukrainian legislation and, in fact, with the EU state aid rules. If the amount of granted state aid exceeds the de minimus level, these measures must be notified in advance to the Anti-Monopoly Committee and agreed with them.

Conclusion. Fiscal aid measures for companies are widespread both in EU member states and in Ukraine. They can be granted in different forms like tax incentives, individual tax decisions, rescheduling and write-offs of tax debt etc.

Ukraine is obliged to reform its state aid legislation according to EU-Ukraine association agreement. That is why Ukraine has to harmonize its tax legislation to EU state aid regulation principles. Ukrainian public authorities have to change fiscal measures to meet state aid legislative requirements. To be considered state aid, a fiscal measure must contain four features: create advantage for enterprises, be granted by the state or through state resources, be selective and distort competition. If one of them is not met, the fiscal measure does not constitute state aid.

European state aid rules narrow the possibilities for granting aid to big companies. For SMEs, de minimus rule can be applied, which that makes applicable almost all types of tax measures. However, for big companies, de minimus amount of €200 000 per company over a three year period can be too little to make any considerable effect. Furthermore, big companies use more often such tools as advance pricing agreement, tax rulings and tax rescheduling. These arrangements are at risk of being considered as state aid, but, for big companies, they can be very important for normal profit taxation. That is why big companies and tax authorities have to increase their competence in state aid legislation to avoid granting any privileges through tax arrangements.

Until 2023, Ukraine has to implement a huge part of European state aid legislation and provide enforcement of its state aid rules. Some issues can arise when Anti-Monopoly Committee decide that a particular fiscal measure is unlawful state aid and must be stopped and even returned to the budget. Due to certain specificities of Ukrainian legislation, the procedure of return can be time-consuming, complicate and may encounter political obstacles. However, the procedure of sanction implementation for non-compliance with EU state aid law too is limited and time-consuming. The most probable type of sanctions is introduction of customs duties for Ukrainian commodities produced by companies who received unlawful state aid.

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