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RISKINESS OF TAX AVOIDANCE SCHEMES IMPLEMENTATION

The important task of company's management team in a market economy is raising of operating efficiency. One of the forceful enablers of such task is tax planning.

Tax planning is a field of activities that can allow mitigate the impact of the external environment on current and future operating conditions of the enterprise, as well as ensure the balance between fiscal and regulatory functions of the taxes raising the effectiveness of stimulating role of the tax system. The main objectives of tax planning at the organizational level are assessment of tax payable to the budget and extra-budgetary funds on specific taxes for the next financial year, and preparation of the general budget of tax payments; calculation of target prime cost of production and development of the financial plan of the company; optimization of the main tax payments; monitoring of the tax payments accuracy, determination of tax burden level in planning period.

The framework of tax planning within the enterprise is tax optimization, defined as an organizational arrangement for selection of date, place and types of activity, creation of the most effective contractual relationships and models within the current legislation in order to increase cash flows of the enterprise by means of tax minimization. Thus, optimization consists in tax burden minimization in the long and short terms and avoidance of penalties imposed by the revenue bodies. It is impossible to underestimate the role of tax optimization, because such policy enables the company to avoid excessive costs for taxes at any particular period of time. In the conditions of high tax rates the wrong or insufficient accounting of a tax factor can lead to very adverse effects including bankruptcy of the enterprise. A situation when the enterprise pays the taxes, formally obeying the letter of the law without binding to features of own business, demonstrates that nobody works on tax planning at the enterprise, which in turn represents the lack of knowledge of entrepreneurs about their rights, opportunities, benefits and, of course, risks.

Conceptual and practical aspects of tax planning and tax status of Ukraine have been investigated by Y.B. Ivanov, V.V. Karpov, P.Y. Buryak, O.G. Kuzmin, S.V. Ishchuk, S.S. Hrynkevych and other scientists. While appreciating the achievements of native scientists in the field of taxation attention should be drawn to considerable importance of planning in activities of each enterprise, including tax planning, as well as understanding of the implications and ways of such planning, which is the purpose of the research.

Before beginning any optimization we need to find out what its purpose is: reducing the overall tax burden or the expense of the payment of one single tax. The next tasks are the insight into the classification of optimization models and determination of acceptable risk for the company. And until after the selection of particular way it is appropriate to carry out calculations.

Optimization always entails risks and challenges in its implementation. Each of the possible models should be adapted and improved according to the current legislation to

fit into the tax field. Efficient and optimal tax planning is the key to success in this business providing that there are deep knowledge of tax law, understanding of the use of tax incentives, the ability to find gaps in the legislation, the knowledge of tax systems and other aspects of the legislation.

Choosing a particular product or service, we walk after an approach "price meets quality" while choosing the optimization scheme we should be guided by such principle as "optimization profit should meet optimization risk".

All ways in the optimization, in our opinion, can be divisible into three main groups, namely the withdrawal of funds from under the taxation, transfer of funds in the sector with lower taxation and deferring of the taxes. For a more detailed understanding of the nature of mentioned approaches let's consider each of them.

The indispensable condition of the schemes of the withdrawal of funds from under the taxation is the use of fictitious contracts and companies. Frequently in such situations it is possible to resort to attraction of nominee directors and founders to keep anonymity of the real owners. In most indicated schemes the funds are being derived from legitimate turnover and their reverse (back input) is already considered to be "laundering of income". One of the optimization ways of this group is a scheme, which increases optimizers' expenses due to the transfer of funds to the "gray" and "black" companies. Thus increasing the expenses of the company and the credit against tax it becomes possible to get free cash and put into the company's turnover the goods purchased for cash. This phenomenon is called "phoenix operations" or the transfer of funds in cash using the "fly-by-night companies", "conversion centers". The following scheme of this group applies to the reduction of inventories as an alternative to the sales. It involves the sale of inventories at reduced prices due to corruption or fictitious destruction of inventories. In addition to the above this inventories are sold for cash. Another optimization scheme, which involves shifting the tax liability from one company to another, requires for its implementation a company that is ready to sell a credit against tax or expenses. This can be an exporter who is not entitled to VAT refunds.

The schemes of the withdrawal of funds from under the taxation include an increased risk for optimizer, as they are illegal, short-term and can be fast detected by the revenue bodies. For those who economize through the transferring funds into cash, "conversion centers", taxmen may as a minimum charge additional VAT and income tax, as well as a maximum – it's possible to get under criminal prosecution under the article 212 of the Criminal Code of Ukraine "Evasion of taxes and dues (mandatory payments)".

The way of optimization, which involves the transfer of funds in the sector with lower taxation, differs from the first way primarily in the fact that the funds are not derived from legitimate turnover and if necessary they can be turned back. This group of methods includes the transfer of funds to other countries with lower tax rates. In this case it is referred to the offshores. If we resort to transfer the funds to other companies with different taxation system, it applies primarily to businesses with a simplified system of taxation that are on a single tax. As to the third direction of this group it involves the transfer of funds in other spheres of activities or at other companies with preferential taxation. Such schemes require extraordinary attentiveness and caution, because most of them are temporary. Their implementation is possible in agriculture, printing industry, IT, companies that employ persons with disabilities, etc.

As it has been mentioned this optimization path carries less risks than the first one, but it cannot be considered as the ideal. Considering the risk this is kind of “golden mean” between the withdrawal of funds from under taxation and the way of deferring of the taxes. The ability to detect such schemes appears if the company carries out its activities and enter into agreements on the basis of fictitious documentation or has lack of personnel and assets, and transactions are conducted with too low or too high prices and so on.

The third group of optimization ways by applying the deferring of the tax payments allows regulating the tax burden and is suitable for companies that provide long-term planning. In this way it is possible to achieve the reduction of tax burden for the next period, which further leads to its increasing. This group includes the pending operations for deferring of tax liabilities what involves the replacement of operations, which give rise to tax liabilities, with the transactions that do not lead to such consequences. One of the examples of such actions may be a contract of storage for further sales with the further registration of the transaction including the desirable deferring of tax liabilities instead of the agreement of sale and purchase. In this group there is a method of conducting the operations with their subsequent cancellation that is resorted to increase the credit against tax and expenses in the end of accounting period followed by those operations in future accounting periods, when there are necessary resources. It is also worth mentioning the way, which is referred to binding the occurrence of tax liabilities to reports and information received from contracting parties. Such involving of contracting parties is made to increase the time gap between the actions of contractors and occurrence of tax liability, in such a manner it is possible to achieve legal deferring of the tax payments, using the commission agent agreement, contract of delegation and so on. The most striking feature of this optimization path is the lowest level of risk comparing with other optimization models. Identifying these schemes is possible only in case of mistakes made by optimizer, like some business operations are not timely concealed, only one way of tax optimization is used without resorting to their diversity, or improperly entered documents are used in business activities and others. Despite everything, this optimization model is less risky, bringing the content of transferring the taxes forward in time, rather than its avoidance.

Summing up, it should be pointed out that tax planning, including all methods of optimization of tax burden must strictly comply with the law, in other words be implemented by legal means. This optimization should make economic sense and be economically justifiable, and ultimately work towards increasing profit, rather than just minimizing taxes.