Tax Circle Dossier: Dr. Zimbabwe

By April 2020, the Anti-BEPS Law (the “Law”) would be formally approved by the Parliament of Ukraine, and its legislative procedure would be complete. The Law is the most noteworthy development in Ukraine’s tax legislation over the past 5 years. Its main purpose will be to improve tax administration, prevent and combat tax evasion, and increase tax revenues. This Client Alert presents the provisions of the Anti-BEPS Law and their implications on taxpayers’ activities and operations.

**Relevant changes**

The Anti-BEPS Law will impose new obligations on businesses. Business owners should be aware of these new requirements and consider the measures to address them.

**Actions to consider**

- Assess the personal income tax (PIT) risks if you carry on business in Ukraine;
- Review the current model of attribution and taxation of profits, if you have a PE in Ukraine;
- Assess the personal income tax (PIT) risks, if you act through a dependent agent or have individual contractors working in Ukraine;
- Assess the PE risks, if you act through a dependent agent or have individual contractors working in Ukraine;
- Review the current tax model for non-residents that carry on business in Ukraine;
- Assess the risk of being subject to a CFC regime.

**Key provisions**

- **Controlled foreign company (CFC) regime:** Effective 1 January 2021, the CFC Rules introduce taxation of income of controlled foreign companies (CFCs) in Ukraine. A CFC is defined as a company, other than a subsidiary, which is owned directly or indirectly by Ukrainian tax residents. The CFC Rules will significantly expand the scope of entities to be taxed as CFCs. Tax residents may be required to file a tax return for each CFC they own. These requirements may result in the non-resident being fined for UAH 100,000 (c. USD 4,100).
- **Penalties:** Effective from the date following the official publication of the Anti-BEPS Law, failure to register a PE in Ukraine will result in a UAH 2,102,000 - c. USD 84,000 fine.
- **Transfer pricing:** The Anti-BEPS Law will introduce a three-tier approach to the transfer-pricing documentation. This will require an increased amount of documentation. Businesses will be responsible for, e.g., tax officers’ toolkit.
- **Country-by-country report (CbCR):** Business will be in a position to request a Master file only for the financial year ending in 2021.
- **Mutual Agreement Procedure (MAP):** Ukraine will be able to enter into a MAP only after the Anti-BEPS Law is formally approved by the Parliament of Ukraine.

Effective from 1 January 2020, the Anti-BEPS Law introduces new sanctions for those who do not comply with the requirements of the Anti-BEPS Law. For example, an individual who has not filed a CbC report will be fined UAH 1000 - c. USD 41. The Anti-BEPS Law will also increase the amount of tax penalties for those who have not filed a CbC report. For example, a taxpayer who has not filed a CbC report for 2020 will be fined UAH 50,000 (c. USD 2,050).

In particular, the recipient of an income would not be qualified as the beneficial owner but rather as an agent, nominee or intermediary with respect to the income when:

- The recipient is an agent of the entity that makes the payment, and the entity makes the payment to the agent to distribute the payment to the beneficial owner;
- The recipient is a nominee or intermediary under a trust agreement or other arrangement or transaction.

Effective from 1 January 2020, the Anti-BEPS Law will introduce a new tax on capital gains arising from the sale of real estate in Ukraine. The tax will apply to non-resident investors who sell real estate located in Ukraine for more than twice the purchase price. The tax will be applied to the difference between the sale price and the purchase price, with the rate of 15%.

**Summary**

The Anti-BEPS Law will significantly affect Ukraine’s tax system. Businesses should be aware of the new requirements and consider the measures to address them. The new tax on capital gains arising from the sale of real estate in Ukraine will also affect non-resident investors who sell real estate located in Ukraine. Businesses should be prepared for the new tax regime and review their tax planning strategies.