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RISK ASSESSMENT METHODS OF TRANSFER PRICING

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Muzychuk M. I. Risk Assessment Methods of Transfer Pricing

Transfer pricing is one of the greatest problems of the global system of taxation and therefore the efficient TP tax control is of special importance. As the risk-oriented approach allows to improve the TP tax control, tax administrations as well as businesses should apply and develop it for the timely risks identification. This assumption is based on the review of foreign and domestic scientific literature provided in this article. This study aims to analyze the significance of TP risk management system and its impact on the TP tax control and voluntary tax compliance as well as to develop proposals on the TP risks assessment methods, focusing on Ukrainian tax regulation as well as the OECD and the EU tax framework. The research methods include systematic and comparative analysis of scientific literature, deduction, induction, analysis, synthesis and systems approach. To fulfill the objective of this study the analyses of legislative regulation of the TP control at both the international and the country level is provided, focusing on the stage of the monitoring of the controlled transactions. For the enhancement monitoring stage of the TP control the algorithm for the risk identification and assessment for the monitoring of controlled transaction (CT) is suggested. The study also provides for the methodology on comparison of the profitability of taxpayers with the average in the industry and methodology for building the TP risks matrix. The study results revealed the significance of the TP risks management processes standardization that allows its automatization and could contribute to the TP tax control strengthening as well as an TP compliance improvement. The prospects for future research could be focused on development of an algorithm for comparing the prices of CT with the quoted prices for raw materials.

Keywords: tax control, transfer pricing risks, tax compliance, risk management system, risk criteria

Fig.: 1. **Tabl.:** 3. **Bibl.:** 47.

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Муzychuk M. I. Методи оцінки ризиків трансфертного ціноутворення

Трансфертне ціноутворення (ТЦУ) є однією з найбільших проблем світової системи оподаткування, а тому ефективний податковий контроль за ТЦУ набуває особливого значення. Оскільки ризик-орієнтований підхід дозволяє вдосконалити податковий контроль за ТЦУ, податковим адміністраціям, а також бізнесу варто застосовувати та розвивати його для своєчасної ідентифікації ризиків. Таке припущення ґрунтується на огляді зарубіжної та вітчизняної наукової літератури, наведеному в цій статті. Метою дослідження є аналіз значення системи управління ризиками ТЦУ та її впливу на податковий контроль за ТЦУ і добровільну сплату податків, а також розробка пропозицій щодо методів оцінки ризиків ТЦУ з урахуванням особливостей українського податкового законодавства та податкового законодавства ОЕСР і ЄС. Методи дослідження включають систематичний і порівняльний аналіз наукової літератури, дедукцію, індукцію, аналіз, синтез і системний підхід. Для досягнення мети дослідження проведено аналіз законодавчого регулювання контролю за ТЦУ як на міжнародному, так і на національному рівнях, акцентуючи на етапі моніторингу контрольованих операцій (КО). Для вдосконалення моніторингового етапу контролю за ТЦУ запропоновано алгоритм ідентифікації та оцінки ризиків для моніторингу контрольованої операції. Дослідження також містить методику порівняння рентабельності платників податків із середньогалузевими показниками та методику побудови матриці ризиків ТЦУ. Результати дослідження показали важли-

вість стандартизації процесів управління ризиками ТЦУ, що уможливить їх автоматизацію та сприятиме посиленню податкового контролю за ТЦУ, а також підвищенню рівня комплаєнсу з ТЦУ. Подальші дослідження можуть бути зосереджені на розробці алгоритму порівняння цін КО з котировальними цінами на сировину.

Ключові слова: податковий контроль, ризики трансфертного ціноутворення, податкова дисципліна, система управління ризиками, критерії ризику.

Рис.: 1. **Табл.:** 3. **Бібл.:** 47.

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In the process of transfer pricing (hereinafter – TP) management the stage of tax control is of special importance. It is carried out by the controlling bodies and following the results of which the penalties may be imposed for late reporting submission on controlled transactions (hereinafter – CT), errors in the TP reporting or adjusting the tax liability as well as occurrences of double taxation.

In international practice additional charges for the TP tax audits can reach hundreds of million dollars while litigation can take several years [1]. In their research the scientists suggest that regulation of TP is so complicated and frequently changeable that it is practically impossible to develop a precise plan for successful compliance with the TP requirements so, as a matter of fact TP implies the liability risks (the risks of additional tax liabilities connected with relevant significant penalties). Moreover, the size of corporate income tax rate is not the main cause of the risk from enterprise's TP, the main problem is the non-compliance with tax legislation, violation of procedures [2].

The issue of tax control of transfer pricing management (hereinafter – TPM) was studied by international scholars: George Osborn [3], S. P. Jost, M. Pfaffermayer, H. Winner [2], Th. C. Pearson in his work examined how the multinational business was prepared to the TP tax audit, in particular regarding the transactions with intangible assets [4].

A significant contribution to the research development of the introducing the tax control of TPM in Ukraine was made by our scholars I. Lytsenko [5], S. Brekhov [6], L. Zadorozhnia [7], M. Mishyn [8]. The scientists V. Kruhliak and Ye. Kyrilov identified the main goals of the monitoring of CT as one of the forms of tax control and analyzed the sources used for the monitoring [9].

According to the approved report of the EU Joint Transfer Pricing Forum (2018), it is crucial to establish the coordinated approach for the TP controls within the EU to mitigate the risks of double taxation or non-taxation, and this can further be applied for high level risks assessments, simultaneous controls and joint audits [10].

The problem of the research is set as follows: Having noted the huge contribution of both the domestic and the foreign scholars in studying the mentioned fields, the

important area of scientific approach is improvement of the tax control process, specifically the implementation of the procedures aimed at increasing the voluntary compliance, standardization of the process of identifying TP risks at the stage of primary analysis of CT, the methodology of TP risk.

The study on the TP risks assessment methods is intended to contribute to the development of relevant methodologies and introduce them for practical implementation by tax administration.

This study aims to analyze the special features of the TP tax control, in particular the stage of monitoring of CT, focusing on the TP risks. The aim is detailed into three objectives: 1) to assess the importance the application of RM approach for the TP tax control concerning the scientific and law literature; 2) to develop proposals for standardization of risk identification process and improvement of its methodology; 3) to elaborate recommendations in the TP tax control area aimed on voluntary compliance strengthening.

The novelty of the study: The study discloses the features of building of the effective TP risk management process and provides for its development. The study results can contribute to the strengthening the TP risk management and voluntary tax compliance improvement in particular countries or groups of countries.

ROLE of RM in the TP TAX CONTROL

An important element of the TP tax monitoring is identification and evaluation of risks. One of the stages at monitoring of CT is reports on the CT analysis, which is conducted using information sources and results of initial analysis. While conducting the analysis, the results of economic and financial activity of the enterprise are considered. The task of reports on CT evaluation is the TP risks detection.

American scientists Th. Stanton and D. Webster offered the definition of the term “risk” as threat, that the goals will not be achieved [11].

Among Ukrainian scientists, the theoretical aspects of the risks were studied by V. Vitlinskyi [12; 13], S. Nackonechy [13], N. Yevtyshenko [14].

The issue of improvement of tax compliance by creating a risk management system was studied by the

foreign experts S. Betts [15], A. Chooi [15; 16], C. Tamaz [17]. The impact of cooperative compliance program on corporate tax risks and the costs for tax administration were studied by German scholars E. Eberhartinger, M. Zieser [18]. The foreign scholar Ch. Plesner Rossing [19] has made a great contribution to the development of theoretical developments in the risk management system for enterprise transfer pricing.

The management of tax risks at the enterprise was studied by Ukrainian scientists Ya. Dzetsko, H. Melnychuk [20], O. Hutsaliuk, N. Levkovets [21], O. Hrachov [22]. Thus, O. Hrachov offered the following definition for the tax risk of the enterprise: we should understand the probability of potential threat to the taxpayer to incur financial losses or get smaller income due to non-payment of the taxes or tax offenses. Significant contribution to creation of the tax risk concept in the field of taxation and development of the theoretical basis for building tax risk management system at the State level was made by Ukrainian scientists O. Desiatniuk [23; 24], V. Vitlinskyi, O. Tymchenko [25], O. Dolhyi [26], N. Yevtushenko [27], and S. Brekhov [28; 29]. N. Yevtushenko in her work offered the following definition of the concept of tax risk from the State's point of view and as represented by the authorized bodies – it is the probability (threat) of not receiving taxes to the budget due to the taxpayers' methods of minimizing taxation that are possible because of flaws in tax legislation [27]. However, at the theoretical level the question of building a TP risk management system requires additional research.

REGULATIONS of RM and TAX LAW

In the guidelines of the Treasury of the UK (HM Treasury) on risk management, the risk is considered as an uncertain outcome which can be a positive opportunity or negative threat due to some actions or events [30]. The standard principles, structure and the process of risk management are presented in the ISO 31000:2018 of International Organization of Standardization (hereinafter – IOS) [31], that also issued the Guidelines of Implementation [32] and in the Risk Management Standard of Federation of European Risks Management Associations (FERMA) [33]. In the HM Treasury Guidelines it is written that risk must be assessed in terms of the probability of its occurrence and the result it may have caused and risk management also includes their identifying, evaluation and response to them [34].

The Organization for Economic Cooperation and Development (OECD) has issued the Guidelines that have a conception of applying modern risks management principles for tax risk management purposes [35]. In addition, OECD has prepared a number of documents on building effective risk management process for tax administration [36; 37] and a Handbook on Transfer Pricing Risk Assessment [38].

The Guide for Tax Administrations “Compliance Risk Management” published by the European Commis-

sion provides for practicable framework for applying risk management for tax administrating [39].

The Report on Transfer Pricing Risk Management of the EU Joint Transfer Pricing Forum provides for general principles to be applied for the TP RM, recommends to develop the specific criteria for TP risks identification and to exchange on information on TP risks assessment between countries of the European Union according to the framework that is envisaged by the EU Directive on Administrative Cooperation (2011/16/EU) [40; 41].

The main principals and producers of the TP tax control in Ukraine are envisaged by the Tax Code of Ukraine, that defines four main forms of the TP tax control. Ukrainian expert M. Mishyn in his works additionally identifies control over taxpayer's adjustment (independently and under the Mutual Agreement Procedure) as a separate element of control [42]. Considering the opinion of the scientist, we offer the following classification of the forms of tax control with TP:

- 1) monitoring of the CT;
- 2) the survey of authorized people and/or the employees of the taxpayer on the TP questions;
- 3) tax audits on the taxpayer's compliance with the “arm's length principle”;
- 4) Advance Pricing Agreement Procedure;
- 5) self-adjustment;
- 6) corresponding adjustment.

To govern the monitoring of the CT and ensure its transparency, the Ministry of Finance of Ukraine approved the Procedure of monitoring of the CT (hereinafter – the Procedure No. 706), that establishes the administrative framework for the carrying out of the CT monitoring [43].

As provided by the Procedure No. 706, the goals of the monitoring of the CT are as follows: a) establishing compliance with the “arm's length principle”; b) identifying possible TP risks; c) identifying the risks of absence of economic reason (business purpose); d) risks analysis of underestimating tax liabilities by the taxpayer; e) ensuring control over the timeliness and completeness of the TP reporting [43].

According to the Procedure No. 706, the monitoring of CT is carried out in five stages:

- 1) primary information analysis while conducting CT;
- 2) control over submission of reports on CT, notifications on the MNE Group participation, Country-by-Country reporting;
- 3) analysis of reports on controlled operations and notifications on the MNE Group participation;
- 4) analysis of the TP documentation, submitted by the taxpayer and/or global documentation on TP (master file);
- 5) analysis of Country-by-Country reporting [43].

RESULTS and DISCUSSION

To ensure the transparency for the taxpayers as well as to partially standardize the TP tax control process, a number of procedures of this area in Ukraine are formalized and published although in most EU countries they are for the internal use of tax administration with the restricted access.

In order to improve the TP risk management, tax administrations introduce more detailed requirements for the TP tax reporting. So, recent amendments for the TP tax return in Polish creates an ideal tool for the identification of the risky TP transaction [44]. As the Ukrainian TP-tax return provides for the detailed information on controlled transaction on transactions level, it allows to build unique efficient database for tax control purposes [45].

The Procedure No. 706 establishes a clear list of the TP risks criteria:

- ✦ unprofitability according to the financial statement in more than one reporting period;
- ✦ inconsistency of financial results (indicators of profitability) of the taxpayer with the average indicators within the industry;
- ✦ significant number of transactions with non-resident related parties that are registered in the States (at the territories), included in the List of States;
- ✦ significant number of transactions with the related parties of non-residents, whose organizational and legal form is included in the List of OLF (organizational and legal form);
- ✦ significant number of transactions with intangible assets, such as royalties, licenses, patents fees, trademarks as well as other forms of intellectual property;
- ✦ significant number of transactions for providing/receiving internal group services, paid royalties and/or interest on financial loans;
- ✦ negative net assets with existence of loans, borrowings and other debt obligations that arose from transactions with the related parties of non-residents;
- ✦ conducting economic transactions that are not typical for current activity of the taxpayer;
- ✦ non-compliance of goods recipients as reported by the customs clearance with the parties of the agreement (usage of indirect contacts);
- ✦ lack of significant main assets [43].

We believe that for the effectiveness of the analysis process of the CT, in the Procedure No. 706 it should be noted that the purpose of the analysis about CT should be comparison of the CT indicators with uncontrolled transactions. In our opinion, when the taxpayer has signed the Advance Pricing Agreement with STS or the supervisory authority has received the information from foreign tax authorities in the framework of information exchange on request

(EOIR), related to this company the Procedure No. 706 should contain provisions about the necessity to monitor whether the CT conditions meet the conditions agreed in relevant agreements.

In our opinion, to reveal the risks with TP at this stage it is advisable for the controlled authority to perform the following:

- 1) comparison of profitability indicators with the average indicators for the industry;
- 2) comparison of prices of controlled commodity transactions with the quoted prices;
- 3) comparison of prices of controlled transactions with the market prices for goods (works, services) (except commodities);
- 4) building forecasts of financial and price indicators of BEs, industry, market, etc. on the basis of historical data.

We propose to compare the profitability of taxpayers with the average in the industry according to the following algorithm:

- 1) to create the list of all taxpayers who filed the CT Report by type of economic activity (at the class level – 4 characters of Standard Industrial Classification code (hereinafter – KVED), codes of the main directorates, where the taxpayer is registered, indicating the total amount of CT in terms of types of transaction (*Tbl. 1*).

Table 1

List of taxpayers that carried out the CT for the reporting period in terms of types of the transaction subject

Taxpayer		Type of company economic activity according to the Standard Industrial Classification code	Transaction type	Total amount of CT, UAH	
Company name	Company code			Export	Import
					"201" (Goods)
					"202" (Intangible assets)
					"203" (Securities)
					"204" (Service)
					"207" (Work)
					"208" (Financing by non-resident of the current activities of its permanent establishment in Ukraine)
					"209" (Commodities)

Source: developed by the author.

- 2) To calculate the indicators of profitability of taxpayers who carried out the CT for the corresponding year or for several tax periods (years) as follows:
 - a) operating margin (if export CT \geq import CT);
 - b) net cost plus (if import CT > export CT).

When using several tax periods (years), the weighted average value of the profit level indicator for a comparable entity is calculated. The Procedure for determining the weighted average value of the profit level indicator for a comparable legal entity for the transfer pricing purposes was approved by the resolution of the Cabinet of Ministers of Ukraine dated March 29, 2017 No. 191 (hereinafter – Procedure No. 191) [46].

- 3) To create the list of the legal entities for each reporting year that do not directly and/or indirectly own the corporate rights of another legal entity with a share of such participation of 25 percent or more and/or do not have as a participant (shareholder) a legal entity with a share direct (indirect) participation in the amount of 25 percent or more. The list can be prepared taking into account the criterion of minimum revenue from the sale of products (goods, works, services) in order not to include legal entities that carry out incomparable activities.
- 4) To calculate the range of profitability and the median of the range of profitability for the relevant year or for several tax periods (years) for legal entities from the list, taking into account the criterion of foreign economic activity by these legal entities:
 - a) profitability range and median of the range for operating margin indicator according to the relevant KVED (at the class level) for all taxpayers from the list,

excluding taxpayers who: i) carried out controlled transactions; ii) did not carry out foreign economic transactions; iii) were unprofitable according to the accounting (financial) statements (when calculating for several tax periods (years) – more than one reporting period);

- b) profitability range and median of the range for net cost-plus indicator according to the relevant KVED (at the class level) for all taxpayers on the list, excluding taxpayers who:
 - profitability range and median of the range for operating carried out controlled transactions;
 - did not carry out foreign economic transactions;
 - were unprofitable according to the accounting (financial) statements (when calculating for several tax periods (years) – more than one reporting period).

- 5) To assess the potential risks according to the following rule:
 - if the total amount of export CT exceeds or is equal to the total amount of import CT, the taxpayer's net cost plus indicator is compared with the minimum value of the net cost-plus range according to the relevant KVED (at the class level);
 - if the total amount of import CT exceeds the total amount of export CT, the taxpayer's operating margin indicator is compared with the minimum value of the operating margin range according to the relevant KVED (at the class level).

The Procedure for calculating the price (profitability) range and the median of the price (profitability) range for the transfer pricing purposes was approved by the Resolution of the Cabinet of Ministers of Ukraine dated June 4, 2015 No. 381 [47].

The Guide for Tax Administrations “Compliance Risk Management” recommends to evaluate the probability of risks occurrence and consequences for the risks assessing and ranking, and as an option suggests applying a risks matrix (Fig. 1) [39].

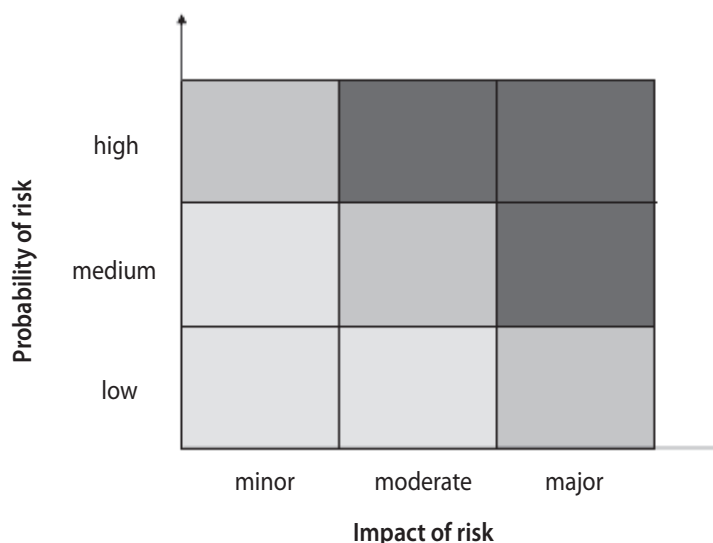


Fig. 1. Tax risks matrix

Source: compiled by [39].

In accordance with the above mentioned matrix and on the basis of the profitability calculation, we suggest building the TP risks matrix according to the rules provided in the *Tbl. 2*.

Table 2

The TP risks matrix

Risk probability	Export CT \geq Import CT	Import CT $>$ Export CT
High	net cost plus of the taxpayer $< 50\% \times$ minimum value of the net cost-plus range	operating margin of the taxpayer $< 50\% \times$ minimum value of the operating margin range
Medium	$50\% \times$ minimum value of the net cost-plus range $<$ net cost plus of the taxpayer $< 75\% \times$ minimum value of the net cost-plus range	$50\% \times$ minimum value of the operating margin range $<$ operating margin of the taxpayer $< 75\% \times$ minimum value of the operating margin range
Low	$75\% \times$ minimum value of the net cost-plus range $<$ net cost plus of the taxpayer $<$ minimum value of the net cost-plus range	$75\% \times$ minimum value of the operating margin range $<$ operating margin of the taxpayer $<$ minimum value of the operating margin range

Source: developed by the author.

- 6) To assess the risks impact. We propose to use the following algorithm for the assessment (*Tbl. 3*).
- 7) According to the results of the risk assessment, the taxpayers should be ranked according to the consequences of risk into 3 groups, based on the total quantitative level of deviation:
 - minor;
 - moderate;
 - major.

In our opinion, the taxpayers should be informed on the results of the risk assessment by publishing them in the Electronic Cabinet of the taxpayer. Thus, the companies will be able to re-evaluate their TP risks and, if necessary, make TP-adjustments. This, in turn, will allow the STS not to initiate the TP tax audit, that will reduce the administrative burden for both the company and the STS.

CONCLUSIONS

The analysis of scientific literature indicates that effective TP tax control is important both for the State as it allows timely detection of TP risks, and for the company, because it can cause additional tax charges, significant penalties and long-term tax disputes. We find that an important form of the TP tax control is the monitoring of CT, which consists of five stages. Analysis of reporting on CT is one of the stages of monitoring of the CT, the tasks of which are risks identification and analysis. During the analysis of the reporting on CT we suggest comparing the comparable indicators of CT with uncontrolled operations. For the identification of the TP risks during

Table 3

Calculation of risk assessment and their adjusted assessment

Factor	Calculation of the risk impact assessment	Adjustment of risk assessment
Total amount of controlled export transactions \geq the total amount of controlled import transactions	Quantitative risk assessment should be calculated as the deviation of the net cost plus the taxpayer from the minimum value of the net cost plus range according to the relevant KVED, multiplied by the sum of the cost of goods (works, services) sold and operating expenses of the taxpayer and multiplied by the corporate profit tax rate. <i>Additionally, the calculation of the risk impact assessment for the deviation from the median of the net cost-plus range is carried out</i>	Multiplication by the percentage of export CT in the taxpayer's net revenue. <i>If required increasing/decreasing coefficients for this factor could be applied</i>
Total amount of controlled import transactions \geq the total amount of controlled export transactions	Deviation of the operating margin of the taxpayer from the minimum value of the operating margin range according to the relevant KVED, multiplied by net revenue from the sale of goods (works, services), excluding excise tax, duties, value added tax, other taxes and fees, and multiplied by the corporate profit tax rate. <i>Additionally, the calculation of the risk impact assessment for the deviation from the median of the operating margin range is carried out</i>	Multiplication by the quantitative risk assessment must be adjusted by the percentage of import CT in the amount of cost of goods (works, services) sold and operating costs of the taxpayer. <i>If required increasing/decreasing coefficients for this factor could be applied</i>

Source: developed by the author.

the monitoring of CT, it is recommended to compare the indicators of profitability of taxpayers with the average industry indicators. The findings of this study confirmed that for the TP risks identification, it is important to assess it and the probability of its occurrence and consequences, it is advisable to use the matrix of TP risks, and for risks assessment calculation the adjustment should be done. According to the probability of risks occurrence it is necessary to prepare ranking and carry out appropriate tax control measures. To increase the level of voluntary tax compliance, the tax authority should inform taxpayers about the identified TP risks. The scientific novelty of this research is the development of the algorithm for comparing the taxpayers' profitability with the industry average and the methodology of the TP risks matrix building.

The limitation of this research is that any comparison of prices of CT with commodities, goods, and services was not considered. Therefore, prospects for future research should also include these other stages of the TP risk management in a particular development of an algorithm for comparing the prices of CT with the quoted prices for raw materials. ■

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ФІНАНСОВЕ ЗАБЕЗПЕЧЕННЯ РОЗВИТКУ КРИТИЧНОЇ ІНФРАСТРУКТУРИ В УМОВАХ ПОВОЄННОЇ ВІДБУДОВИ ЕКОНОМІКИ УКРАЇНИ

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Кизим М. О., Хаустова В. Є., Трушкіна Н. В. Фінансове забезпечення розвитку критичної інфраструктури в умовах повоєнної відбудови економіки України

У статті досліджено успішні практики та кейси фінансового забезпечення відбудови критичної інфраструктури у країнах світу, які свого часу постраждали від збройних конфліктів та активних бойових дій. Вивчення закордонного досвіду свідчить про необхідність залучення міжнародного фінансування переважно у формі грантів, фокусування на завданнях дієвого розвитку критичної інфраструктури із застосуванням механізму публічно-приватного партнерства. Разом із тим кожна країна має свої специфічні особливості. Встановлено, що до основних фінансових інструментів, які застосовувалися у країнах світу задля відновлення та модернізації критично важливих об'єктів інфраструктури, віднесено такі: безповоротна фінансова допомога США, кредити, прямі іноземні інвестиції, кошти державного бюджету, кошти фізичних та юридичних осіб, грантові кошти, донорська допомога міжнародних фінансових організацій, фінансова допомога неурядових організацій, пільгові позики, респарція. На підставі узагальнення передового міжнародного досвіду визначено перспективи запровадження державно-приватного партнерства як пріоритетної моделі та ключового принципу повоєнної відбудови критичної інфраструктури в Україні. Виявлено, що на даний час не приділено належної уваги створенню інституційних умов для розвитку критичної інфраструктури на засадах публічно-приватного партнерства в контексті повоєнної відбудови національної економіки. Запропоновано внести зміни та доповнення до законодавчих і нормативно-правових документів, а також розробити Національну стратегію повоєнної відбудови критичної інфраструктури в Україні та План її реалізації, у якому визначити відповідні фінансові інструменти та інститути. Побудовано структурну схему механізму фінансового забезпечення повоєнної відбудови критичної інфраструктури в Україні з урахуванням міжнародної практики.

Ключові слова: національна економіка, критична інфраструктура, розвиток, відбудова, захист, стійкість, модернізація, фінансова підтримка, фінансове забезпечення, механізм, державно-приватне партнерство, фінансові інструменти, фінансові інститути, страхові інструменти, ризик, система ризик-менеджменту, національна безпека, закордонний досвід, повоєнна розбудова.

Рис.: 1. **Табл.:** 2. **Бібл.:** 47.

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