

**Liudmyla TOVKUN, Mariia PEREPELYTSIA, Nataliya MARYNIV, Anastasiia
OVCHARENKO**

*International experience of e-commerce taxation and its application in Ukraine
(legal aspect)*

DOI: [https://doi.org/10.34625/issn.2183-2705\(34\)2023.ic-05](https://doi.org/10.34625/issn.2183-2705(34)2023.ic-05)

Secção I

Investigação Científica*

* Os artigos presentes nesta secção foram sujeitos a processo de revisão segundo o método *blind peer review*.

International experience of e-commerce taxation and its application in Ukraine (legal aspect)

Experiência internacional de tributação do e-commerce e sua aplicação na Ucrânia (aspecto jurídico)

Liudmyla TOVKUN¹
Mariia PEREPELYTSIA²
Nataliya MARYNIV³
Anastasiia OVCHARENKO⁴

ABSTRACT: The relevance of this paper is determined by the fact that e-commerce is one of the elements of the digital market and is fully or partially conducted in the virtual space (the Internet). The main objective of this paper is to cover the content of e-commerce, study the experience of its taxation in leading countries of the world with the possibility of adapting it in Ukraine, as well as provide proposals for improving the e-commerce taxation system in Ukraine. The following methods used to study this subject can be distinguished: dialectical method, legal cognitive method, comparative legal method, formal legal method, historical method, hermeneutical method, structural and functional method, etc. In the course of the study, the content of e-commerce was considered, the international legal and national regulatory framework for its regulation was determined, the international experience of implementing e-commerce was studied, and attention was focused on the features of taxation of e-commerce entities. The provisions that are enshrined in this paper are of practical value primarily for legal entities and individual entrepreneurs who carry out their activities in the field of e-commerce, for competent state bodies that will prepare draft amendments and additions to tax legislation.

KEYWORDS: e-commerce, information system, telecommunications system, individual entrepreneur, tax, goods, services.

RESUMO: A relevância deste trabalho é determinada pelo facto de que o e-commerce é um dos elementos do mercado digital e é realizado total ou parcialmente no espaço virtual (a Internet). O principal objetivo deste trabalho é cobrir o conteúdo do e-commerce, estudar a experiência de sua tributação nos principais países do mundo com a possibilidade de adaptá-lo na Ucrânia, bem como apresentar propostas para melhorar o sistema de tributação do e-commerce na Ucrânia. Os seguintes métodos utilizados para estudar este assunto podem ser distinguidos: método dialético, método cognitivo legal, método jurídico comparado, método jurídico formal, método histórico, método hermenêutico, método estrutural e funcional, etc. considerou-se o e-commerce, determinou-se o enquadramento legal internacional e nacional para a sua regulação, estudou-se a experiência internacional de implementação do e-commerce e

¹ Department of Financial Law, Yaroslav Mudryi National Law University, 61024, 77 Pushkinska Str., Kharkiv, Ukraine.

² Department of Financial Law, Yaroslav Mudryi National Law University, 61024, 77 Pushkinska Str., Kharkiv, Ukraine.

³ Department of Financial Law, Yaroslav Mudryi National Law University, 61024, 77 Pushkinska Str., Kharkiv, Ukraine.

⁴ Department of Financial Law, Yaroslav Mudryi National Law University, 61024, 77 Pushkinska Str., Kharkiv, Ukraine.

centrou-se a atenção nas características da tributação das entidades de e-commerce. As disposições que estão consagradas neste documento são de valor prático principalmente para pessoas jurídicas e empresários individuais que desenvolvem suas atividades no campo do comércio eletrônico, para órgãos estatais competentes que irão elaborar projetos de alterações e aditamentos à legislação tributária.

PALAVRAS-CHAVE: comércio eletrônico, sistema de informação, sistema de telecomunicações, empresário individual, tributário, bens, serviços.

Introduction

Recent decades can be described as "decades of radical changes" since there has been an active development of the economy, culture, art, politics, as well as considerable progress in the field of science and technology. The main achievement of this time can rightly be considered the spread of the Internet, and in this regard the emergence and development of such a phenomenon as e-commerce. The history of e-commerce development in its simplest form began in the United States in the early 1960s. Initially, it was the use of automation technology in the sale of tickets for transport companies, as well as the exchange of information between transport services during the preparation of flights and trips⁵. However, the date of creation of e-commerce is considered to be 1994, when a CD was first sold through the NetMarket website, which is considered an American retail platform. Since then, e-commerce has been considered and defined as the purchase or sale of goods and services, as well as the transfer of data or funds through an electronic network⁶. In turn, the UN Commission on international trade law (UNCITRAL) gave the following definition of the concept of "e-commerce", according to which e-commerce should be understood as the technology and organisation of the purchase and sale of goods and services that are carried out through the use of telecommunications networks or electronic financial and economic instruments⁷. Notably, an important issue for understanding the content of e-commerce was the relationship between the terms "e-commerce" and "e-trade", and the definition of the latter as a component of e-commerce.

⁵ TASTULEKOVA, A.B., SATOVA, R.K., SHALBOLOVA, U.ZH. 2018. *Business valuation and equity management when entering the IPO market*. *European Research Studies Journal*, vol. 21, n. 4, pp. 75-886.

⁶ BOIKO, N. 2023. *Modern strategy and tactics development algorithm of internet marketing on the B2B market*. *Economics of Development*, vol. 22, n. 1, pp. 50-58. <https://doi.org/10.57111/econ/1.2023.50>

⁷ MYSKIV, G., NYCZ-WOJTAN, S. 2022. *Reservation systems as a tool of tourist services marketing*. *Economics, Entrepreneurship, Management*, vol. 9, n. 2, pp. 7-18. <https://doi.org/10.56318/eem2022.02.007>

Today, most companies in the world, both large and small, pay considerable attention to carrying out business activities via the Internet, which allows them to sell goods and offer their services to consumers on a larger scale and range, which improves the quality of customer service and reduces the costs of business entities⁸. Thus, the development of e-commerce has formed a new virtual channel for selling goods and services, and this, in turn, has changed the idea of carrying out conventional business activities. Currently, transactions related to the implementation of e-commerce can be carried out via the Internet (the entire process or part of the sale or payment). Considerable adjustments to the development of e-commerce in the world were made by the pandemic caused by the spread of the COVID-19 virus, which considerably changed the idea of business and doing business on the Internet⁹. In general, for the first half of 2020, the study Global-e¹⁰ established that sales through e-commerce increased by 20% compared to 2019. For example, in the United States of America (USA) for the period from April to June, sales carried out via the Internet increased by 45%. In 2020, 16 thousand new companies operating in the field of e-commerce appeared in the United Kingdom (UK). In addition, according to the data that were given by International Business Machines Corporation¹¹, the e-commerce industry broke five-year figures during the pandemic, which means that the pandemic contributed to its development in the world.

Analytical centre Better Regulation Delivery Office¹² conducted the study, the results of which have shown that Ukraine ranks second in Europe in terms of e-commerce market growth. This study also found that the e-commerce market for 2019 amounted to approximately 97.4 billion Ukrainian hryvnia (UAH). According to the forecast given by the above analytical centre, by 2022, 67% of online purchases that will be made in the world will be made through

⁸ LEONOW, A.I., KONIAGINA, M.N., PETROVA, S.V., GRUNT, E.V., KERIMKHULLE, S.Y., SHUBAEVA, V.G. 2019. *Application of information technologies in marketing: Experience of developing countries*. *Espacios*, vol. 40, n. 38. <http://www.revistaespacios.com/a19v40n38/a19v40n38p24.pdf>

⁹ SALO, I., POPOVA, O., KOTSYUBYNSKA, L. 2023. *Capacity and saturation of the food market in Ukraine*. *Ekonomika APK*, vol. 30, n. 1, pp. 10-19. <https://doi.org/10.32317/2221-1055.202301010>

¹⁰ Global-e. 2021. Available from: <<https://www.global-e.com/about/>>.

¹¹ International Business Machines Corporation. 2021. Available from: <<https://www.ibm.com/ua-en>>.

¹² Better Regulation Delivery Office. 2021. Available from: <<https://en.brdo.com.ua/>>.

marketplaces. In Ukraine, over the past three years, all market leaders have partially or completely become marketplaces (every fifth of the top twenty e-commerce store-fronts)¹³. A study conducted by Euromonitor International¹⁴ found that Ukraine has become the leader among Eastern European countries in the growth of e-commerce. For comparison, the e-commerce implementation rate in 2018 was 3.2% and in 2020 it is already 8%, that is, the e-commerce implementation market indicators increased by more than 150%¹⁵.

Ukraine has special electronic systems for VAT administration, including the VAT refund system, the VAT invoice registry, and the VAT control system¹⁶. The war has impacted e-commerce in Ukraine, with a decrease in e-commerce sessions, transactions, and revenues generated from digital sales^{17,18}. However, a study proposes general approaches to adapting marketing and e-commerce during the war to preserve, restore, and further develop business in Ukraine¹⁹.

Regarding taxation, the Directorate-General Taxation and Customs Union (DG TAXUD) wanted to ensure that sanctioned Russians and Belarussians were fully and properly scrutinized from a tax perspective, given the potential for evasion and abuse²⁰. A Tax Enforcement Plan included actions by EU tax authorities such as tax audits, tax refund screening, and information exchange between authorities. A tax subgroup was set up within the EU's "Freeze and Seize" Task Force to coordinate the work on this plan and ensure its proper

¹³ REDICH, E. 2020. *The e-commerce market: what it was in 2019 and what it will be in 2020*. Available from: <<https://cutt.ly/4WrkVrJ>>.

¹⁴ Euromonitor International. 2021. Available from: <<https://www.euromonitor.com/>>.

¹⁵ KISIL, R. 2020. *The second wave of COVID-19: What about e-commerce and logistics in Ukraine and the world*. Available from: <<https://rau.ua/dosvid/yak-drugyj-lokdaun-e-komertsiyu/>>.

¹⁶ Worldwide Tax Summaries. 2023. *Ukraine*. Available from: <<https://taxsummaries.pwc.com/ukraine/corporate/other-taxes>>

¹⁷ JONES, L. 2022. *How has the war impacted e-commerce in Russia and Ukraine?* Available from: <<https://gripsintelligence.com/articles/how-has-the-war-impacted-e-commerce-in-russia-and-ukraine>>

¹⁸ SHAHINI, E., KORZHENIVSKA, N., HAIBURA, Y., NISKHODOVSKA, O., BALLA, I. 2023. *Ukrainian agricultural production profitability issues*. *Scientific Horizons*, vol. 26, n. 5, pp. 123-136. <https://doi.org/10.48077/scihor5.2023.123>

¹⁹ ZATONATSKA, T., FARENIUK, Y., ZATONATSKIY, D., DLUHOPOLSKA, T., POLTORATSKA, A. 2022. *The Influence of Migration Processes Caused by the Russian-Ukrainian War on the Development of E-Commerce in Ukraine*. Available from: <https://ceur-ws.org/Vol-3384/Short_6.pdf>

²⁰ European Commission. 2023. *Standing with Ukraine: How customs and tax policy contributes to the EU response*. Available from: <https://taxation-customs.ec.europa.eu/news/standing-ukraine-how-customs-and-tax-policy-contributes-eu-response-2023-02-22_en>

implementation. DG TAXUD also worked quickly to grant VAT and customs duty relief to goods that the Member States sent to Ukraine as humanitarian aid. The war situation in Ukraine has led to tax and customs simplifications to support Ukrainian businesses, while also impacting e-commerce.

The main regulatory legal act in the field of e-commerce is the Law of Ukraine "On e-commerce", which contains the definition of the concept of "e-commerce" and notes the specific features of its implementation. The law established the basic principles of activity in the field of e-commerce, the rights and obligations of participants in this area, the procedure for making transactions, as well as defined the basic concepts and terms in the field of e-commerce. Amendments were also made to the Law of Ukraine "On Consumer Rights Protection" regarding warranty obligations in electronic form. Some recommendations for harmonising the norms of this law with real processes that work effectively in the EU countries were made by experts of the European Business Association. The introduction of such changes strengthens consumer protection in such areas as consumer protection of e-commerce, sale of goods with digital content, etc. In addition, among the national legal acts, the following should be highlighted: the Law of Ukraine "On mandatory copy of documents" from 09.04.1999, the Law of Ukraine "On information" from 02.10.1992, the Law of Ukraine "On electronic document and electronic document management" from 22.05.2003, the Law "On telecommunications" from 14.05.2003, etc.

Among the international acts regulating the implementation of e-commerce, the following should be highlighted: UNCITRAL Model Law on electronic signatures from 2001, EU Directive "On e-commerce" from 08.06.2000, Convention for the protection of persons in connection with automated processing of personal data from 28 January 1981 (Strasbourg), European Parliament resolution on the safe use of the Internet and new online technologies from 02.12.2004, EU directive "On rules and taxation of e-trade" from 01.04.2004, etc.

E-commerce should include electronic capital movement, electronic information exchange, electronic marketing, electronic money, electronic

insurance services, electronic banking, etc.²¹ E-trade, as noted above, is an integral part of e-commerce and is considered as a specific and group affiliation.

The main objectives of this paper are the disclosure of the content and concept of e-commerce, the study of the experience of taxation of e-commerce in the leading countries of the world with the possibility of adapting its individual elements in Ukraine, the study of the practice of taxation of e-commerce in Ukraine and regulatory support for the implementation of such activities, as well as the development of recommendations for improving the system of taxation of e-commerce in Ukraine.

Materials and Methods

Among the research methods of this paper, it is necessary to distinguish general theoretical methods of scientific cognition, in particular: the dialectical method, which applies to all processes of cognitive activity. The use of this method in the research of this subject leads to a theoretical and practical study of the issue of international experience in e-commerce taxation and its application in Ukraine, and this method is also used to study the concept, content, and meaning of e-commerce. The comparative legal method was used when comparing the legislation of different states on the introduction of e-commerce taxation, determining common and distinctive features. An analysis of the e-commerce taxation of the countries of the European Union, as well as the USA, was carried out and contrasted with the Ukrainian e-commerce taxation. Historical and abstract-logical – for studying the prerequisites for the establishment and development of e-commerce, clarifying the essence of related concepts. Analogies and extrapolations – when developing areas for improving the taxation of e-commerce. In addition, for a more complete and effective study of this subject, the formal legal method was used, which was used in the analysis of the content of Ukrainian legislative regulatory legal acts and legislation of other countries regulating the implementation of e-commerce in Ukraine and the world, as well as to establish the specific features of taxation of business entities engaged in e-commerce.

²¹ PETERSONE, M., KETNERS, K. 2017. *Improvement of customs and tax administration ict system performance. Research for Rural Development*, vol. 2, pp. 263-269.

The hermeneutical method of research is used to identify the essence of the concept of "e-commerce" and the possibility of determining the essence and features of this concept in practice and the structural and functional method that is used to determine the legal features of paying taxes in different states, as well as in Ukraine and improving the tax system for selling goods and services via the Internet. An effective method of studying the international experience of e-commerce taxation and its application in Ukraine is the axiomatic method, the task of which is to build a scientific theory in which some statements (axioms) are accepted without proof and then used to obtain the rest of the knowledge according to certain logical rules. The method of analogy, by which knowledge about objects and phenomena is achieved on the basis that they have similarities with others, that is, it can be argued that this method is aimed at analysing the payment of taxes in different legal systems and countries and with different tax systems.

A formalisation method that reflects meaningful knowledge in a known sign-symbolic meaning. The method of system analysis, theoretical generalisation, induction and deduction is used to generalise the theoretical foundations of e-commerce taxation; analysis and synthesis, comparison and grouping, observation – when identifying trends and practices of e-commerce taxation in Ukraine. In addition, among the methods by which the regulation of taxation of activities related to the implementation of e-commerce, formal-legal method can still be distinguished, which is aimed to study and clarify the content of the norms of Ukrainian legislation, which in turn forms the regulatory basis for the application of provisions on the study of the features of application of the main approaches and ways to improve the payment of taxes in Ukraine for the implementation of e-commerce, as well as is aimed at studying all the means of grammatical, logical, systematic, and axiological interpretations of the content of legal norms aimed at improving the tax system of relevant activities.

The above methods were used by the author to study the issues of this paper. Using them, the author defined the main concepts and provisions that are noted in this work and developed recommendations for improving this area.

Results

There are many definitions of "e-commerce" in the world. In Ukraine, the concept of e-commerce is understood as relations, the action which is aimed at making a profit due to the implementation of transactions that are aimed at acquiring, changing, or terminating rights and obligations that arise during the use of information and telecommunications systems and as a result of the use of such systems, rights and obligations of a property character arise.

Among the regulatory legal acts regulating this area in Ukraine, the following should also be highlighted: Commercial code of Ukraine, Civil code of Ukraine, Law of Ukraine No. 2121-III "On banks and banking", Law of Ukraine No. 2346-III "On payment systems and funds transfer in Ukraine", Law of Ukraine No. 2297-VI "On protection of personal data", Law of Ukraine No. 2664-III "On financial services and state regulation of financial service markets", Law of Ukraine No. 85/96-VR "On insurance", Law of Ukraine No. 270/96-VR "On advertising", Law of Ukraine No. 1280-IV "On telecommunications", Law of Ukraine No. 80/94-VR "On protection of information in information and telecommunications systems", as well as international treaties and international regulatory legal acts ratified by the Verkhovna Rada of Ukraine.

In 2021, the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On amendments to the Tax Code of Ukraine concerning the abolition of taxation of income received by non-residents in the form of payments for the production and/or distribution of advertising and improving the procedure for VAT on transactions involving the supply of electronic services by non-residents to individuals". This law obliges entities that provide electronic services in Ukraine to pay 20% VAT.

The new tax on electronic services, which is introduced by the above law, will be new for some taxpayers and will have a new administration procedure and new tools, a simplified reporting and payment procedure. The subjects of payment of such tax are non-residents who do not have a permanent representative office in Ukraine.

Article 14 of the Tax Code of Ukraine was supplemented with paragraph 56-5 part 1 of Article 14, the essence of which is to introduce the concept of electronic services. This item also contains a non-exclusive list of electronic services, namely: providing access to commercial, information, entertainment

electronic, and other resources; using search engines and accessing databases; providing access to images, information and texts, as well as supplying electronic copies; providing cloud services in terms of providing computing resources; providing advertising services through the use of the Internet network; etc.

Such global digital giants as Google, Apple, Microsoft, etc., starting from January 2022, will have to register as a VAT payer for electronic services, as well as pay VAT and report for the provision of electronic services in Ukraine. For them, registration as a VAT payer is a matter of reputational importance, and therefore it can be argued that such companies' compliance with the norms defined by the above law is their responsibility.

The implementation of this law also contains certain risks, namely, the supply of software products that are not currently taxed in accordance with part 26 of subsection 2 falls under the risk. The issue of whether non-residents will transfer VAT payment in full or in part to consumers of their services remains relevant.

Thus, the main innovations of this law are: inclusion of non-residents in the list of persons who are registered under the simplified procedure as VAT payers, if the total amount from the implementation of relevant operations exceeds 1 million UAH per year; determination of the list of electronic services; introduction of VAT taxation (20%) for the provision of electronic services that are supplied to individuals by non-residents and whose location is the customs territory of Ukraine; exclusion of the norm according to which residents, when paying non-residents income for the production or distribution of advertising, must pay tax at the rate of 20% of the amount of such payments at their own expense.

Despite the above list of regulatory legal acts regulating the field of e-commerce in Ukraine, it is worth noting that in practice such regulation is not sufficiently perfect and requires changes. This is due to the specific features of e-commerce in the context of globalisation and non-compliance of e-commerce in Ukraine with EU standards and the most effective global models.

One of the main problems of implementing effective activities in the field of e-commerce in Ukraine is the lack of a single body that would be responsible for implementing national policy in this area. However, there are 11 bodies in

Ukraine that share their corresponding responsibilities: the Ministry of digital transformation of Ukraine, the State service of Ukraine for food safety and consumer protection, the Ministry of economic development, trade and agriculture of Ukraine, the Verkhovna Rada Commissioner for Human Rights, etc. Such a large number of state bodies, whose powers include regulating issues related to the implementation of e-commerce, leads to inefficiency in the activities of such state bodies and creates extensive powers and the lack of a unified approach to solving issues that arise in the field of e-commerce. Therefore, as a result, there is a lack of systematic adjustment of regulatory acts and bringing them to the level of international legal acts, as well as the lack of constant monitoring and the lack of statistical accounting of the quality, quantity, and structure of consumer complaints. To solve the above problems, it is possible to apply the concept that was proposed by the EU-Ukraine civil society platform. This concept provides for the creation, together with the National Bank of Ukraine, of an interdepartmental working group with the involvement of all interested parties, which in turn will develop a national policy plan for the development of e-commerce²².

The national policy plan in the field of e-commerce development in Ukraine provides for a number of measures, including: preparation of personnel and financial support for the development of e-commerce; development and improvement of the regulatory framework for regulating e-commerce; development of a National Action Plan for familiarisation and implementation of e-commerce systems of various types; interaction of the state with the public in the field of e-commerce²³.

In the current conditions in the field of e-commerce development, there is an urgent question of revising the process of its taxation. First of all, this issue is important for the state. Because taxes received from the implementation of e-commerce can make a considerable contribution to the development of the revenue base of the budget of Ukraine. Given the fact that the Internet is developing rapidly, which accompanies the rapid development of e-commerce

²² TOVKUN, L.V., FEDOROVSKAYA, M.A. 2020. *Current issues of legal regulation of electronic commerce in Ukraine. Legal Scientific Electronic Journal*, vol. 9, pp. 282-286.

What is BEPS. 2013. Available from: <<https://www.oecd.org/tax/beps/about/>>.

²³Retail e-commerce sale worldwide from 2014 to 2024. 2021. Available from: <<https://www.statista.com/statistics/379046/worldwide-retail-e-commerce-sales/>>.

on the Internet, taxation of its results is one of the modern problems facing all states ²⁴.

Investigating this problem, it can be noted that it is complex and insufficiently developed for Ukraine. Despite the fact that the main regulatory legal act regulating relations in the field of collecting taxes and fees in Ukraine is the tax code, it does not have a mechanism for collecting taxes in the field of e-commerce. This is due to the fact that the state does not have a clear procedure for maintaining accounting records and taxation of subjects in this area. Given that the current tax legislation is aimed at regulating conventional business and often does not consider the features inherent in e-commerce, namely high mobility of assets used in conducting internet business (software, entering new markets without the need to create a stationary office, etc.); the use of a client database, trademarks; sales market analysis, etc., the movement of a considerable part of funds cannot be controlled. Therefore, most of the e-commerce market is in the shadows, and therefore the number of business entities that often use it for tax evasion purposes is growing.

This, in turn, leads to the fact that the income received through the Internet is difficult to estimate and investigate since many individuals are not registered entrepreneurs, and therefore do not pay taxes properly.

On June 15, 2021, the Law of Ukraine "On Amendments to the Tax Code of Ukraine on stimulating income shadowing and improving the tax culture of citizens by introducing voluntary declaration of assets belonging to them by individuals and paying a one-time fee to the budget" was adopted. Its main purpose is to encourage income unshadowing. The adoption of legal acts related to the use of indirect methods that can be used to determine the income of citizens can have both political and economic consequences. Indirect methods are the determination of the amount of tax liabilities of taxpayers, which is carried out based on the assessment of their expenses. It is possible to determine such amounts using information obtained from financial statements and primary documents. The purpose of indirect methods for determining the income of citizens is to establish the fact that citizen's expenses correspond or

²⁴ SOLODAN, K.V. 2018. *Legal regulation of e-commerce taxation in the USA and European countries: A comparative legal study*. *Law and Society*, vol. 2, n. 3, pp. 133-138.

do not correspond to their income. If the expenses of citizens exceed their income, the state gets the right to apply control and enforcement measures due to income tax evasion.

In addition, the problem of taxation of income from e-commerce is also related to the fact that sales of specific goods and services, such as telecommunications or multimedia equipment, advertising or information services, are not subject to control and tracking. This is explained by the fact that, for example, website owners who are not registered as entrepreneurs do not pay taxes for their activities, that is, it can be argued that they legally circumvent the law by carrying out their activities but in fact receive funds from consumers for the sale of goods and services, which in turn leads to considerable losses and non-access of funds to the state budget. Despite the fact that the Tax Code of Ukraine does not contain special rules that would regulate the implementation of e-commerce on the Internet, however, it contains norms that regulate the legal basis for applying the general and simplified tax system. According to the legislation of Ukraine, an individual acquires the appropriate status and can carry out business activities and pay taxes from the moment of its registration with the State Tax Service. In addition, according to the Tax Code of Ukraine, the above business entities have the right to independently choose the tax system.

Business entities often choose a simplified tax system since this reduces the tax burden and allows working legally.

Therefore, to improve this situation, it would be effective to introduce an additional group in the simplified tax system, which would regulate the implementation of e-commerce and which would consider the specific features of carrying out activities in this area. An important step in improving taxation in the field of e-commerce, considering the realities, namely the pandemic caused by the spread of the COVID-19 virus, it would be advisable for the state to support business and entrepreneurship. N.M. Boreyko and N.V. Paranytsa²⁵ notes in this regard: "To make it easier for businesses to carry out their activities during the pandemic crisis, as well as to find ways to expand the tax base and

²⁵ BOREYKO, N.M., PARANYTSA, N.V. 2020. *Areas of support for business entities in the field of e-commerce in the economic crisis caused by the COVID-19 pandemic. Counteraction to Minimization Tax Payments: World Experience and Practice of Ukraine*, vol. 3, pp. 149-151.

de-shadow e-commerce, it would be appropriate to introduce preferential lending, tax benefits, as well as support from the state through financing to such business entities. In addition, as noted by N.M. Boreyko and N.V. Paranytsa²⁶, another effective way is to introduce tax holidays for newly created business entities that operate in the field of e-commerce, which in turn will lead to a positive increase in the state budget of Ukraine, as well as create new jobs and reduce the level of the number of unemployed people in Ukraine.

Discussion

The World Trade Organisation (WTO) defines "e-commerce" as the production, marketing, distribution, delivery, or sale of goods and services by electronic methods. The WTO has determined that these transactions can be carried out between businesses, private organisations, individuals, households, governments, or other state organisations²⁷. Organisation for Economic Co-operation and Development (OECD)²⁸ under the term "e-commerce", in a narrow sense, defines activities related to the purchase and sale of goods and services online. In a broad sense, "e-commerce" means all business activity that takes place over the Internet, namely the sale or purchase of goods and services, online marketing activities, money transfer, as well as data collection and processing²⁹. According to those taking part in such activities, e-commerce is divided into the following types:

1. Business to business (B2B). This type of e-commerce is characterised by the fact that transactions are carried out between two enterprises.
2. Business to consumers (B2C). This type of e-commerce is characterised by the fact that transactions are carried out between enterprises and consumers.
3. Consumer to consumer (C2C). In this type, transactions occur between consumers, that is, the sale and purchase of goods and services is carried out between two consumers.

²⁶ BOREYKO, N.M., PARANYTSA, N.V. 2020. *Areas of support for business entities in the field of e-commerce in the economic crisis caused by the COVID-19 pandemic. Counteraction to Minimization Tax Payments: World Experience and Practice of Ukraine*, vol. 3, pp. 149-151.

²⁷ Electronic commerce. 2018. Available from: <<https://cutt.ly/FWrDHRu>>.

²⁸ Organisation for Economic Co-operation and Development. 2021. Available from: <<https://www.oecd.org/>>.

²⁹ Implications of e-commerce for competition policy – background note. 2018. Available from: <[https://one.oecd.org/document/DAF/COMP\(2018\)3/en/pdf](https://one.oecd.org/document/DAF/COMP(2018)3/en/pdf)>.

4. Consumer to business (C2B). This type of e-commerce is characterised by the fact that consumer actions bring monetary benefits to the business. Many companies that are engaged in crowdsourcing belong to this type of e-commerce implementation.

5. Business to government (B2G). This type can be characterised by the fact that the government of a certain state uses information and telecommunications systems, using the Internet, to purchase goods or services from a business, and such a transaction can fall under B2G e-commerce.

6. Government to business (G2B). In this type of electronic trade, transactions are carried out when a company or organisation pays for state goods or services using information and telecommunications systems through the Internet.

7. Consumer to government (C2G). This type is characterised by the fact that it includes e-commerce participants who pay administrative payments using information and telecommunications systems via the Internet.

As noted above, one of the first countries in which e-commerce emerged was the United States of America. Currently, the USA loses approximately 23 billion annually due to problems with e-commerce taxation³⁰.

In the United States of America, there is no Value-Added Tax (VAT), but sales tax is applied. Today, it is the main indirect tax levied by states and local territorial authorities for the implementation of e-commerce by business entities. Under the US Constitution, sales tax can only be levied if both the buyer and seller are physically present in the same state. This means that the buyer and seller must be registered in the same state and have a representative office or property there³¹. Sales taxes, which are widespread in the United States of America, are charged and levied by the seller at the time of sale, and then transferred to the corresponding state at the end of a certain period. Each US state has the right to determine whether the e-commerce tax will be applied to end users or to the enterprise as well. As an example of applying this provision, it can be noted that as a consequence of applying the above situation, large

³⁰ CORKERY, J., FORDER, J., SVANTESSON, D., MERCURI, E. 2013. *Taxes, the Internet and the digital economy*. *Revenue Law Journal*, vol. 23, n. 1, article number 7.

³¹ BAUGH, B., BEN-DAVID, I., PARK, H. 2018. *Can taxes shape an industry? Evidence from the implementation of the "Amazon tax"*. NBER Working Paper 20052. Available from: <<http://www.nber.org/papers/w20052>>.

companies, enterprises that carried out their activities in the field of e-commerce, such as Google and Amazon, gained an advantage over stores that carry out conventional sales of goods, that is, they had their own sales halls where they displayed and sold their products. This can be explained by the fact that the above companies have actually been physically present since 2012 only in about 5 states where they paid taxes, and in all other states where they carried out their activities, they did not have such obligations, and accordingly secured competitive advantages differently from other companies³².

In addition to this tax, the US applies a usage tax. Most states of the USA and local territorial authorities, to eliminate the advantage of companies engaged in e-commerce activities over companies engaged in conventional sales of goods, have introduced this tax, which is paid by the buyer of goods, provided that such a buyer purchases such goods from a non-resident seller³³. These taxes are collected only once at the end point of sale³⁴. Each US state sets its own tax rules, meaning that each state has the right to independently determine the procedure for paying taxes, tax rates, and reporting procedures. The tax rate paid in US states ranges from 0.125% to 8%.

The US Federal Government has adopted the Permanent Internet Tax freedom act, the main purpose of which is to avoid new taxes. According to the Permanent internet Tax freedom act, it is prohibited to introduce a tax on access to the Internet, the purpose of which is the ability of users to receive information and also allows users to access e-mail and other services. However, there are certain exceptions to the Permanent Internet Tax freedom act, namely taxes levied prior to the adoption of the Permanent Internet Tax freedom act and sales taxes in the case of online purchases of physical goods.

In the United States of America, there is such a phenomenon as a commercial clause, the essence of which is to protect citizens from voluntary and arbitrary powers of the state, which are not limited either by the principles

³² SOLODAN, K.V. 2018. *Legal regulation of e-commerce taxation in the USA and European countries: A comparative legal study*. Law and Society, vol. 2, n. 3, pp. 133-138.

³³ KHODAKIVSKA, O., KOBETS, S., BACHKIR, I., MARTYNOVA, L., KLOCHAN, V., KLOCHAN, I., HNATENKO, I. 2022. *Sustainable development of regions: Modeling the management of economic security of innovative entrepreneurship*. *International Journal of Advanced and Applied Sciences*, vol. 9, n. 3, pp. 31-38. <https://doi.org/10.21833/IJAAS.2022.03.004>

³⁴ CHEN, C. 2016. *Taxation of digital goods and services*. Available from: <https://annualsurveyofamericanlaw.org/wp-content/uploads/2016/02/70-4_chen.pdf>.

established by private law or by distributive justice. The Supreme Court interpreted the concept of "commercial reservation", according to which the purpose of a commercial reservation is that when a state wants to introduce a sales tax, it is necessary that the sale has a considerable connection with the state³⁵. Thus, in the *Quill Corp. v. North Dakota*³⁶ case, this was understood as an indispensable physical presence in the corresponding state.

The implementation of e-commerce at the supranational level in the European Union (EU) should also be investigated. Among the regulatory legal acts regulating the implementation of e-commerce in such countries, it is worth highlighting the Directive 2000/31/EU of the European Parliament and the Council "On the legal aspects of information services related to e-commerce in the internal market" ("On e-commerce") from 08.06.2000. This directive was developed based on the recommendations of the EU Commission, which in turn identified the main problematic issues in the field of e-commerce, namely:

- conclusion of contracts through the use of electronic means;
- commercial traffic;
- implementation of Directive 2000/31/EU in the legislation of EU member states;
- resolution of disputes arising in the field of e-commerce;
- responsibility of intermediaries; etc.

The EU has also adopted a number of regulatory legal acts aimed at regulating the implementation of e-commerce, namely: the EU directive "On consumer protection in case of long-distance contracts", the EU directive "On electronic commerce", etc.

Notably, back in 1920, a conference held in Brussels laid the foundation for solving the problem of double taxation. The results of the conference were the issuance of resolutions that established the basic principle of international tax law corresponding to this principle, active income should be taxed at the place of origin of this product, this means that taxation depends on the

³⁵ SOLODAN, K.V. 2018. *Legal regulation of e-commerce taxation in the USA and European countries: A comparative legal study. Law and Society*, vol. 2, n. 3, pp. 133-138.

³⁶QUILL CORP. V. NORTH DAKOTA. 1992. Available from: <<https://supreme.justia.com/cases/federal/us/504/298/>>.

company's presence in a certain place³⁷. Currently, the above method of taxation has been deformed and has undergone some changes. The implementation of taxation in Europe was limited only to the application of VAT. Thus, a company that provided e-services to an individual (consumer) had to receive a local VAT number and pay VAT in the country of location of such an individual. The emergence of such a phenomenon as MOSS (Mino One Stop Shop) in 2015 greatly facilitated the life of businesses in the issue of paying VAT because since the advent of MOSS, companies did not need to receive local VAT numbers in each country of the EU, but simply registered in the system and provided information about goods and services sold in each country of the EU, then the system itself transmits all the necessary information to EU countries about paying VAT³⁸.

The European Union has a special programme "Electronic Europe"³⁹, which aims to apply the latest information technologies and form a new, unified supranational legislation at the EU level. Thus, the European Commission has identified ten main political priorities of its activities, among which the creation of a single digital technology market occupies a priority place. Creating such a market requires a reliable and stable tax base to encourage the development of digital market innovations, as well as to ensure that all participants in such a market are in fair and equal conditions⁴⁰. A stable tax base is also necessary for the tax confidence of e-commerce participants, as well as to prevent the emergence of tax gaps in legislation⁴¹. International tax rules that were developed for conventional enterprises do not correspond to the current realities of business and the introduction of entrepreneurial activity. T. Zatonatska and

³⁷ SHVYDENKO, A. 2020. *Taxation of e-services: A review of world practice*. Available from: <<https://cutt.ly/XWrxzVS>>.

³⁸ SOLODAN, K.V. 2018. *Legal regulation of e-commerce taxation in the USA and European countries: A comparative legal study*. *Law and Society*, vol. 2, n. 3, pp. 133-138.

³⁹ The Digital Europe Programme. 2023. Available from: <<https://digital-strategy.ec.europa.eu/en/activities/digital-programme>>

⁴⁰ BAIKIN, A., SHALBOLOVA, U., KAZBEKOVA, L. 2017. *Regional diversification of entrepreneurial activity in the Republic of Kazakhstan*. *Espacios*, vol. 38, n. 46, article number 35.

⁴¹ PETERSONE, M., KRASTINS, A.V., KETNERS, K. 2016. *In-service training system organization improvement at customs administrations*. *Eurasian Studies in Business and Economics*, pp. 201-216. https://doi.org/10.1007/978-3-319-27570-3_17

O. Melnychuk⁴² highlighted the basic principles of taxation in the EU countries, including:

- compliance with all existing tax rules by operators in the field of e-commerce;
- there is no need to introduce new taxes in the field of e-commerce, primarily to adapt existing taxes, VAT in the first place, to the e-commerce market;
- electronic transfer of goods should be considered as delivery of services for VAT purposes;
- the tax system of each EU country should ensure that taxation can be carried out in relation to the supply of goods and receipt of services that will be received within the EU by enterprises and individuals;
- to avoid unfair competition when conducting e-commerce, neutrality should be maintained between the tax systems of suppliers from the EU or not from the EU, as well as between offline or online sales.

In EU countries, VAT is paid and electronic goods and services are taxed at the appropriate VAT rate. Each EU member state can set its own VAT rate. If a certain company or enterprise that is located within the territory of the EU and the turnover of such a company for selling goods via the Internet exceeds the VAT of the country in which such a company is located, it must register to pay VAT. Representatives of the most economically developed EU countries, including Germany, France, Italy, and Spain, jointly wrote a letter calling for such multinational companies as Google and Amazon to be taxed in Europe based on their income. France has proposed creating an "equalisation" tax and changing the rules for taxation of e-commerce activities, which in turn will lead to taxation at the level of corporate tax. Changing taxation in the EU requires the consent of all member states of the European Union, even those with a low level of tax payment (Luxembourg, Ireland). Very often, large-scale internet giants such as Google and Facebook are accused of registering their companies or having a better tax rate. For example, in Ireland, where the level of taxation is low, and accordingly they pay a low percentage of taxes. For the period of 2013-2015, Google paid taxes of no more than 0.8%⁴³.

⁴² ZATONATSKA, T., MELNYCHUK, O. 2016. *Features of taxation of e-commerce market entities*. *Bulletin of Taras Shevchenko National University of Kyiv*, vol. 9, n. 186, pp. 16-22.

⁴³ LOMAS, N. 2017. *France, Germany, Spain, Italy call for turnover tax for tech giants*. Available from: <<https://techcrunch.com/2017/09/11/france-germany-spain-italy-call-for-turnover-tax-for-tech-giants/>>.

OECD developed the Base Erosion and Profit Shifting (BEPS) Action Plan⁴⁴. The main purpose of this plan is to combat the blurring of the tax base and the removal of profits from taxation, as well as to improve tax legislation at the international and national levels. The plan contains 15 actions, 4 of which are mandatory for countries that have joined it, among the following actions are: countering abuse in the application of double taxation conventions; reviewing documents that provide for the preparation of transfer pricing documents; countering tax abuse; improving dispute resolution mechanisms for the application of double taxation treaties. In France, the subjects of taxation are companies whose income exceeds 750 million euros, of which 25 million euros with a source of origin in France. The object of taxation is services similar to those defined by the directive, and the tax rate is 3%. Austria has introduced taxation of digital services provided on its territory since 2020. The place of service provision is determined by IP (Internet Protocol)-address and other technologies for determining geolocation. In turn, the UK has introduced a tax on digital services in the amount of 2%, and it will be taxed at the place of origin starting from April 2020⁴⁵.

Conclusions

With the spread of the Internet and the improvement of innovative technologies, the field of e-commerce has also achieved rapid development. The United States of America was one of the first countries to introduce e-commerce. According to the legislation of the United States, there are two main taxes: sales tax and usage tax, but there is no conventional VAT. Each US State has the right to set its own tax rates, payment, and reporting procedures. The US Federal Government has adopted the Internet Tax Freedom Law. In the EU countries, unlike in the United States, the main tax for e-commerce is VAT. Each EU member state has the right to determine the tax rates in this area. However, the tax system is also not perfect, the changes and reforms in this area require the consent of all EU member states, even those with a low level of tax payment (Luxembourg, Ireland). And this is a considerable obstacle to the implementation of such reforms. Ukraine has adopted a law regulating the

⁴⁴ What is BEPS. 2013. Available from: <<https://www.oecd.org/tax/beps/about/>>.

⁴⁵ SOLODAN, K.V. 2018. *Legal regulation of e-commerce taxation in the USA and European countries: A comparative legal study*. *Law and Society*, vol. 2, n. 3, pp. 133-138.

implementation of this activity (the Law of Ukraine "On e-commerce"), and there are many different regulatory legal acts regulating the sphere of e-commerce, but a number of legal acts does not guarantee the effectiveness of regulation of this area. One of the most difficult problems in the development of e-commerce in Ukraine is the taxation of the results of such activities. The current Ukrainian tax legislation is aimed at regulating conventional business in Ukraine and, unfortunately, is not adapted to regulating the implementation of e-commerce since part of the funds from such activities are not subject to control and tracking. Another problem is the lack of a single body that would implement national policy in the field of regulating the implementation of e-commerce. Despite certain problems in this area, the state's actions regarding the taxation of e-commerce should be aimed at creating favourable conditions for its development. This is due to the rapid development of new technologies and the fact that this area is a potential source of tax revenues to the budget. Considering the specific features of e-commerce, when developing a mechanism for taxation of its subjects in Ukraine, it is necessary to consider the basic international provisions in the field of taxation of e-commerce and make changes to the Tax Code of Ukraine based on them. This will help to avoid contradictions between the national tax system and the EU tax system and will help to increase the volume of operations in this area.

REFERENCES

BAIKIN, A., SHALBOLOVA, U., KAZBEKOVA, L. 2017. *Regional diversification of entrepreneurial activity in the Republic of Kazakhstan. Espacios*, vol. 38, n. 46, article number 35.

BAUGH, B., BEN-DAVID, I., PARK, H. 2018. *Can taxes shape an industry? Evidence from the implementation of the "Amazon tax"*. NBER Working Paper 20052. Available from: <<http://www.nber.org/papers/w20052>>.

Better Regulation Delivery Office. 2021. Available from: <<https://en.brdo.com.ua/>>.

BOIKO, N. 2023. *Modern strategy and tactics development algorithm of internet marketing on the B2B market. Economics of Development*, vol. 22, n. 1, pp. 50-58. <https://doi.org/10.57111/econ/1.2023.50>

BOREYKO, N.M., PARANITSA, N.V. 2020. *Areas of support for business entities in the field of e-commerce in the economic crisis caused by the COVID-19 pandemic. Counteraction to Minimization Tax Payments: World Experience and Practice of Ukraine*, vol. 3, pp. 149-151.

CHEN, C. 2016. *Taxation of digital goods and services*. Available from: <https://annualsurveyofamericanlaw.org/wp-content/uploads/2016/02/70-4_chen.pdf>.

CORKERY, J., FORDER, J., SVANTESSON, D., MERCURI, E. 2013. *Taxes, the Internet and the digital economy*. *Revenue Law Journal*, vol. 23, n. 1, article number 7.

E-Commerce Be: Roundtable Results. 2021. Available from: <https://eba.com.ua/elektronnij-komertsiyi-buty-rezultaty-kruglogo-stolu/>.

Electronic commerce. 2018. Available from: <<https://cutt.ly/FWrDHRu>>.

Euromonitor International. 2021. Available from: <<https://www.euromonitor.com/>>.

European Commission. 2023. *Standing with Ukraine: How customs and tax policy contributes to the EU response*. Available from: <https://taxation-customs.ec.europa.eu/news/standing-ukraine-how-customs-and-tax-policy-contributes-eu-response-2023-02-22_en>

Global-e. 2021. Available from: <<https://www.global-e.com/about/>>.

Implications of e-commerce for competition policy – background note. 2018. Available from: <[https://one.oecd.org/document/DAF/COMP\(2018\)3/en/pdf](https://one.oecd.org/document/DAF/COMP(2018)3/en/pdf)>.

International Business Machines Corporation. 2021. Available from: <<https://www.ibm.com/ua-en>>.

JONES, L. 2022. *How has the war impacted e-commerce in Russia and Ukraine?* Available from: <<https://gripsintelligence.com/articles/how-has-the-war-impacted-e-commerce-in-russia-and-ukraine>>

KHODAKIVSKA, O., KOBETS, S., BACHKIR, I., MARTYNOVA, L., KLOCHAN, V., KLOCHAN, I., HNATENKO, I. 2022. *Sustainable development of regions: Modeling the management of economic security of innovative entrepreneurship*. *International Journal of Advanced and Applied Sciences*, vol. 9, n. 3, pp. 31-38. <https://doi.org/10.21833/IJAAS.2022.03.004>

KISIL, R. 2020. *The second wave of COVID-19: What about e-commerce and logistics in Ukraine and the world*. Available from: <<https://rau.ua/dosvid/yak-drugyj-lokdaun-e-komertsiyu/>>.

LEONOW, A.I., KONIAGINA, M.N., PETROVA, S.V., GRUNT, E.V., KERIMKHULLE, S.Y., SHUBAEVA, V.G. 2019. *Application of information technologies in marketing: Experience of developing countries*. *Espacios*, vol. 40, n. 38. <http://www.revistaespacios.com/a19v40n38/a19v40n38p24.pdf>

LOMAS, N. 2017. *France, Germany, Spain, Italy call for turnover tax for tech giants*. Available from: <<https://techcrunch.com/2017/09/11/france-germany-spain-italy-call-for-turnover-tax-for-tech-giants/>>.

MYSKIV, G., NYCZ-WOJTAN, S. 2022. *Reservation systems as a tool of tourist services marketing*. *Economics, Entrepreneurship, Management*, vol. 9, n. 2, pp. 7-18. <https://doi.org/10.56318/eem2022.02.007>

Organisation for Economic Co-operation and Development. 2021. Available from: <<https://www.oecd.org/>>.

PETERSONE, M., KETNERS, K. 2017. *Improvement of customs and tax administration ict system performance. Research for Rural Development*, vol. 2, pp. 263-269.

PETERSONE, M., KRASTINS, A.V., KETNERS, K. 2016. *In-service training system organization improvement at customs administrations. Eurasian Studies in Business and Economics*, pp. 201-216. https://doi.org/10.1007/978-3-319-27570-3_17

QUILL CORP. V. NORTH DAKOTA. 1992. Available from: <https://supreme.justia.com/cases/federal/us/504/298/>.

REDICH, E. 2020. *The e-commerce market: what it was in 2019 and what it will be in 2020*. Available from: <https://cutt.ly/4WrkVrJ>.

Retail e-commerce sale worldwide from 2014 to 2024. 2021. Available from: <https://www.statista.com/statistics/379046/worldwide-retail-e-commerce-sales/>.

SALO, I., POPOVA, O., KOTSYUBYNSKA, L. 2023. *Capacity and saturation of the food market in Ukraine. Ekonomika APK*, vol. 30, n. 1, pp. 10-19. <https://doi.org/10.32317/2221-1055.202301010>

SHAHINI, E., KORZHENIVSKA, N., HAIBURA, Y., NISKHODOVSKA, O., BALLA, I. 2023. *Ukrainian agricultural production profitability issues. Scientific Horizons*, vol. 26, n. 5, pp. 123-136. <https://doi.org/10.48077/scihor5.2023.123>

SHVYDENKO, A. 2020. *Taxation of e-services: A review of world practice*. Available from: <https://cutt.ly/XWrzVS>.

SOLODAN, K.V. 2018. *Legal regulation of e-commerce taxation in the USA and European countries: A comparative legal study. Law and Society*, vol. 2, n. 3, pp. 133-138.

SOLODAN, K.V. 2020. *Legal regulation of e-commerce taxation in the United States: An analysis of key precedents. Prykarpattya Legal Bulletin*, vol. 3, n. 32, pp. 59-64.

TASTULEKOVA, A.B., SATOVA, R.K., SHALBOLOVA, U.ZH. 2018. *Business valuation and equity management when entering the IPO market. European Research Studies Journal*, vol. 21, n. 4, pp. 75-886.

The Digital Europe Programme. 2023. Available from: <https://digital-strategy.ec.europa.eu/en/activities/digital-programme>

TOVKUN, L.V., FEDOROVSKAYA, M.A. 2020. *Current issues of legal regulation of electronic commerce in Ukraine. Legal Scientific Electronic Journal*, vol. 9, pp. 282-286.

What is BEPS. 2013. Available from: <https://www.oecd.org/tax/beps/about/>.

Worldwide Tax Summaries. 2023. *Ukraine*. Available from: <https://taxsummaries.pwc.com/ukraine/corporate/other-taxes>

ZATONATSKA, T., FARENIUK, Y., ZATONATSKIY, D., DLUHOPOLSKA, T., POLTORATSKA, A. 2022. *The Influence of Migration Processes Caused by the RussianUkrainian War on the Development of E-Commerce in Ukraine*. Available from: https://ceur-ws.org/Vol-3384/Short_6.pdf

ZATONATSKA, T., MELNYCHUK, O. 2016. *Features of taxation of e-commerce market entities*. *Bulletin of Taras Shevchenko National University of Kyiv*, vol. 9, n. 186, pp. 16-22.

Data de submissão do artigo: 07/04/2023

Data de aprovação do artigo: 19/12/2023

Edição e propriedade:

Universidade Portucalense Cooperativa de Ensino Superior, CRL

Rua Dr. António Bernardino de Almeida, 541 - 4200-072 Porto

Email: upt@upt.pt