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OFFSHORE, AS A WAY TO OPTIMIZE TAX PAYMENTS AND METHOD OF TAX EVASION FROM ORGANIZATIONS AT THE INTERNATIONAL LEVEL

In today's challenging political and economic situation, it is especially necessary to analyze the risks of economic security for the Republic of Kazakhstan. One of the most significant threats to economic security of the state is tax evasion, capital outflow, and asset transfers to offshore companies. Offshore schemes allow companies using them not to pay taxes to the budget, often legally, which causes a lack of revenues to budgets of all levels. This problem is of particular relevance due to the fact that these schemes are used exclusively by large businesses that have the possibility of cross-border movement of capital. International companies use offshore zones both for tax evasion and also for capital outflow from the country. The latter is especially relevant for the Republic of Kazakhstan. For tax evasion offshore schemes are somewhat similar to schemes using one-day firms. The problem of using offshore is a global problem. In developed countries, the scheme for the use of offshore companies is as follows: the parent company is located in the metropolis, and subsidiaries (sometimes called «daughter» companies) and «granddaughter» companies are taken to offshore companies. Through transfer prices, meaning overpricing for resources purchased in offshore companies, as well as work and services, as well as lowering prices for products, works, services that the parent company sells to offshore, all profits are concentrated on offshore companies and thus minimized taxation is achieved.

Key words: offshore, tax, crime, prophylaxy, causes, responsibility, legislation.

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Оффшорлар, салық төлемдерін оңтайландыру тәсілі және халықаралық деңгейде ұйымдардан салық төлеуден жалтару әдісі ретінде

Қазіргі күрделі саяси және экономикалық жағдайда Қазақстан Республикасы үшін экономикалық қауіпсіздік тәуекелдерін әсіресе талдау қажет. Мемлекет үшін экономикалық қауіпсіздіктің ең маңызды қатерлерінің бірі – салық салудан кету, капиталды сыртқа шығару, сондай-ақ активтерді оффшорлық компанияларға аудару. Оффшорлық схемалар оларды пайдаланатын компанияларға жиі заңды негізде бюджетке салық төлемеуге мүмкіндік береді, бұл барлық деңгейдегі бюджеттерге түсетін түсімдердің жетіспеушілігін тудырады. Осы мәселе схемаларды капиталдың трансшекаралық қозғалысы мүмкіндігі бар ірі бизнес қана пайдаланатындықтан ерекше өзектілікке ие болады. Халықаралық компаниялар оффшорлық аймақтарды салық салудан кету үшін де, сондай-ақ елден капиталды сыртқа шығару үшін де пайдаланады. Соңғысы Қазақстан Республикасы үшін аса өзекті. Салық салудан кету үшін оффшорлық схемалар бір күндік фирмаларды қолдану схемасына ұқсайды. Оффшорларды пайдалану мәселесі әлемдік деңгейдегі мәселе болып табылады. Дамыған елдерде оффшорларды пайдалану схемасы келесідей: бас компания метрополитенде, ал оффшорларда еншілес және «немерелі» компаниялар шығарылады. Трансферттік бағалар арқылы, яғни оффшорлық компанияларда сатып алынатын ресурстарға, сондай-ақ жұмыстар мен қызметтерге бағаның

артуы, сондай-ақ бас компания оффшорларда сататын өнімге, жұмыстарға, қызметтерге бағаның төмендеуі оффшорлық компанияларда барлық пайда шоғырланады және осылайша салық салуды барынша азайтуға қол жеткізіледі.

Түйін сөздер: оффшор, салық, қылмыс, алдын алу, себептер, жауапкершілік, заңнама.

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Оффшоры как способ оптимизации налоговых платежей и метод уклонения от уплаты налогов с организаций на международном уровне

В современной непростой политической и экономической ситуации особенно необходимо анализировать риски экономической безопасности для Республики Казахстан. Одна из самых существенных угроз экономической безопасности для государства – это уход от налогообложения, вывоз капитала, а также переводы активов на оффшорные компании. Оффшорные схемы позволяют компаниям, их использующим, не платить налоги в бюджет, часто на законных основаниях, что вызывает недостаток поступлений в бюджеты всех уровней. Особую актуальность эта проблема получает из-за того, что данными схемами пользуется исключительно крупный бизнес, имеющий возможности трансграничного движения капитала. Международные компании используют оффшорные зоны как для ухода от налогообложения, также и для вывода капитала из страны. Последнее особенно актуально для Республики Казахстан. Для ухода от налогообложения оффшорные схемы чем-то напоминают схемы с использованием фирм-однодневок. Проблема использования оффшоров является мировой проблемой. В развитых странах схема использования оффшоров выглядит следующим образом: материнская компания находится в метрополии, а в оффшоры выводятся дочерние и «внучатые» компании. Через трансфертные цены, т.е. завышение цен на закупаемые в оффшорных компаниях ресурсы, а также работы и услуги, а также занижение цен на продукцию, работы, услуги, которые материнская компания продает в оффшоры, вся прибыль концентрируется на оффшорных компаниях и таким образом достигается минимизация налогообложения.

Ключевые слова: оффшор, налог, преступление, профилактика, причины, ответственность, законодательство.

Introduction

The capital outflow both in the direct and figurative sense de-energizes the state, deprives it of the financial resources necessary for the modernization of the economy and the development of human capital. One of the reasons for the rapid decline of the national currency that we were witnessing lately is also the capital outflow. Transferring assets to offshore jurisdictions, as well as transferring the management of national organizations to offshore companies, creates one of the most significant threats to economic security, such as losing control over the most significant enterprises and organizations for the national economy. (Волотовская, 2014; Maurer, 2003).

And the Republic of Kazakhstan is not an exception, as it also faced the problem of tax evasion through offshore companies.

Offshores are traditionally considered to be countries, as well as individual districts in some countries that represent preferential tax treat-

ment, and in some cases, the absence of taxation at all.

Also, some offshore zones provide confidentiality of information in regards to business transactions, cash flow, property of foreign companies, and sometimes even provide for the anonymity of company owners.

Methodology of research

The methodological basis of this study consists of general scientific methods such as: dialectic and deductive methods, systematic approach and analysis, methods of epistemology, formal logic, and social management.

In addition, special research methods were used in the work: comparative legal and statistical methods, including detailed analysis of the existing practice of developed countries with a reorientation of the main conclusions to the legal system of the Republic of Kazakhstan, as well as concrete sociological and formal legal methods.

Discussion

This problem has been studied both by the specialists of the Republic of Kazakhstan and by foreign civilists, whose works are devoted to double taxation and issues of evading them, including through offshore companies. Among such authors we can mention: Chretien M.A., Knechtle A., Rivier J.-M., Tixier G., Nagy K., Faminsky I., Chernyavsky S. P., Savin V.A. and others. (Chretien, 1955; Knechtle, 1979; Rivier, 1983; Tixier, 1985; Nagy, 1977; Фаминский, 2000; Чернявский, 2000; Савин, 1996).

Conclusions described in the works of these authors were useful both in the improvement of international mechanisms for the prophylaxy and prevention of tax evasion through offshore companies, and in further studies of various aspects of these legal relationships.

At present, legal basis for regulating the mechanisms of prophylaxy and prevention of tax evasion through offshore companies, above all, include Constitution of the Republic of Kazakhstan (Конституция, 1995), Criminal Code of the Republic of Kazakhstan (Уголовный кодекс, 2014), Criminal Procedural Code of the Republic of Kazakhstan (Уголовно-процессуальный кодекс, 2014), Law of the Republic of Kazakhstan dated August 28, 2009 «On Countering the Legalization (Laundering) of Illegally Gained Income and the Financing of Terrorism» (Закон, 2009) and etc., as well as International treaties and agreements, ratified by the Republic of Kazakhstan according to established order.

There is no single list of global offshore companies. Most often, the following countries are referred to offshore: The Bahamas, Virgin Islands, Guernsey Islands, Jersey, Maine, Cayman Islands, Seychelles, Andorra, Gibraltar, Monaco and etc. For example, in the USA there are Wyoming and Delaware states that perform the functions of offshore zones. As part of the European Union, the following countries that have signs of offshore are often identified, these are Andorra, Ireland, Liechtenstein, Luxembourg, Monaco, Malta, the Netherlands (Приказ, 2010).

Offshore zones differ from each other in the benefits that they provide to non-resident companies. For example, the Cayman Islands, Jersey and the Isle of Man, and others are distinguished by symbolic taxes and business confidentiality. The legislation of these countries allows the registration of companies for anonymous founders. Some other offshore zones provide simply preferential tax treatment. (EFF Analysis, 2001; Stephan, 2000, Harry 2000).

Company in the country with ordinary jurisdiction minimizes its profits by lowering the revenue

from selling products, works, services of an offshore company or overstating the costs associated with the acquisition of goods, works, services and the associated offshore company. Thus, all profits are concentrated in the company registered in jurisdiction with preferential taxation (or generally free of taxes).

In fact, the outflow of capital is an absolutely natural process inherent in any, even developed and non-resource economy. For the export of capital, schemes are used to attract foreign investment from companies located in offshore jurisdictions that are directly or indirectly associated with the company – the bias. It can be both investments in authorized capital and loans. (Мануков, 2012; Van Fossen, 2002; Sikka, 2005).

If there are a lot of such situations, the threat of economic loss can be indicated as the threats to the security of the Republic of Kazakhstan. There are negative consequences for the economies of countries which companies use offshore schemes to a significant extent. It is the non-receipt of revenues to the budgets of all levels and the capital outflow. For Kazakhstan, the second is particularly relevant. For quite a long time, enterprises and organizations in the Republic of Kazakhstan received significant loans abroad, including offshore jurisdictions. This was due to lower interest rates of loans provided by foreign banks compared to Kazakhstan.

Currently, we are witnessing the collapse of the national currency, and one of the reasons for such decline is the return of foreign loans by organizations. At the same time, the possibility of obtaining new loans is currently significantly limited due to the imposed sanctions against one of our partners in the EAEU – the Russian Federation (Forbes).

Thus, we see how economic realities were used for political purposes. If the capital outflow is added, associated with various schemes of its outflow to offshore jurisdictions, in addition to lending, for example, the fictitious acquisition of shares of foreign companies, we will get quite threatening picture.

Also a significant risk for the Republic of Kazakhstan is the transfer of assets to offshore companies. The techniques of such transfer may be different and will be discussed below, but it should be noted that there is a significant risk increase for the economic security of the country in connection with such operations. This threat is characteristic primarily for Kazakhstan, since here the owner traditionally has a fear of losing this asset. One of the risk options for transferring assets to an offshore company is transferring the management of organizations to offshore.

The combination of these two operations creates the risk that the country could lose both assets and

the ability to control its economy. There is a possibility of increasing the value of imports to reduce company profits. Or it may decrease the announced price for goods with high customs duties (Байрачный, 2001). When importing goods to the country through an offshore, the price is usually underestimated to minimize the amount of customs duties and VAT paid; in addition, the customs value must be taken into account, since too low price will lead to an increase in income taxes, and too high – customs payments (Владимирова, 2005). In each case, you can pick up the price at which the total amount of payments to the state will be minimal. It should also be noted that the amount of income tax can be reduced by transferring payment for services to firms paying single tax, or transferred to simplified tax system.

For example: 1) importing company purchases equipment from its own offshore company at an already inflated price (it is to reduce the income tax – increase in the amount of tax deductions); 2) Offshore company lowers the price of the goods, the importing company buys it to save on customs duties when importing goods (Гончаров, 2001). Moreover, as A.Goncharov is supported and other scientists continue to argue, they note that it is important to balance these two ways when importing. (Грузенкин, 2002; Ерицяян, 2003).

Until now, the so-called «Panama papers case» is of particular relevance, the informal name of the leak of confidential documents of the Panamanian law firm Mossack Fonseca, which the media in 2012 called the industry leader in the country. The documents were received by the German newspaper Süddeutsche Zeitung in 2015 from an anonymous source. During the year, group of international journalists under the auspices of the American non-profit organization International Consortium of Investigative Journalism (ICIJ) studied the documents. The publication of the results of the investigation took place on April 3, 2016. The ICIJ refused to publish in open access both the archive itself and copies of documents from it. The results of the research documents cover the period from 1977 to 2018. The main theme of the published results was the disclosure of the presence of hidden property of politicians and related conflicts of interest, including those with the citizenship of the Republic of Kazakhstan and operating on the territory of Kazakhstan (ICIJ).

In modern schemes, several offshore companies are involved, wherein companies located in respectable countries ensuring the legitimacy of these operations, are screens, or they are sometimes called companies – gaskets between Kazakhstani organi-

zations and classical offshore companies. (Хейфец, 2013, p.37; Хейфец, 2009, p.53).

The scheme of using the offshore economy of Kazakhstan is different. In the Republic of Kazakhstan, there are mainly registered subsidiaries («daughters») and «granddaughters» of the parent company located in the offshore zone. And through equity schemes, loans and borrowings, there is an capital outflow and assets are transferred to the parent company.

Naturally, Kazakh companies use the same offshore companies to minimize taxation, but the main problem and the main risks of economic security is control over the assets of companies and the capital outflow. In connection with the latest political events, it is also necessary to take into account the risks of seizing assets from Kazakh companies.

Recently one more way of capital outflow was covered in the press – the acquisition of foreign securities. The organization acquires foreign securities, the rights to which are registered in European depositories. Access to information about these securities is often difficult, the depositories do not disclose full information on them. Thus, there is a reason to believe that there really are no securities, but simply the illegal capital outflow from the country. (Тайбекулы, 2015).

The accounting of companies using offshore schemes can often be considered falsified. Of course, a number of operations related to the transfer of profits to offshore companies, as well as the capital outflow, falsify financial statements. There are a number of fictitious business transactions discussed above, which are made solely for the purpose of minimizing taxes or capital export.

Accordingly, these transactions in accordance with the current civil legislation of the Republic of Kazakhstan can be considered fake. And the financial statements prepared on the basis of accounting records on fake transactions, is falsified. Another thing is that in this case one will have to deal with not international, but an international court. And to recognize such deals as fake will be very, very difficult, if possible at all.

Nevertheless, a large number of transactions with subsidiaries and «granddaughter» companies located on the territory of the country are made on completely legal grounds. Since the management of such company is located in the offshore zone, it is from there that the low prices for export deliveries and the inflated prices for goods imported from affiliated companies, work services, and operations related to the transfer of assets to foreign organizations are dictated. But these transactions are dictated not by economic expediency, but by the desire to minimize

taxes and outflow assets and capital to offshore. Thus, the problem exists and it is very difficult to solve it.

Creating offshore zone on the territory of the Republic of Kazakhstan will have positive impact on the economy of our country. The existence of offshore zones and their use by our companies, increase the competitiveness of organizations, allows to receive more foreign investment, diversify investments, and also allows to ease the burden of taxation. Also, considering the risk of losing assets and controlling capital, the use of offshore companies can help to reduce the risks of expropriation for investors and better ensure the exercise of property rights, which helps to stimulate economic activity in the country, which also meets the national interests of the country. (Мазоренко)

This point of view was considered by Kazakhstani legislators when adopting the Law of the Republic of Kazakhstan dated August 28, 2009 «On Countering the Legalization (Laundering) of Illegally Gained Income and the Financing of Terrorism» (Закон, 2009), which establishes a list of states that are offshore zones for the purposes of the Law of the Republic of Kazakhstan on countering the legalization (laundering) of illegally gained income and the financing of terrorism.

Results

Thus, it can be concluded that the parent company registered in offshore has more opportunities to

enter financial markets and has more access to external financing, since it accumulates the profits of all its subsidiaries and «granddaughters». Even, perhaps, in the presence of positive moments, the risks associated with the use of offshore companies are so great that they simply cannot be ignored.

Offshore status of the company implies the exclusion from the taxation in the country of its registration both on the principle of residence and on the principle of territoriality. For this purposes, the following restrictions are imposed: the company must belong to non-residents of the state of registration and carry out all its activities outside its territory. Subject to the specified conditions, offshore company gets the right to enjoy tax and administrative privileges.

Since in recent years such forms of doing business as a trust and holding have been widely adopted, it is proposed to introduce a new concept that is broader than the term «offshore company» – «offshore business tool» that includes not only legal entities but all legal and organizational forms available in offshore jurisdictions.

The evolution of the offshore business can be divided into four stages – the birth, growth, stabilization and recession. A distinctive feature of the modern period (recession stage) is the formation of international anti-offshore regulation, which led to a reduction in the number of offshore zones and decrease in the rate of registration of offshore companies.

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