

THEORETICAL ASPECTS OF TAX MINIMIZATION IN UKRAINE

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Abstract: *The problem of tax minimization is very difficult, ambiguous and relevant to a comprehensive scientific study and discussion of researchers and practitioners in Ukraine. During the global economic crisis and lack of appropriate budget revenue, creation of effective mechanisms to fight against tax minimization, is one of the priorities of the Tax Service of Ukraine.*

Keywords: *tax minimization, tax planning, tax evasion*

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1 INTRODUCTION

The problem of tax minimization is very difficult, ambiguous and relevant to a comprehensive scientific study and discussion of researchers and practitioners. In Ukraine problems of tax minimization are reflected in the researches of scientists such as Mykola Azarov, V. Andrushenko, T. Afonska, A. Badelyuk, V. Belous, A. Bodyuk, P. Govorov, P. Miller, D. Mulyavka, S. Pavlenko, B. Papaika, O. Popovic, A. Savchenko, F. Yaroshenko. Among Western scientists this issue pay great attention researches of James Sunderland. These studies seek to identify the factors that cause the tax minimization, and creation means to combat illegal minimization.

2 DEFINITIONS IN UKRAINE: TAX MINIMIZATION, OPTIMIZATION AND TAX EVASION

As analysis showed, at present in Ukraine in the sphere of taxation does not exist clarity in terminology and very often taxpayers incorrectly interpret concepts "tax minimization", "tax planning", "tax evasion", "bypassing taxes" and "tax optimization".

In particular, James Sunderland, a judge of the Supreme Court of the United States determines that the main ways to minimize the taxes are:

Tax Planning – activity, focused on the best usage of all the nuances of the current legislation in order to achieve the highest financial performance by business optimizing in a legal way. A characteristic feature of tax planning is its alternative nature, which in practice enables tax optimization;

Tax optimization - the choice of business policy for creation the most effective schemes and contractual relationships, to increase the company's cash flows due tax optimization and minimization of tax payments.

In turn, T. Afonska argues that optimization and minimization of tax liabilities are homogeneous concepts, although tax planning is more civilized, legitimate and necessary to activity every organization.

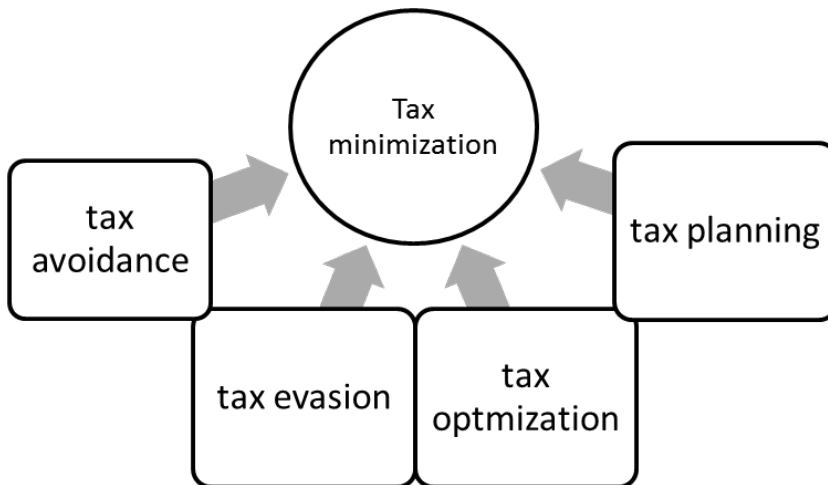
At the same time, Yu.M. Lermontov emphasized that optimization is the main component in tax minimization. The author describes it as a system of different schemes and methods that allows to select the best solution for the specific case of business organization and can bring maximum effect at planning future activities.

A significant number of economists, including P. Kovtun and A. Govorov, believe, that minimization of tax is a partial tax exemption. This is a legal way to reduce the tax burden on business, in contrast to tax evasion. Simultaneously, there is the possibility of reducing the tax burden through various tax benefits (which not everyone knows or does not know how to use them). In addition, some provisions of the legislation can be used not only to create financial reserves, but in certain circumstances serve for the growth of financial resources at the expense of tax savings or even by the return of tax payments from the budget.

Thus, according to this group of economists, tax minimization is not tax reduction, but increase of all company financial resources.

Doctor of Economics, O. Papaika analyzing the problems of minimizing taxes separates such concepts as: optimization, avoidance and tax evasion, tax planning and considers them as key areas to minimize taxation is shown schematically in Figure 1.

Figure 1. Main directions of tax minimization



Source: Papaika, O. Směry minimalizace zdanění jako prostředek optimalizace finančních zdrojů podniků (Папайка О. Напрямки мінімізації оподаткування як засіб оптимізації фінансових ресурсів підприємств). Dostupné in: <http://archive.nbuv.gov.ua/portal/>

Hence, tax optimization is reducing the amount of tax liability by taxpayer lawful actions, which include full use of all the benefits provided by law, tax exemption and other legal benefits.

Tax optimization gives the taxpayer the opportunity to choose the way to calculate the tax base, in particular the economic rationale in accordance with the current legislation. Among the legal ways can be called: choice of the legal form of activities, tax regime choice, accounting policies, the type and conditions of civil contracts, use of incentives. Making optimal management decisions aimed at minimizing the required payment obligations within the law, is a typical area of taxpayer policy under current market conditions.

The main difference of tax optimization from tax evasion is that a taxpayer uses permitted by the legislation the ways or not prohibited by the legislation of the ways to reduce the amount of tax payments. In that case, these taxpayers break not the law and, therefore, they are not offenders; tax sanctions in the form of additional taxation or fines to them may not be applied.

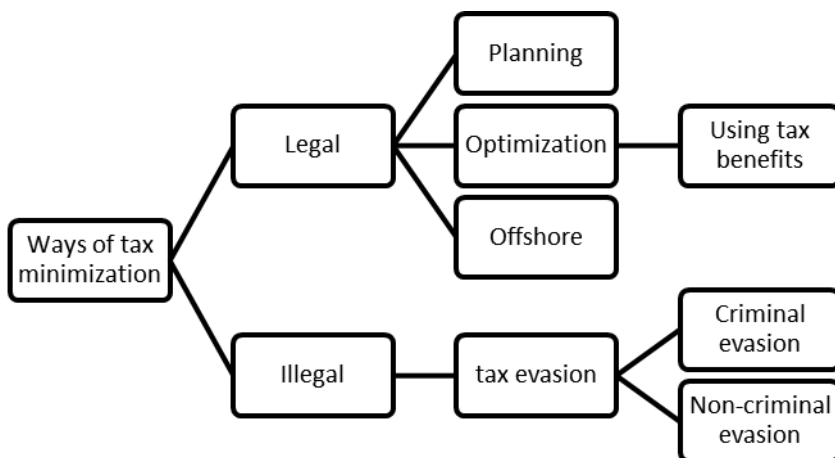
Tax optimization includes a set of methods and tools that ensure the most effective use of financial resources of business entities. According to doctors of Economics, O. Papaika, tax optimization should be based on the following principles:

- only legal optimization- when optimizing of the taxation it is necessary to use not only the contradictions of the current legislation;
- caution - the optimization should rely on the use of logical flaws in the legislation, rather than creating artificial schemes of tax understatement;
- sequence – selection of tools for tax planning should shape optimization scheme inherent in a particular company that follows its typical business transactions compliance;
- moderation - get the maximum benefits with losses;
- effectiveness - costs of the implemented optimization scheme shall not exceed the amount of the minuent taxes.

3 METHODS OF TAX MINIMIZATION

Considering the above there are two main ways of tax minimization: legal and illegal (see Figure 2).

Figure 2. Main ways of tax minimization



Source: Papaika, O. *Směry minimalizace zdanění jako prostředek optimalizace finančních zdrojů podniků* (Папаїка О. Напрямки мінімізації оподаткування як засіб оптимізації фінансових ресурсів підприємств). Dostupné in: <http://archive.nbuv.gov.ua/portal/>

Legitimate ways to minimize, with the legal point of view, does not imply a violation of the legitimate interests of the budget. However, tax evasion is a reduction of tax liability, where the taxpayer deliberately evades or inadvertently reduces the size of their tax obligations in violation of applicable laws.

In this case, reduction of tax liabilities, as well as complete avoidance of tax liability is represented as a realization of the taxpayer of tax offences, namely, violation of tax laws. The main difference between tax evasion from tax optimization is the way of taxpayer to reduces his tax liability.

4 CRIMINAL LIABILITY FOR TAX EVASION

Illegal tax cuts - avoidance causes negative consequences for the economy of the state, and the country as a whole. In this case, the state budget receives less funds, and therefore he has to limit its spending. This results in the suspension of certain government programs, non-payment of wages in the public sector and so on. In addition, tax evasion can have serious economic consequences as a violation of the laws of competition. The two similar companies that produce the same products, will be on the market occupy a different position, if one of them evade taxes.

It should be noted that in Ukraine exist the risk of criminal prosecution (or at least of a criminal case), and not only for those who evade taxes, but is actually for each in the event of a dispute with the tax authorities may be fined by a significant amount. Art.212 of the Criminal Code of Ukraine provides for the evasion of taxes and duties (mandatory payments):

- Part 1, Art. 212 of the Criminal Code of Ukraine provides criminal penalties for willful evasion of taxes, unless appropriate actions have resulted to an increased deficit of the state budget and other state funds in significant amount;
- Part 2, Art. 212 of the Criminal Code of Ukraine stipulates liability for the same act, if committed by a group of persons upon their prior conspiracy, or unless appropriate actions have led to an increased deficit of the state budget or other state funds in a large scales;
- Part 3, Art. 212 Criminal Code of Ukraine provides for liability for acts provided for by paragraph 1 or 2 of this Article, if committed

by a person previously convicted of tax evasion, or if they have led to an increased deficit of the state budget in a large scale;

- According part 4, Art. 212 Criminal Code of Ukraine, person who, for the first time has committed acts listed in the first and second parts of article 212, is exempted from criminal liability, if that person until the moment attract criminal liability paid the taxes, charges (obligatory payments), as well as if that person compensated the damage caused to the state of their untimely payment (financial sanctions, penalties).
- Definitions: "in the significant amount", "in the large scale" and "especially large size" are quantitative indicators, their application is carried out in accordance with of the Notes to Criminal Code of Ukraine:
 - "the significant amount" - amount of taxes, duties and other mandatory payments which a thousand or more times exceed the established by the legislation the non-taxable minimum incomes of citizens;
 - "the large amount" - amount of taxes, duties and other mandatory payments, which in three thousand and more times exceed the established by the legislation the non-taxable minimum incomes of citizens;
 - "especially large sizes" - amount of taxes, duties and other mandatory payments, which in five thousand and more times exceed the established by the legislation the non-taxable minimum incomes of citizens;

In turn, the concept of non-taxable income is determined in paragraph 5 of subsection 1 of section XX "Transitional Provisions" of the Tax Code of Ukraine, it reads as follows:

"If the provisions of other laws contain links to non-taxable minimum incomes of citizens, for the purposes of their application an amount of 17 USD is used, besides administrative rules and criminal law regarding definition of crimes or offenses for which the non-taxable amount is set at the tax benefits, defined by subsection 169.1.1 of paragraph 169.1 of Article 169 of section IV of the Code for the applicable year".

So, with Tax Code of Ukraine application for the purpose of defining actions under Art. 212 of the Criminal Code the size of social benefit must be used.

In turn, the Article 169 of the Tax Code of Ukraine sets the social benefit "in an amount equal to 100 % of the minimum subsistence level for able-bodied person (per month), established by law as of January 1 of the tax year - for every taxpayer."

However, the Final Provisions of the Tax Code of Ukraine are different. Thus, in accordance with paragraph 1 of the Final Provisions of the Tax Code of Ukraine Article 169 will take effect only from 1 January 2015. Up to this point, including as of today, "tax benefits provided in an amount equal to 50 percent of the cost of living for the working people (per month), established by law as of January 1 of the tax year - for any the taxpayer. "

Based on the above, to address the issue of criminal proceedings taking place after the entry into force of the Tax Code of Ukraine, we are more likely to follow a conservative approach and consider 50%, rather than those 100%. Of the subsistence wage for the working person as a social benefit.

Thus, summarizing the above, in 2012 non-taxable minimum income for the purposes of the application of the criminal law is defined as 50% of the minimum subsistence level for able-bodied persons.

By the way, earlier legislation was oriented by the minimum wage. Therefore, for periods prior to the entry into force of the Tax Code of Ukraine, the corresponding calculations were performed on the base of minimum wage.

An important point that, in accordance with Art. 212 Criminal Code of Ukraine liability for willful tax evasion committed by a company is applied only when these acts have led to an actual shortfall in the budgets of state funds or funds. This shortfall can take place only because of taxes, which are to be payable. This recognition comes only as a result of the so-called approval procedures, that means in most common cases only after the Court of Appeal decision on the merits of the tax dispute, if the appeal was carried out by the taxpayer properly in the established deadlines. That is only the case when extra income tax liabilities are matched, and there may be grounds for criminal prosecution.

5 SUMMARY

Summing up the above, we can conclude that in Ukraine minimizing taxes is divided into two parts: minimization, which complies with the law and violates the law. Tax minimization affects the economy and the state position, because of shortfall of funds in the budgets of different levels, the state would be unable to perform its basic functions (economic, social, environmental, defense, etc.). If it consider minimization from point of view the taxpayer, it becomes clear that all his actions are directed to reduce the tax burden, which in turn would increase his income.

6 REFERENCES

Афонська Т. Які кроки по «законній мінімізації» податків сьогодні ще можуть вважатися допустимими? Dostupné in: www.audit-as.ru.

Говоров П. Налоговое планирование: аргументы за и против. Юридическая практика, 2007, №21, с. 2–3.

Дегтяр І.М., Гончарова Л.І. Мінімізація: легальне зменшення податків чи ухилення від оподаткування? Актуальні проблеми економіки, №7(109), 2010.

Папаїка О. Напрямки мінімізації оподаткування як засіб оптимізації фінансових ресурсів підприємств. Dostupné in <http://archive.nbuv.gov.ua/portal/>

RAYMOND R. N., CLIFFORD M. HICKS. Income Tax influences on Legal Forms Organizations for small Business L. 1990, p. 45.

ŠPIRKO, Š., KŘUPKA, J. (2008) Základy technickej kybernetiky. Liptovský Mikuláš: Akademia Ozbrojených síl generála M. R. Štefánika, ISBN 978-80-8040-375-7.

SCHNEIDER G, PERRY J, (2002) Electronic commerce. Course Technology-ITP, Cambridge.

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