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TAX PLANNING: ASPECTS OF APPLICATION OF THE PROVISIONS OF THE INTERNATIONAL CODE OF ETHICS FOR PROFESSIONAL ACCOUNTANTS

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Abstract: Recently, tax planning issues have become particularly important. First of all, this is due to the increased frequency of events related to tax evasion or significant underestimation of tax amounts, reflected in published journalistic investigations (Panama Papers, Paradise Papers, etc.). Variations in minimizing the tax burden may be different: from transactions between different countries to transfer pricing schemes. In this case, situations arise, primarily of an ethical nature for professional accountants when providing tax planning services for client enterprises or employer enterprises. This article is devoted to the analysis of the provisions of the International Code of Ethics for Professional Accountants in terms of tax planning and the development of proposals for its improvement. The author classifies tax planning into three categories: from standard to aggressive planning, while providing definitions and characteristics of each of these types. It should be noted that in tax planning, the correct application of the concept of a reliable basis plays an important role, but the International Code of Ethics does not provide a definition of such a concept. In turn, the author, analyzing this issue, formulates a definition of a reliable basis.

Keywords: tax planning, tax consultant, code of ethics, professional accountant.

JEL Classification: M41

1 Introduction

In the context of globalization and digitalization of the world economy, investment migration, and the growth of offshore zones, various options for tax evasion arise. In this regard, recently the attention of the world community has been riveted to events related to tax evasion or significant understatement.

This was facilitated by journalistic investigations that uncovered a number of schemes, these investigations were called the "Paradise Papers" and "Pandora Papers" (Pandora, Pandora Papers: A simple guide to the). For example: an investigation into tax evasion (the so-called "Paradise Papers" - a large package of materials) was conducted by the International Consortium of Investigative Journalists and published by such media organizations as the BBC, The Guardian, etc.

The investigation presented information from the registers of two offshore service providers and 19 offshore companies, about their assets, investments and tax evasion schemes. (The Paradise papers)

Also released were the Panama Papers, which are financial documents from the law firm Mossack Fonseca, which advised a wide range of businesses and individuals on setting up offshore companies to achieve desired tax results.

Thus, questions were raised about the ethical implications for the professional behavior of accountants involved in developing tax minimization strategies, which may also be legitimate.

As a result of these events, the Organization for Economic Cooperation and Development (OECD), in partnership with the G20, launched a project to analyze the erosion of the tax base and profit shifting (BEPS). At the same time, the goal of the project was to ensure uniform international tax rules that would not facilitate the movement of corporate profits beyond the place of actual

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economic activity of the enterprise and the creation of the cost of the product. (Base erosion and profit shifting (BEPS))

The World Federation of Stock Exchanges has included tax transparency as an "important environmental, social and governance indicator" for the reporting of listed companies.

In this regard, the reaction of the International Ethics Standards Board for Accountants (IESBA) followed, which developed a strategy and work plan for 2019-2023, and in September 2019 formed a working group to:

examining the regulatory framework, practices, and other developments in corporate and individual tax planning; and

to identify and analyze the ethical implications of providing tax planning services and to determine the need to complete the International Code of Ethics.

In September 2021, the working group submitted its final report and recommendations to the International Ethics Standards Board for Accountants (IESBA). Based on this report and related recommendations, the Council (IESBA) has launched a project to create standards in the field of tax planning.

As a result, at its meeting in December 2023, the Council (IESBA) approved amendments to the Code concerning tax planning and related services. (Final Pronouncement - Revisions to the Code Addressing Tax Planning and)

It should be recalled that the International Code of Ethics for Professional Accountants (including International Standards of Independence) consists of 3 parts: (International Code of Ethics for Professional Accountants)

Part 1 "Complying with the Code, fundamental principles and conceptual framework";

Part 2 "Professional accountants in business";

Part 3 "Professional accountants in public practice" and

International Independence Standards (Parts 4A and 4B):

Part 4A "Independence for audit and review engagements",

Part 4 B "Independence for assurance engagements other than audit and review engagements".

At the same time, the provisions of part one, which reflect the fundamental ethical principles, should be applied by all accountants.

Part 2 "Professional Accountants in Business" and its provisions apply to accountants who work as employees in various sectors of the economy: trade, manufacturing, services, the public sector, non-profit organizations, as well as regulatory professional organizations. Also, the second part is mandatory for accountants who provide specialized services to enterprises on the basis of a civil contract.

Part 3, "Professional accountants in public practice," is used by professional accountants (auditors) when they provide relevant services to clients.

It should be noted that the relevant sections 2 and 3 of the International Code of Ethics for Professional Accountants (including International Standards of Independence) have been supplemented with sections 280 and 380 on tax planning and ethical principles of accountants in the provision of such services. The effective date of these sections is June 30, 2025.

It should be emphasized that each country has its own tax legislation, with its own rules, benefits, and exemptions, international norms should also be taken into account, and we can talk about the harmonization of European legislation, for example, in terms of value added tax.

In this regard, the International Code of Ethics for Professional Accountants (including International Standards of Independence) sets out general ethical requirements that must be met when providing tax planning services.

It is a single guideline for all professional accountants, as well as tax professionals, who are strongly encouraged to use these standards to ensure that the public interest is respected, as

well as potential reputational, commercial and economic consequences for their clients or employers.

2 Analysis of the provisions of the International Code of Ethics for Professional Accountants in terms of tax planning

When analyzing the provisions of the International Code of Ethics for Professional Accountants (including International Independent Standards), it should be noted that there are certain limitations and difficulties in implementing the provisions of this code, which are as follows:

Specifying the definition of tax planning services, which include a wide range of services or activities aimed at helping a client structure his business in a tax-efficient manner. At the same time, the concept of "aggressive tax planning" should be defined. It is necessary to distinguish between whether the concluded transaction was structured in the most efficient way from the point of view of taxation or whether it is aimed at tax evasion for the main or sole purpose. the goal.

At the same time, questions arise regarding tax evasion or other non-compliance with tax laws and regulations. It should be noted that the International Code of Ethics for Professional Accountants does not even address these issues, as they are illegal.

In this case, the provisions of the Standard on Responding to Non-Compliance with Laws and Regulations (NOCLAR) apply. However, public concern has recently increased significantly about the role of tax consultants in helping individuals and corporations evade taxes, as well as the use of sophisticated strategies by multinational companies to minimize their taxes.

Public distrust of professional tax consultants has increased to such a level that in some major jurisdictions, such as the EU, the adoption of legislation regulating tax consulting and the activities of tax consultants is being considered;

In addition to tax planning services, the consultant may also provide related services, which include preparing tax returns and protecting the client's interests in tax matters in court. In principle, such services do not relate to tax planning, but when performing them, the requirements of the International Code of Ethics must be met;

Tax planning services may be provided by specialists who are not required to comply with the requirements of the International Code of Ethics, and therefore, the corresponding restrictions and prohibitions will not apply to them as professional accountants, which may lead to unfair competition;

It should be noted that many jurisdictions have their own national legislation on preventing tax evasion, for example: on transfer pricing. In this regard, the question arises about the application of national legislation and the provisions of the International Code of Ethics in terms of tax planning. It should be noted that the provisions of the International Code of Ethics do not replace national legislation;

An important point is the role of a professional accountant and his activities in the public interest. It is necessary to consider the role of a professional accountant in terms of consultations in a comprehensive manner, taking into account the responsibilities of clients, management and those responsible for corporate governance.

First of all, it concerns the disclosure of information about tax planning in financial statements or a supplement to them. In this regard, the Public Interest Oversight Board (PIOB) has asked the International Ethics Standards Board for Accountants to consider appropriately disclosing information about tax-related matters in financial statements or other relevant public documents, in accordance with applicable reporting requirements;

The responsibilities of professional accountants should also be taken into account. When accepting an engagement, an accountant should obtain an understanding of the nature of the engagement, knowledge of the client enterprise, its owners, management and its business

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activities; the objectives, factors and circumstances of the agreement, and the relevant laws and regulations.

However, in situations where there is uncertainty in the interpretation of tax legislation, or different interpretations thereof, it may be necessary to provide information to the professional accountant on how to proceed.

At the same time, the Code establishes that a professional accountant can provide reasonable advice only when there are reliable grounds in legislation and regulations, then there is a reliable basis. However, the concept of a reliable basis in laws and regulations will vary depending on the jurisdiction. However, it would be inappropriate to assign a probabilistic numerical indicator to the threshold value of a reliable basis, since this would create a false sense of accuracy.

However, there are situations, so-called grey areas of uncertainty, as to whether a proposed scheme will comply with tax laws and regulations. For example, a tax strategy that is considered correct each year may be found to be incorrect after a number of years.

The International Ethics Standards Board for Accountants has reviewed the ethical basis for applying a conceptual framework to assist associates in navigating grey areas and other tax planning circumstances. In doing so, the following issues should be taken into account: the types of threats that may be created by associates carrying out tax planning activities or providing tax planning services, factors that are relevant to assessing the level of such threats, and examples of actions that may eliminate such threats or may serve as safeguards to eliminate such threats.

An example of an ethical hazard would be where a government retains a tax advisor to assist in drafting tax legislation designed to reduce tax evasion, and the advisor subsequently advises clients on tax strategies to avoid being subject to the legislation. This would create a self-interest threat for the tax advisor when he or she is offered a significant fee;

An important point to pay attention to is the disagreement between the tax consultant and the client's management. For example: in circumstances where the tax consultant has reason to believe that there is no reliable legal basis for applying this scheme, and the client does not agree with the consultant's assessment, the consultant should inform the client about its results and possible consequences;

A tax consultant may also consider seeking expert advice. If the experts' recommendations are consistent with the assessment of the tax consultant, then, analyzing the situation, he must decide whether to retain the client or terminate cooperation and relations with the client if the client has not changed his position. This includes considering whether to terminate the contract and professional relationships;

However, in cases where a client or employing organisation is engaged in illegal activity, the tax advisor will consider reporting these activities to the appropriate authority and consider the need to resolve the situation with the client or the employment relationship;

It should be noted that issues relating to documentation arise in the process of providing tax advice. It is mandatory to document the transfer pricing agreement, discussions with the client or responsible parties in the employing organization, as well as the analysis, judgments and decisions in terms of tax planning.

It is considered that the requirement to document will ensure that all relevant facts and circumstances are reflected and provide a basis for responding to inquiries, for example, from the tax authorities.

However, documentation is a matter of quality and risk management, not ethics. Based on this, documentation of tax advice should be encouraged, but not a requirement from an ethical standpoint. However, some jurisdictions may decide at the legislative level on this need. For example, in the UK, the Professional Conduct in Taxation (PCRT) standard requires members of UK professional accountancy bodies to document in a timely manner the rationale for their professional judgments.

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Or, in Australia, the Accounting Professional and Ethical Standards Board (APESB) issued APES 220 Tax Services, which requires its members to prepare documentation for tax services;

The next important point of tax consulting (planning) is the relevant service (product) or tax planning agreement developed by a third party. However, it is necessary to ensure that the third party (supplier) has the appropriate experience. At the same time, even if a third party develops tax planning regulations, no one removes responsibility from the tax consultant. At the same time, the consultant may receive a commission from a third party.

Practices regarding referral fees vary from jurisdiction to jurisdiction. In the codes of conduct of some jurisdictions, for example, in the United States, government consultant assistants are expected to disclose to clients information about any referral fees as an important measure to protect against threats to the assistants' objectivity.

At the same time, the International Code of Ethics establishes that regardless of whether a client applies to a tax consultant for advice or an agreement is developed by a third party and the consultant recommends or directs the client to a third-party supplier, the consultant must inform the client about any professional or business relationship he has with a third-party supplier;

An important point remains the question of the tax benefit received in several jurisdictions. For example: a client or an employing organization may receive a tax benefit from the same transaction in more than one jurisdiction.

In this case, although it would not be illegal for a client or an employing organization to receive the same tax benefit twice in two different jurisdictions, there is a public interest argument that a tax consultant should recommend that the client or employing organization disclose to the relevant tax authorities the specific facts and circumstances, as well as the tax benefits resulting from the transaction in different jurisdictions;

Another issue that should be analyzed concerns the applicability of the provisions of the International Code of Ethics to sustainable development professionals. The International Code of Ethics is global in nature because it has been adopted or is in use in more than 130 jurisdictions. The International Ethics Standards Board for Accountants (IESBA) believes that the Code can serve as a basis for ethical obligations for others who perform the same professional activities as professional accountants.

By publishing sections 280 and 380 on tax planning, the International Ethics Standards Board for Accountants (IESBA) aims to inspire other standard-setters and practitioners who are not professional accountants to raise the bar for ethical behavior in relation to transfer pricing and tax planning.

3 Conclusion

Analyzing the provisions of the International Code of Ethics, it can be stated that:

It is necessary to introduce a classification of types of tax planning. When discussing the provisions of the International Code of Ethics, the question was raised that aggressive tax planning should be defined in the International Code of Ethics. For example: there was a proposal to narrow down the proposed description of "tax planning" and go beyond aggressive tax minimization.

It was believed that the proposed description could inadvertently create burdensome requirements and the proposed description could include any "tax-efficient" transfer pricing agreements aimed at providing economic benefits, primarily for the client. This proposal was not accepted, however, according to the author, a classification of tax planning and appropriate definitions should be given. We propose the following classification:

- *standard tax planning,*
- *tax planning - alternative,*
- *aggressive tax planning.*

Standard tax planning involves the development of strategies, tactics, and tax schemes that fully comply with the provisions of tax legislation, using the benefits and deferrals of tax payments

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provided by tax legislation, or an appropriate official response has been received from the competent authorities regarding tax planning.

Tax planning - alternative, this type is planning when there are different interpretations of tax legislation and a professional accountant assumes responsibility for interpreting the provisions of tax legislation, in conditions where there is significant uncertainty about changing the provisions of tax legislation or the interpretation of the provisions of tax legislation.

Aggressive tax planning is a type of planning that is on the verge of avoiding taxation, due to different interpretations of tax legislation or a number of other reasons.

It should also be noted that there is a need for greater transparency in financial reporting in terms of tax planning. In this regard, it is necessary to properly disclose information on tax-related and tax planning issues in financial statements or other relevant public documents, in accordance with applicable reporting requirements.

An important point is the fact that in tax planning it is necessary to take into account that the basis for making decisions is reliable. The International Code of Ethics does not provide such a definition, but in the author's opinion such a definition is necessary. It should be taken into account that the definition of a reliable basis in laws and regulations will differ depending on the jurisdiction.

When discussing this issue, there was also a proposal to establish a probabilistic numerical indicator for the threshold value of a reliable basis. In our opinion, since the economies of different countries are not equivalent in their development, establishing any specific numerical indicator would not be entirely correct, taking into account the different capabilities of the economies of different countries. In the author's opinion, the definition of a reliable basis is as follows: a reliable basis is a reasonable confidence in the interpretation of the provisions of tax legislation, which serves as a basis for the implementation of correct tax planning.

Another point that should be taken into account in tax planning is the so-called gray area, which is the problem of uncertainty as potentially leading to threats in circumstances related to tax planning.

In this situation, it is difficult to give a specific definition of the gray area, since the tax legislation of different countries varies, and the definition of the gray area requires specification.

An important point is the fact that at present the provisions of the International Code of Ethics are applied by professional accountants, but there are many tax consultants who do not fall under the need to comply with the provisions of the International Code of Ethics, in this regard, unfair competition occurs when professional accountants are obliged to comply with the requirements of the code of ethics, while other consultants are not.

This can be done either by introducing into the International Code of Ethics requirements for compliance with ethical standards in tax planning for tax consultants who are not professional accountants, or by issuing a separate Code for tax consultants.

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