

attributed to clearly positive or completely negative. In addition, the result is highly dependent on what state channels and other media say on this issue. Even in spite of the large amount of information in the media, people do not have a view of the whole situation as a whole and cannot predict where their decision will lead. Also, it is impossible to guarantee full attendance, someone is busy, someone does not care.

If we summarize everything, the problems in the democracy of modern countries, it is too much democracy. Ordinary people do not have enough experience and knowledge that would allow them to solve major state issues, but they can choose protégés to the authorities, because these applicants explain everything to people in an understandable language. The problem of democracy through referendums and other legitimate ways of expressing the will of the people is that it is the vagueness of the vote and the lack of understanding by society of the consequences of the choice, leading to illogical decisions that may later have a bad effect on the situation in the country.

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CONTROLLED FOREIGN COMPANIES: INNOVATIONS IN UKRAINE AND EXPERIENCE OF FOREIGN STATES

OLENA YATSKIV, student

NATALIE HRYNYA, Associate Professor, PhD in Philology, Scientific and Language Adviser

Ivan Franko National University of Lviv

The article considers the issue of legislative innovations in the tax legislation, as the introduction of controlled foreign companies. The article analyzes the legal nature and requirements for such entities. In addition, the international approach to the identified issue and the special features of application in the jurisdictions of foreign states are highlighted.

Key words: taxation, residency, de-offshorization, controlled foreign companies.

Problem statement. The introduction of new tax rules and new subjects in the Ukrainian tax legislation is an important step for Ukraine on the European path. However, the implementation of international acts into the national legislation has proved to be problematic for Ukraine. Therefore, it is important to analyze the legal problem and international practices of CFCs.

Recent research and publications. The question of functioning controlled foreign companies was engaged in research of N. Mudrak, M. Woźniak, B. Arnold, D. Pinto, M. Lang, K. Bilgren, and D. Sandler and others.

The purpose of the article is to analyze the features of functioning of CFCs in Ukraine and the international approach to this issue.

Presentation of the main material. Reformation of the Ukrainian legislation, fulfillment of Ukraine's obligations under the Association Agreement with the EU have also worked in the aspect of the tax legislation. Law №466-IX of May 23, 2020 "On Amendments to the Tax Code of Ukraine to improve tax administration, eliminate technical and logical inconsistencies in the tax legislation" (hereinafter - Law №466) introduced certain significant innovations. Among these is the introduction of controlled foreign companies (hereinafter - CFC).

As a justification for the enactment of the Law №466, there was a regulation of counteraction to modern tax rules, which give businesses too many opportunities to speculate on tax rates, regimes and statuses. However, the wishes of legislators turned out to be too cardinal for Ukrainian business. The law changed the philosophy of the relationship between regulatory authorities and business in the direction of strengthening the influence of tax authorities and limiting the exercise of rights by taxpayers. The balance that they have been trying to build for many years has been upset. Therefore, representatives of business associations, experts and entrepreneurs raised the issue of the expediency of this Law and its repeal or amendment.

Despite the fact that Ukraine was not ready for such radical changes, the innovations will still work, only with a delay. In this way, the Law of Ukraine "On Amendments to the Tax Code of Ukraine and other laws of Ukraine to ensure the collection of data and information required for the declaration of certain objects of taxation" from 07.12.2020 № 1117-IX was adopted. As a result, it was decided to postpone the entry into force of the rules of taxation of the CFC for a year until 01.01.2022.

Legal nature of controlled foreign companies in Ukraine. Law №466 stipulates that a CFC is any entity registered in a foreign state or territory that is recognized as being under the control of a natural person resident in Ukraine or a legal entity resident in Ukraine. For a more effective understanding, we can derive the following "CFC formula": the company is a non-resident of Ukraine, the controller is a resident of Ukraine. The most common practical implementation of this rule is when a citizen of Ukraine owns a significant share in the authorized capital of a foreign company or manages it.

The concept of the company in the general sense, first of all, represents a legal entity of a corporate type. Given the various organizational and legal forms of legal entities in foreign countries, the legislator defined the concept of legal entity as a corporate entity, and also included any other legal entities, corporate entities, entities without legal personality, partnerships, trusts, funds, other institutions, organizations. Moreover, the concept of formation without the

status of a legal entity closes most of the corporate forms for which a foreign company could be hidden. Now, any entity created on the basis of a transaction or registered in accordance with the law of a foreign state without the creation of a legal entity that has the right to carry out activities aimed at generating income for its members, partners, founders, principals or other beneficiaries will be considered a company under Law №466. Such companies must be non-residents of Ukraine.

The second element of the CFC is the controller. According to the Law, the controller is recognized as an individual or legal entity that are residents of Ukraine and carry out direct or indirect control over the first element – the company. Within the question of the controller, it is important to determine the issue of residency, as different jurisdictions have their own criteria for classifying a natural or legal person as a resident of the state. Under the Tax Code of Ukraine, residents are legal entities and their separate persons who are formed and conduct their activities in accordance with the legislation of Ukraine located both on its territory and abroad; an individual who has a place of residence and location of the centre of vital interests in Ukraine and the time of his stay in the country is not less than 183 days.

The connecting link between the controller and the company is the activity of the controller, as the way of its influence on the company, which are set out in the Law as conditions of control. Control itself can be divided into two categories: formal and actual control. Formal control involves the participation of the controller in the company through the ownership of a share in the authorized capital of such a company. Therefore, formal control is the participant's ownership of a share of more than 50 percent, or ownership of a share of more than 10 percent, provided that several controllers – residents of Ukraine – own shares, the total amount of which is 50 percent or more. The conditions of actual control are the provision of binding instructions to the governing bodies of the legal entity; conducting negotiations by a person on concluding transactions by a legal entity and agreeing on the essential terms of such transactions; the person has a power of attorney to carry out significant transactions on behalf of the legal entity, issued for a period of more than one year, and does not provide for prior approval of such transactions by the governing bodies of the legal entity; carrying out operations on bank accounts by a person; indication of the person as the founder, beneficiary, actual beneficiary.

The practical application of the CFC formula entails three legal consequences: tax control, mandatory reporting and additional taxation. As a result, the tax authority of Ukraine has a powerful instrumentality, which consists of a set of tools of unlimited influence, and the application of sanctions for non-compliance or violation of their newly created responsibilities by controllers.

Experience of foreign countries. The United States became a pioneer in the operation of CFCs in 1962. In Europe, the CFC rule was introduced by a

judgment of the European Court of Justice in 2006 in Cadbury Schweppes (C-196/04). Today, this practice of taxation is common in most countries. Determining the general rules of operation of controlled foreign companies in the world, it is worth noting the following distinctive features of Ukrainian legal requirements.

Firstly, in contrast to Ukraine, the rules of operation of controlled foreign companies provide for tax consequences only for legal entities-controllers, and not for individuals. Similar to the Ukrainian rules are the following requirements for the controller in Russia, Germany, Estonia, Australia, Japan.

Secondly, foreign law on controlled foreign companies stipulates that only a certain type of income will be taxed in this case. Thus, in the countries of the Organization for Economic Cooperation and Development there are two main approaches to the regulation of controlled foreign companies – transactional and jurisdictional. The first approach assumes that only specially defined, mostly passive income is taxed. Such a system operates in Germany and Spain. The second approach, jurisdictional, sets out income taxation in low-tax and offshore jurisdictions.

Thirdly, in terms of control, different requirements are set, depending on the jurisdiction of the state. With regard to formal control, the main difference is the percentage of the share capital that the participant must have in order to be recognized as a controller. Thus, in the USA, Great Britain, Cyprus, Germany the percentage varies from 40 to 55 and depends on the type of participation – corporate rights or voting rights in a foreign company. In neighbouring Russia, the rules are somewhat stricter than under the Ukrainian law. There, when determining the share of an individual in the organization, not only individual participation is taken into account, but also participation together with spouses and minor children.

Base Erosion and Profit Shifting Plan. The Base Erosion and Profit Shifting (BEPS) concept was introduced by the Organization for Economic Cooperation and Development (the OECD) to combat tax evasion, improve the coherence of international tax rules and ensure a more transparent tax environment. BEPS provides a set of acts that introduce various approaches, tools and mechanisms to combat tax avoidance, in particular in the aspect of CFCs.

Therefore, the international approach to CFCs within BEPS provides for the following important provisions. First, similarly to the Ukrainian Law, the list of organizational and legal forms of companies is quite extensive, and the size of the share in the controlled company is often equal to or exceeds 50%. Second, the object of taxation depends on factors such as the "sufficient economic presence" of the company, as the ability to generate income, and the excess of such income. In this case, the object of taxation is determined by the rules of the national law of the parent company. In addition, the tax rate is determined by the jurisdiction, among the subsidiary and the parent, where it is a higher percentage.

To date, 135 countries have joined the OECD / G20 Inclusive Framework on BEPS and the organization has a clear plan to implement the same trends by implementing them in the national legislation of member states. In particular, addressing tax issues arising from digitization, reviewing BEPS Minimum Standards, including new assessments of substance in non-taxable or low-tax jurisdictions.

Conclusion. Therefore, Ukraine's pro-European orientation presupposes a certain inevitability in the process of counteracting tax avoidance. The use and implementation of international practices in the Ukrainian law will, on the one hand, force Ukrainian entrepreneurs to pay a mandatory state payment and, on the other hand, give control bodies a wider range of powers, which may lead to an increase in corruption. Therefore, it is important for the legislator to find the middle ground aimed at protecting Ukrainian business, not its oppression.

Despite the high legislative technique, legal practitioners will be able to find a way out of the regulation of CFCs: legal advisers are already expanding ways to avoid Law №466, from changing residency to establishing corporate pyramids among controllers and their companies. However, such innovations still made Ukrainian business think about the feasibility of their functioning as CFCs and the possibility of transferring their business to the Ukrainian arena. There are still open questions about double taxation, ways to verify the conditions of actual control and the limits of legal remedies of the tax authority.

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