



International
Fiscal
Association

Implementation of BEPS Action Plan in Ukraine

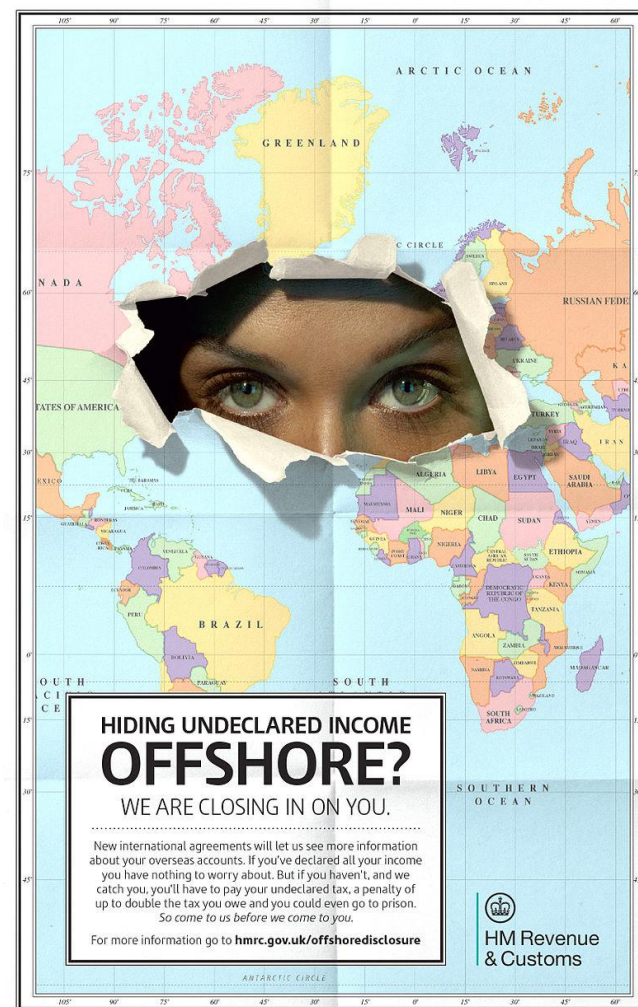


ARMENIAN STATE
UNIVERSITY OF
ECONOMICS

Roman Blazhko,
Head of Tax Practice of
Alekseev, Boyarchukov and Partners
Law Firm
(Kyiv, Ukraine)

Contents

- I. The Story of 2016
- II. The Story of 2017
- III. Action 5 on harmful tax practices
- IV. Action 6 on treaty abuse
- V. Action 13 on country-by-country reporting
- VI. Action 14 on dispute resolution mechanisms
- VII. Automatic exchange of information



I. The Story of 2016



I. The Story of 2016



3 April 2016 - the first news stories published

8 April 2016 – Petro Poroshenko confessed to using an offshore company, but for placing his confectionary business into blind trust, rather than for tax avoidance purposes

28 April 2016 – Presidential Degree No 180/2016 on Counteracting Base Erosion and Profit Shifting:

- Working Group Headed by Nina Yuzhanina (the Head of the Parliamentary Committee on Tax and Customs Policy)
- Development of BEPS (deoffshorization) Bill by 10 June 2016



I. The Story of 2016

What has been done?

- Concept of BEPS reform of 4 May 2016
- BEPS Bill developed by the Working Group ???????
- Several alternative BEPS Bills registered by the Parliamentary opposition (failed to be considered by the Parliament)



I. The Story of 2016



Nine Directions of the Working Group (Concept)

- 1) Controlled Foreign Corporation
- 2) Place of Control Rules
- 3) New deductibility limitations on financial payments to related parties
- 4) Preventing DTT abuses
- 5) Preventing artificial avoidance of PE status
- 6) Strengthening TP rules (country-by-country reporting and master file)
- 7) Automatic exchange of tax information
- 8) VAT rules about e-commerce
- 9) Liberalizing currency control

II. The Story of 2017



Since 1 January 2017 Ukraine is a member of the Inclusive Framework on BEPS

Ukraine committed itself to implement the minimum standards of BEPS Package:

- Action 5 on harmful tax practices
- Action 6 on treaty abuse
- Action 13 on country-by-country reporting
- Action 14 on dispute resolution mechanisms

II. The Story of 2017



- 15 May 2017 - the Ministry of Finance of Ukraine published a roadmap on the implementation of the minimum standards of BEPS Package
- May 2017 - the CFC Bill was registered in the Parliament
- 2017 - No mentioning of ambitious Nine Directions Concept developed by the Working Group

III. Act. 5 - harmful tax practices

Preferential tax regimes being used for artificial profit shifting, such as IP regimes, headquarters regimes, holding companies regimes, distribution centre regimes



Tools:

- Substantial activity requirement
- Nexus approach (a taxpayer can benefit for an IP regime only to the extent the taxpayer itself incurred qualifying R&D expenditure)

III. Act. 5 - harmful tax practices

The state of affairs in Ukraine:

- IP regime (5% corporate tax) repealed as from 2015
- Preferential regime for agricultural producers (fixed tax related to the acreage of land)
- Preferential regime for small businesses (unified tax)

Progress:

- Filing a questionnaire with the Forum on Harmful Tax Practices (done)
- Analysis of the questionnaire by the the Forum on Harmful Tax Practices (2017-2018)

III. Act. 5 - harmful tax practices

Tax rulings, such as
crossborder advance pricing
agreements, other TP rulings,
rulings on PE and preferential
regimes



Tools:

- Spontaneous exchange of information on rulings

III. Act. 5 - harmful tax practices



The state of affairs in Ukraine:

- Tax rulings in the form of tax consultation available
- No tax privileges provided by tax rulings
- Advance pricing agreements available

Progress:

- Filing a questionnaire with the Forum on Harmful Tax Practices (2018)
- Analysis of the questionnaire by the the Forum on Harmful Tax Practices (2019)

IV. Act. 6 - treaty abuse

**Granting treaty benefits
in inappropriate
circumstances**



Tools:

- Limitation on benefit + principal purpose test
- LOB alone
- LOB supplemented by a mechanism dealing with conduit financing

IV. Act. 6 - treaty abuse

Principal Purpose Test:

*“a benefit under the Covered Tax Agreement shall not be granted in respect of an item of income or capital if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was **one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit**, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of the Covered Tax Agreement”*

Limitation on benefit:

- Benefits are provided to “qualified persons” (individuals, state and local authorities, non-profit organization, stock exchange listed entities, at least 50% of shareholding belong to residents of the contracting jurisdiction)

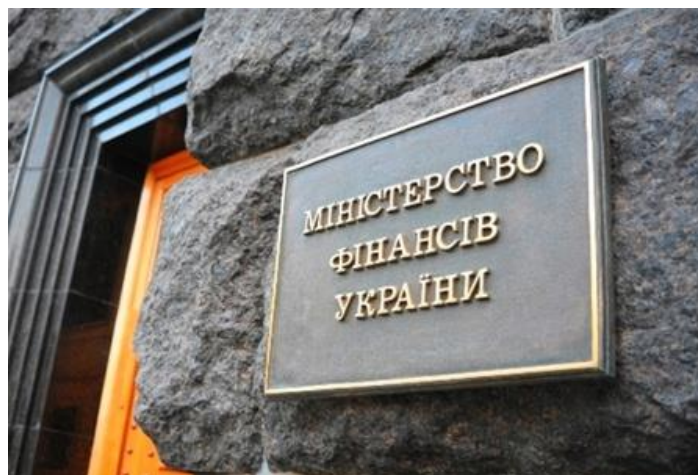
IV. Act. 6 - treaty abuse

- Ukraine is not a signatory to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI)
- September 2017 - The Minister of Finance of Ukraine declared the intention to join the MLI convention by the end of 2017



V. Act. 13 - country-by-country reporting

- Introduction country-by-country reporting
- Master file and local file are not required within the scope of the minimum standards
- The Ministry of Finance of Ukraine Bill "On Amendments to the Tax Code of Ukraine regarding Control of Transfer Pricing in Order to Implement the Plan to Combat the Base Erosion and Profit Shifting (BEPS)" sets out the introduction of country-by-country reporting



VI. Act. 14 - dispute resolution mechanisms



A set of measures aimed at the effective administration of mutual agreement procedure:

- Amending DTTs
- Publishing rules and guidelines
- Providing statistics to Forum on Tax Administration MAP
- Publishing MAP profiles on a shared platform, etc

VI. Act. 14 - dispute resolution mechanisms



A set of measures aimed at the effective administration of mutual agreement procedure:

- Amending DTTs
- Publishing rules and guidelines
- Providing statistics to Forum on Tax Administration MAP
- Publishing MAP profiles on a shared platform, etc

VII. Automatic exchange of information



- 2009 - Ukraine acceded to the Convention on Mutual Administrative Assistance in Tax Matters
- 2013 - Ukraine became a member of the Global Forum on Transparency and Exchange of Information for Tax Purposes
- 2014 - US and Ukraine has reached an “agreement in substance” on a Model 1 intergovernmental agreement (IGA) - FATCA
- 7 February 2017 - Ukraine signed FATCA IGA (Model 1B)

VII. Automatic exchange of information

ASUE

SPECIALIZATION • EXPERIENCE • OPPORTUNITY

ARMENIAN STATE
UNIVERSITY OF
ECONOMICS



VII. Automatic exchange of Information



- As of October 2017 - Ukraine has not signed the Multilateral Competent Authority Agreement (MCAA) enabling the automatic exchange of information in accordance with the Standard for Automatic Exchange of Financial Information in Tax Matters (common reporting standard)
- As of September 2017 - the Minister of Finance of Ukraine announced the launch of automatic exchange since 2020



- law offices -
**ALEKSEEV, BOYARCHUKOV
& PARTNERS**

ASUE

SPECIALIZATION • EXPERIENCE • OPPORTUNITY

ARMENIAN STATE
UNIVERSITY OF
ECONOMICS



Thanks for attention!

Roman Blazhko

Blazhko@abp.kiev.ua