

DOI <https://doi.org/10.30525/978-9934-26-313-2-22>

PECULIARITIES OF LEGAL ECONOMIC ORDER OF OFFSHORE JURISDICTIONS

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The category of legal economic order is one of the defining in the doctrine of economic law. This category found its consolidation in the Economic Code of Ukraine [1], Article 5 of which is devoted to the constitutional foundations of law and order in the sphere of economics. At the doctrinal level, it is considered that in its form, the legal economic order as an extremely complicated economic and legal phenomenon consists of: 1) a system of legal economic regimes established by legislation, which ensure the implementation of economic activity on individual markets of goods and services, in individual sectors and branches of economy; 2) the system of mechanisms established by legislation to protect the legal economic order both against acts of direct economic opportunism through the formation of the institute of economic and legal responsibility, as well as through the implementation of a system of measures to reduce the volume of the shadow economy; 3) a legally guaranteed mechanism for the formation and implementation of own economic policy of the state in the field of business, which, in particular, determines the level of intensity of implementation of certain economic relations within the existing legal economic order, as well as the content and directions of transformation of such an order with the aim of bringing economic relations to a fundamentally new level of efficiency [2, p. 42].

Among the meaningful factors in the formation of the legal economic order are the constitutional economic order, the national concept of the economic development of the state, and the provisions of the economic policy of the state [3, p. 220]. The economic policy of the state is reflected in the specifics of the legal economic order, which is also formed under the influence of a number of diverse factors, including such as the specifics of the historically developed economic and legal system, the availability of a sufficient amount of natural resources, geographical and geopolitical location, and traditions of social life and management, etc. In turn, the legally defined and ensured legal economic order represents a certain combination of existing legal economic regimes in the country, which system plays a key role in the

legal economic order. Such legal regimes can be either general, extending to the entire economic sphere of the country, or special ones, introduced to regulate specific business conditions in certain areas to achieve certain economic goals and ensure certain priorities of economic policy. In general, a special economic regime is considered a legal regime that introduces a special procedure for conducting economic activity in a certain territory, in a certain sector of the economy or in relation to a certain group of persons, which is characterized by either a preferential, or restrictive, or mixed direction of legal influence on economic relations in order to achieve the goal determined by the legislator [4, p. 88-89].

Thus, the legal economic order of a particular state in its specificity depends on a number of factors and is the embodiment of a certain combination of them, which is system-forming in relation to the entire set of legal economic regimes introduced by the state. If the general definition of the legal economic order in the doctrine of economic law has undergone a sufficiently thorough development, then peculiarities of the legal economic order of certain groups of states and territories do not always receive due attention in the theory of economic law. For example, the aspect of the legal economic systems of the world's offshore jurisdictions and tax havens has been neglected by economic and legal research. Despite its relevance in modern conditions, offshore issues have been studied more from the general economic and taxation, tax law perspectives, but not from the economic law perspective.

In the conditions of the development of global globalization and integration economic processes, the offshore world is an endlessly shifting ecosystem [5, p. 22]. It is quite characteristic and natural for countries with a market economy to seek to attract foreign investments from non-residents. But for offshore countries, such aspiration acquires key importance and becomes the backbone of state economic policy. Offshore jurisdictions provide a number of benefits and guarantees for companies created by non-residents on their territory in order to maximize the attraction of funds from non-residents to their own economy. However, all offshore benefits and guarantees are introduced with the condition that the company does not carry out economic activities in the territory of the offshore zone of the company's registration, as well as that such company does not receive profits inside the offshore zone and from its residents.

Offshore jurisdictions share six characteristics that make them qualitatively different from onshore jurisdictions: 1) offshore jurisdictions tend to be small in size, resources, and population; 2) as a consequence of the lack of domestic resources or economic activity, offshore jurisdictions'

governments' primary opportunity to secure revenue with which to enact the governments' policy preferences come from fees paid by offshore sector participants; 3) offshore jurisdictions' limited alternatives motivate them to be more aggressive in innovating in law; 4) their publics' awareness of the importance of the offshore business to local prosperity depoliticizes measures related to offshore business; 5) offshore jurisdictions include some relatively new jurisdictions and even older jurisdictions are relatively new players on the international financial scene; as these jurisdictions lacked an established reputation when they entered the international markets, they were forced to develop innovative means of demonstrating commitment to the regulatory bargains they proposed to outside economic entities.; 6) offshore financial centers' small size allows them to innovate in development of regulatory regimes [6, c. 46-49].

The specified features in their indivisible totality lead to the establishment of a very specific legal economic order in the territory of global offshores. The basis of such a legal economic order and the just possibility of its introduction is the concept of state sovereignty. The possibility to legally establish a specific offshore legal economic order on its territory in order to maximize the attraction of foreign investments to its own budget is associated with the phenomenon of «the commercialization of state sovereignty» – lacking adequate mechanisms of «internal profit generation» these so-called paper financial centers have learned to take advantage of what is describes as their main asset: the right to write the laws [7, p. 151-152]. Offshore jurisdictions establish different regimes of economic activity for economic entities created in the relevant territory by its residents and non-residents and, in particular, depending on whether such economic entities carry out economic activity and whether they receive income within the territory of the offshore zone itself. The latter is the basis for granting special benefits only if no economic activity is carried out and no profits are received inside the offshore zone of the place of registration.

In general, the legal economic order of offshore countries is characterized by a number of specific features inherent only to them. The desire to attract foreign investments plays a constitutive role in the formation of the legal economic order of offshore jurisdictions, which is reduced to the level of state economic policy and becomes its cornerstone. Based on the concept of state sovereignty and in the context of the phenomenon, which is also called «commercialization of sovereignty», specific special legal management regimes are established by offshore companies for companies created by non-residents on their territory. Such special legal regimes provide an incentive

element in the form of certain benefits (primarily tax), increased confidentiality of commercial secrets, etc.

References:

1. Господарський кодекс України. URL: <https://zakon.rada.gov.ua/laws/show/436-15#Text> (дата звернення 27.03.2023).

2. Господарське право: підручник/ за заг. ред. Д.В. Задихайла, В.М. Пашкова. Харків: Право, 2012. 696 с.

3. Задихайло Д.В. Економічна політика держави в системі правового і законодавчого забезпечення. *Вісник Національної академії правових наук України*. 2013. № 3 (74). С. 214-221.

4. Серсбряк С. В. До визначення правової природи поняття «спеціальний режим» у сфері господарювання. *Актуальні проблеми права: теорія і практика*. 2022. №1 (43). С. 80-90.

5. Nicholas Shaxson *Treasure Islands. Tax Havens and the Men who Stole the World*. London. Random House, 2012, 332p.

6. Andrew P. Morriss *The Role of Offshore Financial Centers in Regulatory Competition*. *University of Illinois Law and Economics Research Paper*. 2008. No. LE07-032. URL:https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1275390 (дата звернення 27.03.2023).

7. Palan R. Tax Havens and the Commercialization of State Sovereignty. *International Organization*. 2002. № 56, 1. P. 151–176.