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THE PRACTICE OF LEGAL REGULATION OF TAX PLANNING OF INTERNATIONAL CORPORATIONS IN FOREIGN COUNTRIES

ПРАКТИКА ПРАВОВОГО РЕГУЛЮВАННЯ ПОДАТКОВОГО ПЛАНУВАННЯ МІЖНАРОДНИХ КОРПОРАЦІЙ У ЗАРУБІЖНИХ КРАЇНАХ

The article examines the tools of legal regulation of tax planning of international corporations abroad. Particular attention is paid to the study of legal means used in developed countries to counteract the negative impact of base erosion. The directions of implementation of the best world practices in Ukraine are determined.

Key words: *tax planning, international corporations, legal regulation, GARR, tax advice.*

У статті досліджено інструменти правового регулювання податкового планування міжнародних корпорацій за кордоном. Особливу увагу приділено дослідженню правових засобів, які використовуються у розвинутих державах для протидії негативному впливу розмивання бази оподаткування. Визначено напрями імплементації кращих світових практик в Україні.

Ключові слова: *податкове планування, міжнародні корпорації, правове регулювання, GARR, податкове консультування.*

В статье исследованы инструменты правового регулирования налогового планирования международных корпораций за рубежом. Особое внимание уделено исследованию правовых средств, используемых в развитых государствах для противодействия негативному влиянию размывания базы. Определены направления имплементации лучших мировых практик в Украине.

Ключевые слова: *налоговое планирование, международные корпорации, правовое регулирование, GARR, налоговое консультирование.*

Problem statement in general form and its connection with important scientific and practical tasks. The scale of tax planning of international corporations as a universal means of reducing the volume of tax payments in recent years is becoming more and more popular. At the same time, the schemes that are used to reduce the tax base are becoming more developed and diversified: it is now not so much about using inconsistencies in legislation, but also about developing and introducing innovative financial instruments, using advanced technologies; the growth in the number of transactions in the services sector or on the transfer between subjects of intangible assets, the value of which is rather difficult to be objectively assessed; an increase in the number of "tax havens" and their active use by business entities at various levels; use of transfer pricing and the like.

Now an increasing number of countries are losing significant resources through the payment by enterprises of taxes in countries where the level of taxation is substantially lower, which becomes possible due to the imperfection of national and international legislation. Given this, an increasing number of countries are using specific means of countering tax planning, which makes it interesting to explore their progressive experience.

Analysis of recent research and publications in which the solution of this problem is initiated and on which the author relies, highlighting previously unsolved parts of the general problem to which the article is devoted. The problems of tax planning were researched in the papers of such scientists as S. Alekseeva, A. Skakuna, A. Tedeeva, N. Prishva, O. Bandurko, V. Ponikarova, S. Popova, I. Apiary, V. Bychkov, V. Belous, A. Humenny, A. Molchan, V. Shorty. At the same time, best practices of legal limitations of tax planning are left insufficiently highlited, which causes interest in the implementation of scientific research on this problem.

Formulation of the objectives of the article (problem statement). The aim of the paper is to summarize the approaches to the legal regulation of tax planning of international corporations in foreign countries. To achieve this goal, the following tasks were accomplished: approaches to the legal limitation of tax planning of international corporations were systematized; best practices of countering tax planning were studied; the possibility of implementing the best practices in Ukraine were identified.

The basic research with the substantiation of the obtained scientific results. At present, tools that can be used by countries to counter the tax planning of international corporations can be divided into 4 groups:

– tools of monitoring tax planning schemes;

– tools of improvement of the conscientiousness of tax payers;

– tools of identification of tax planning schemes for international corporations and increase of responsibility for it;

– tools of resolving disputes related to tax planning.

Thus, international practice demonstrates the inexpediency of complete elimination of the tax planning of international corporations, since for individual economies the involvement in schemes that are used for tax purposes, is one of the main sources of economic development.

One of the ways to combat the tax planning of international corporations in developed countries is to improve

the tax system in such a way that the use of tax planning schemes of international corporations is unprofitable for business entities. This tool belongs to the third group, since it implies the emergence of financial responsibility for participation in tax planning schemes of international corporations. So, in this case, the attractiveness of applying tax planning schemes of international corporations can be reduced in the country, for example, by introducing additional taxes or fees. Thus, in the UK, since 2015, the Diverted Profits Tax has been redirected, the rate of which is 6% higher than the corporate tax paid by all corporations in the country. (The corporate tax rate is 19%, the tax on redistributed profits is 25%) [1]. Thus, it is more profitable for British companies to pay tax for the normal tax regime than to use tax minimization schemes, since profits transferred to other jurisdictions will be taxed at higher tax rates [1].

One of the reasons for the widespread use of tax planning schemes in the world is the expansion of the activities of consultants engaged in targeted studies of tax systems in various countries in order to identify schemes for reducing the tax base. Today, in developed countries their activities are regulated by introduction of ethical standards and fines for providing advice that contribute to the loss of considerable financial resources by states.

The most effective areas of regulation of tax consultants' activity are the following:

– mandatory registration and licensing of this type of activity;

– introduction of responsibility for non-disclosure of information on transactions, the legality of which may be questioned;

– introduction of liability for non-compliance with legislation (including criminal law);

– the creation of trade unions that develop ethical standards for tax consultants.

So, in the UK, there is the practice of creating professional communities of tax advisers, one of the tasks of which is the formation of standards of behavior and ethics. Similar structures also exist in the countries of Asia and Africa (Japan, China, South Africa): these associations are responsible for registering professional tax consultants, and each specialist who carries out this type of activity is assigned an identification number, which is indicated in the declarations of enterprises that were consulted [2].

The tax authorities of the countries, sharing the experience and coordinating their efforts, are doing everything necessary both at the regulatory level and at the level of direct execution to combat the activities of business entities for tax purposes. In particular, CFC rules, transfer pricing rules, requirements for beneficial owners of tax information exchange conventions proposed and even implemented in many countries (UK, USA, Germany, Russia, etc.). All this allows to counteract many schemes to minimize the taxable base. However, despite the ingenuity of business entities, for even greater struggle with the mechanisms of tax planning in many countries of the world, general rules were developed to combat tax evasion (hereinafter referred to as "GAAR").

It is believed that GAAR is an effective way to combat tax planning schemes, because they provide ample opportunities for tax authorities to prevent the use of preferences that have arisen as a result of pre-established schemes to minimize the tax base of business entities.

Due to the lack of legal regulations related to the GAAR rules in Ukraine, we suggest contacting UK law for a more thorough understanding of these rules.

The main purpose of the GAAR rules is to create legal regulation that would make it impossible for taxpayers to operate, abusing the tax law. A key element of GAAR rules is to counter actions exclusively, in line with the abuse of the tax law. It is this abuse that is unlawful activity of the taxpayer that in general leads to a distortion of the spirit of tax legislation.

It should be noted, that the implementation of GAAR rules does not mean that taxpayers should not act in their own interests: given the significant number of tax initiatives, GAAR rules are only aimed at combating activities that go beyond the main goal of legislation. For example, if the taxpayer decides to create a business, he can do it, like registering a limited liability company or working as a private entrepreneur. These two regimes are completely different in nature and lead to different tax consequences. However, the GAAR rules do not apply in this case, because the legislator gave a choice to taxpayers on the methods of doing business, and this choice is fully consistent with the desire of legislators. On the other hand, if the taxpayer uses tax gaps in the legislation, for example, using privileges that he should not use from an economic point of view, because he does not bear significant economic risks to receive such benefits, there are reasonable grounds for applying the GAAR rules.

GAAR rules also apply to interstate relations. So, if taxpayers participate in tax planning schemes in several states using Double Tax Treaties, and their activities are aimed at creating conditions conducive to obtaining tax benefits without any economic justification, there is a reason to analyze such transactions from the point of view of the rules GAAR.

UK law provides that the GAAR rules are applied only in cases where the taxpayer's activity affects the tax liability for personal income tax, income tax, capital gains tax and other specific energy taxes.

In order to reduce the administrative costs of complying with the GAAR rules, a number of guarantees are provided that must be fulfilled by the tax authorities when applying the GAAR rules, namely:

– the obligation to prove, that activities of the taxpayer are aimed at the abuse of tax legislation, including in the tax authorities;

– the ability of the judiciary to use any evidence to understand the taxpayer is involved in activities aimed at abusing tax legislation.

The final decision on the recognition of a particular activity as such, aimed at abusing the tax legislation, is made by a special commission under the tax authorities.

The correlation of the taxpayer's activity with the principles of tax legislation and the goal of a specific regulatory act is the next element in analyzing the application of GAAR rules. So, each regulatory legal act in

Great Britain has its own purpose, which is referred to in the preamble to this regulatory legal act. The activities of taxpayers should not contradict this goal, but on the contrary, fully comply with it.

The existence of dubious schemes created by the taxpayer to obtain benefits from its activities is the third mandatory element for applying the GAAR rules. For example, if a taxpayer fictitiously increases the company's share in the capital to obtain the benefits of conventions on the avoidance of double taxation, there are unconditional grounds for checking the economic activities of such a taxpayer from the standpoint of applying the GAAR rules.

The taxpayer's intention to use gaps in tax legislation is the fourth mandatory element. This element is fairly easy to prove, because due to the presence of the tax benefit, which is achieved through the use of various schemes, the taxpayer's intent is automatically communicated.

Regarding the possibility of implementing the GAAR rules into Ukrainian legislation to strengthen opposition to tax planning schemes, it is worth noting that, despite the fact that Ukraine is not a member of the OECD, the creation of a Working Group by the President of Ukraine in April 2016 demonstrates Ukraine's willingness to join the international community in the process of countering tax planning schemes.

The Tax Code of Ukraine provides for thin capitalization and transfer pricing rules, there is also a Draft Law on the rules of a controlled foreign company. Although this is not enough to comprehensively combat tax planning schemes, Ukraine gradually joins international initiatives and is gradually harmonizing national legislation under European standards.

According to the model of the direct implementation of the GAAR rules, in our opinion, the English version with a subjective criterion for assessing the activities of taxpayers is not quite suitable for Ukrainian realities. For Ukrainian legislation, a more restrained approach is needed with a lower level of attraction of the subjective impressions of the representatives of the tax authorities. Of course, completely dependent on subjective factors is impossible, but it's worth limiting them to a minimum.

Thus, the need to implement the GAAR rules is obvious, because it is thanks to them that it is possible to comprehensively and effectively deal with the activities of taxpayers aimed at reducing the tax base. In the context of globalization, the GAAR rules will allow tax authorities to respond promptly to taxpayers' abuse and to prevent the latter from receiving tax benefits. In addition, it will strengthen the effective collection of taxes and, as a result, the state will receive the proper amount of tax revenue, which will allow the state to effectively perform its functions.

To reduce the possibilities of tax planning the monitoring of activities of tax intermediaries in the United States is used. Tax advisors are responsible for using tax planning schemes by US multinational corporations. In addition, treaties between tax intermediaries and authorized tax compliance agencies are common in the United States. Such agreements are mainly used, when the consultant's actions are unlawful, and their violation may be the reason for his further bringing to civil law and even criminal liability [3].

In developed countries, there is also a requirement for early disclosure of information on the use of tax planning schemes by international corporations. In the United States, the regime of controlled operations is also actively used, the essence of which is to provide the tax authorities with data on those operations, the implementation of which may lead to the government not receiving much of the tax revenue [4].

In Japan, the situation is similar: professional organizations, which all tax advisers are required to participate in, supervise the activities of their members, develop and implement professional activity standards, deprive the right to operate by those consultants who commit violations etc.

In Australia, Canada, New Zealand, a special regime has been established for tax consultants to use tax planning schemes of international corporations. At the same time, sanctions for violations, except for those expressly provided for by the legislation, are put forward both the taxpayer, who used the scheme proposed by the consultant (civil law measures), and to the consultant (disqualification to revoke the license). The range of responsibility measures is quite wide: from civil law (in relation to the taxpayer) to professional disqualification [5].

When studying the practice of protecting national tax systems from tax planning of international corporations, it is necessary to take into account the differences in tax systems, the economic potential, and the heterogeneity of national goals. Along with monitoring the activities of consultants and the introduction of specific taxes and fees, such initiatives as signing intergovernmental agreements used to reduce the number of cross-border transactions that can be used for tax planning purposes by international corporations deserve attention. These include, in particular, the Doctrine of Unfair Practices in the European Union (The European Union) and the General Anti-Avoidance Rules (GAAR). At the national level, an example of effective tax planning programs for international corporations is the Codified Doctrine of Economic Substance in the United States (often used in American courts), the Disclosure Rules in the United Kingdom and the United States, and the United States Ethical Tax Standards [4].

Progressive, in our opinion, is the experience of countering the tax planning of international corporations in Canada. This country divides the tax planning schemes of international corporations into inter-regional, national, and international. According to this classification, interregional tax planning of international corporations is aimed at avoiding paying taxes in a certain region (province), national (traditional) concerns minimization or evasion schemes from regional (provincial) and federal taxes, while international tax planning of international corporations is aimed at tax evasion at the regional and national levels, but not through one, but through several foreign jurisdictions. Such an approach to the tax planning system of international corporations determines the existence in the country of a multilevel system

of counteraction operating with a large number of progressive means.

Canada today makes extensive use of the monitoring of tax planning schemes of international corporations, developing on its basis "Specific Anti-Avoidance Rules" [5].

The strength of this approach is that all cases of tax planning of international corporations that have been discovered are investigated and studied. At the same time, a negative aspect is that subject to the existence of this document, the activities of a significant number of officials are reduced only to the search for those schemes that have already taken place in the practice of Canadian enterprises.

The use of legislative amendments to reverse action is also quite actively used to counter the tax planning of international corporations in Canada. So, despite the fact that regulations are usually not retroactive, Canadian law provides for the adoption of amendments that will have retroactive effect if the activities of enterprises or tax intermediaries whose interests will be affected by this amendment distort the goals of the country's fiscal policy [5].

The conclusions of this study and the prospects for further research in this direction. In our opinion, studies of progressive world experience and in particular the practice of the EU countries (taking into account the European integration aspirations of Ukraine) is a prerequisite for the transformation of the tax system of Ukraine in the context of increasing its transparency and creating prerequisites to prevent the use of progressive tax planning schemes.

The problem of the domestic economy today is that not only the tax planning schemes of international corporations are widely used, but also methods of base erosion of small and medium-sized businesses. This leads to the fact that the government needs to form mechanisms that are not used in the practice of foreign countries, since the main focus abroad is on countering the activities of international corporations.

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