

People Advisory Services News

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Conception of implementation of the main recommendations of counteracting BEPS practices in Ukraine – consequences for individuals

As we informed you in our recent issue of EY Tax & Legal News, on 5 May 2016 the working group for the elaboration of draft legislation aimed at counteracting base erosion and profit shifting (BEPS) held its first meeting to discuss a draft conception of implementation of the main BEPS recommendations in Ukraine, developed by the Parliament's Committee on the Tax and Customs Policy together with the other experts and specialists (hereinafter – the Conception)

We will briefly analyze the recommendations on the implementation of the BEPS Plan in Ukraine, having direct effect on individuals, below.

- ▶ Treatment of a foreign company as controlled and setting the rules for taxation of the profits of such a company

It is suggested to treat foreign companies as controlled by the residents of Ukraine (hereinafter – CFC), if an individual-resident:

- ▶ owns over 20% of shares of a foreign legal entity, or
- ▶ owns over 10% of shares of a foreign legal entity provided that more than 50% of shares of such entity are owned by other Ukrainian residents, or
- ▶ de facto controls a foreign entity.

If the companies are treated as CFC, Ukrainian residents will be obliged to declare their shares in (control over) the foreign companies via compilation and filing of a CFC report, as well as pay taxes in Ukraine on such companies' profits.

If a company is treated as a CFC, its profit should be included into the total annual taxable income of the Ukrainian tax resident.

If there is evidence of control over a separate CFC by several residents, such individuals should estimate the shares of the CFC's profits at their discretion and disclose them in their personal reports. At the same time, if such individuals fail to estimate their shares in the company's profit, tax authorities may impute the profit to any of them or to distribute it proportionally to the number of the participants. The Conception calls for the establishment of significant financial sanctions for failure to declare shares in / control over the CFC.

As the same time, the Conception suggests elaborating the rules for avoidance of double taxation of profits distributed by the CFC to the Ukrainian residents and even for the possibility of application of the lower tax rate if profits are effectively distributed to Ukraine.

The CFC rules are planned to be rolled in several phases, which should enable the residents to become familiar with their content and get prepared to their application in full.

As such, for the 2016 tax year, the CFC reports are suggested to be filed in a test mode in order to assemble the data base (without the obligation to pay tax), and for the 2017 tax year - tax liability arises only if the resident owns more than 50% of the share of the company's capital and the amount of CFC's income exceeds USD 5 million. Full application of the rules is planned for the 2018 tax year.

▶ Currency amnesty

As a reminder, currently Ukrainian residents for currency control purposes may invest abroad only if they possess a licence from the National Bank of Ukraine. As of today, sanctions for violation of this rule constitute 100% of the cost of the assets, acquired with a violation of the investment rules.

To stimulate reporting of shares in / control over the CFC by the tax residents of Ukraine, it is suggested to relieve them from the sanctions for violation of rules for investments abroad and,

generally, to liberalize the currency control system.

▶ Joining the automatic tax information sharing framework

The Conception envisages that Ukraine accedes to the international system of exchange of information on financial accounts, which will allow the Ukrainian tax authorities to receive information on Ukrainian residents' accounts' status and transfers abroad.

To this end, Ukraine should accomplish a number of steps, including passage of national laws implementing automatic disclosure of the actual owners of the accounts opened in Ukrainian banks to the State fiscal service of Ukraine, signing of the international agreements on automatic sharing of tax information (in particular, signing the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information of 29 October 2014 adopted through the OECD), obtaining consent from each state on commencement of such exchange, as well as implementation of technical standards for data transfer.

▶ Personnel mobility

Some of the steps on the BEPS implementation in Ukraine will oblige companies and business owners to monitor activities of their employees more carefully and account for them more thoroughly.

In particular, the Conception sets forth a stricter approach towards listing the activities, which may lead to Permanent Establishment's (PE) creation.

As of now, if an individual negotiates a contract (but does not directly conclude it) and such activity does not cause the PE, in future this may lead to the creation of a PE.

Besides this, it is expected to limit the scope of activities conducted in favour of a non-resident, which does not lead to PE, solely to preparatory and auxiliary activities.

In the context of changes to the transfer pricing legislation as per the BEPS Plan, companies should place more focus on structuring of international assignments and corresponding settlements within a group.



The BEPS program also envisages the detailed reporting – filing of a group masterfile and CbC report in Ukraine. The CbC reports inter alia should contain information on the number of employees, evidently, including those engaged under civil services contracts, which will

encourage companies to carefully monitor the intra-group labor force distribution.

If you have any questions about this newsletter or would like to discuss your personal situation and how the new rules will affect you, please give us a call or send us an email and we will gladly consider your questions online.



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