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Global tax

Financier Worldwide canvasses the opinions of leading professionals around the world on the latest trends in global tax.





Ukraine ■

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Slava Vlasov is a recognised tax professional in Ukraine, known for his proactive lead of initiatives and projects, and for making the tax environment in Ukraine more transparent and business friendly.

He leads a team of more than 130 tax advisers and lawyers. Of his 25 years of experience, both in business and in the consulting profession, he has devoted the last 12 to PwC in Ukraine. For almost a decade, he has also been co-chair of the tax committee at the American Chamber of Commerce.

■ **Q. Could you outline what you consider to be the key developments relating to tax regulations that you have seen in Ukraine over the last 12-18 months?**

VLASOV: The point is that the key developments are still ‘under construction’, and have not been finalised yet. What unites them is the goal of introducing the best international practices in Ukraine, which can be divided into four main categories. First, the struggle against aggressive cross-border tax planning. Here we talk about base erosion and profit shifting (BEPS) and its specifics, such as taxation of controlled foreign companies, revision of permanent establishment rules and mandatory principal purpose tests. Second, transparency. In December 2019, the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI) came into force in Ukraine and the automatic exchange of information is expected soon. Third, transfer pricing (TP). Control is tightening and more detailed documentation is required. Finally, government authorities are fighting against VAT fraud. These are just the key points related to international taxation. Comprehensive tax reform in Ukraine is expected by the end of 2020.



■ **Q. What factors are driving the political agenda on tax-related decisions? Does there seem to be a motivation to get tougher on tax enforcement, for example?**

VLASOV: In addition to following best practices, there is just one reason for authorities to tighten control on those who use aggressive tax planning. The explanation is quite simple: Ukraine has a budget deficit, so the state tax service is driven by a strong need to fill this gap. But on the other hand, the government is announcing its intention to create an investor-friendly environment to increase foreign capital inflow. As a result, we have a mixture of friendly gestures toward investors and a struggle with a lack of funds in the state treasury. On the other hand, the coronavirus outbreak will have an impact. Businesses must operate under tight quarantine conditions, and this is where the state must offer a helping hand. There are already some temporary measures in place for small and medium-sized enterprises (SMEs) but unfortunately they are unlikely to be enough.

■ **Q. To what extent is transfer pricing a key challenge for multinational enterprises? Are too many companies**

underestimating the importance of compliance and risk management in this area?

VLASOV: TP is underrated by business but not by authorities. Tax officials regard this field as a strategic source of money for the state budget. TP rules were introduced in Ukraine in 2013 and, since then, tax authorities have assessed over \$203m of additional tax as a result of TP audits. Businesses should keep in mind that tax inspectors are now better educated and have expertise in TP. Tightening regulations will require more analytical work and documentation from businesses, so being compliant becomes more difficult. At the same time, it is cheaper than endless court disputes. Structural reforms in the Ukrainian judicial systems have not been completed yet. That is a real issue, as Ukraine currently lacks judges and disputes can last for years. This is why we recommend that businesses invest time and resources into TP compliance in order to avoid problems in the future.

■ **Q. How would you describe the tax laws in Ukraine as they relate to foreign entities? Has there been an effort to**



tighten laws and crack down on issues such as offshore tax jurisdictions?

VLASOV: Regulations for foreign entities are based on the Organisation for Economic Co-operation and Development (OECD) legal framework and are familiar to multinational companies. As Ukraine is quite slow in changing its legislation, many of those rules are already in force globally, and some of them are even out-of-date. For instance, the world is discussing BEPS Version 2, while Ukraine is only introducing BEPS Version 1. Digital economy taxation is common for developed countries but still unknown in Ukraine. Regulations look the same, but the question is how they work in practice. Ukrainian authorities are slow to understand new rules. I strongly recommend that businesses carefully monitor developments, as an unexpected implementation is quite possible. And, of course, do not hesitate to ask for professional assistance.

■ Q. Have you seen an increase in tax disputes in Ukraine? What lessons can companies learn from their outcome?

VLASOV: Over the last few years, the number of tax disputes has increased due to judicial system reform. As a result, court disputes are lengthy. However, your chances of winning are

quite high if you are well-prepared. The key lesson companies should learn is to prepare. As tax authorities require more information, each business transaction must be reliably documented, which ensures a strong argument in court. Another lesson to be learned is that companies must also devote enough time and effort to pre-trial settlement. Sometimes it is worth inviting a professional lawyer who is experienced in pre-trial dispute resolution and mediation to be confident about the results. This allows the business to save time and money.

■ Q. If a company does find itself the subject of a tax-related audit, investigation or enquiry, what steps should it take to manage its relationship with tax authorities?

VLASOV: I would recommend the company take the following steps to avoid possible problems. First, undertake a compliance review covering topical tax issues for a certain industry. Second, screen all business partners, both local and international, to prevent VAT disputes. Third, 'vaccinate' against endless TP audits by signing an advance pricing agreement (APA) with tax authorities. Fourth, benefit from the mutual agreement procedure (MAP) in which foreign tax authorities help a company to resolve its dispute with its local tax service. Fifth, remember that pre-trial dispute resolution has been proved



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to be effective. Sixth, do not underestimate the importance of tax advice. Finally, consider obtaining the status of an authorised economic operator to reduce customs risks.

■ **Q. What general advice would you give to companies on effective tax planning? How important is it to create tax-efficient structures and improve internal functions and processes across the organisation?**

VLASOV: Companies must consider two important things: transparency and substance over form. In this regard, I would recommend that they strengthen their in-house tax compliance function. It is not just additional

costs, but an investment in a manageable future, as litigation is much more expensive. New tax rules are also the reason why companies must review their current structures, and make them simpler and more transparent. Tax experts can help them to do this efficiently. Another point is digitalisation. Electronic document workflow makes the tax administration process faster and more efficient. Finally, I would also advise monitoring constantly changing legislation on taxation in the M&A and corporate restructuring fields. ■

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