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FINANCIAL MONITORING. TRANSPARENCY AND NEW BUSINESS PRINCIPLES: THE CHALLENGES OF MODERN FINANCIAL WORLD

Aleksey V. ALEKSANDROV

Candidate of Science in Economics, MBA, Deputy Chairman of the Board, Head of Private Banking UkrSibbank BNP Paribas Group

Nikolay A. ZUBAREV

MBA, Head of Investment Business Legal Support Division in Legal Department of UkrSibbank BNP Paribas Group

Summary. The article analyzes the meaning and principles of operation of Financial Monitoring of Ukraine. Challenges of the modern world are in the fight against laundering of proceeds from crime (money laundering), terrorist financing and tax evasion. Activity in this area involves the principles

of banking secrecy, but in many ways the lack of understanding of the rules and principles of work distorts the real picture in the eyes of customers. The article describes the main control parameters and trends of the modern world financial monitoring.

Key words: *financial monitoring, banking secrecy, control of banking operations, the Organization of Economic Cooperation and Development (OECD), FATF, Foreign Account Tax Compliance Act (FATCA), the tax legislation, money laundering, Non-Cooperative Countries or Territories (NCCT), Tax Justice Network.*

Challenges of the modern world, realization that problems of the world economy, impacted by the global financial crisis, have not been eliminated, and growing pressure of social problems, causes consolidation in financial flows control by governments of the countries with developed or growing economics. The above control is aimed at tax evasion and legalization of criminal funds prevention.

One of the most important issues that world community faces is financial flows control and legalization of criminal funds prevention.

Principles of Bank work with clients involve such a delicate characteristic as banking secrecy. Existing myths and stereotypes concerning the safety of information do not always allow a bank consultant to build a trusting relationship with the customer, which in turn makes it impossible to provide the client with a comprehensive service aimed at long-term strategy, do not allow use of complex financial instruments, and finally have a negative impact on the confidence of the customer to the banking system as a whole. However, a certain isolation of Ukraine and as a consequence of the Ukrainian banking system from the main processes taking place within the EU, the U.S., countries with the developed economies (OECD) does not allow the local client to see the seriousness of modern and systematic transformations

in the world. This aspect is the subject of constant fears of customers both individuals and legal persons served by financial institutions.

The Intergovernmental Organization that develops financial measures to overcome criminal funds laundering (FATF (Financial Action Task Force)) has been created in order to coordinate the activities of States in the fight against terrorism and legalization of criminal funds.

The FATF was established in 1989 by the decision of the "Big Seven" and is a major international institution involved in the development and implementation of international standards in the fight against terrorism and criminal funds laundering. FATF includes 34 countries and two international organizations as its members, 20 organizations and two countries as its observers.

Ukraine's path within the organization is not smooth: the country was included in the black list twice. The first time Ukraine was included in the list of countries not cooperating in criminal funds laundering (NCCT – Non-Cooperative Countries or Territories) from 20 December 2002 to 14 February 2003. In 2010 Ukraine was in the "black list" again as jurisdiction with strategic deficiencies of national system AML/CFT (anti-money laundering and financing of terrorism), in early 2011 it was derived

from it. Both situations have served as a catalyst for their most significant changes in the Ukrainian legislation.

In 2012, FATF, in response to the new threats posed by illegal financing, as well as to address the priority tasks of G. Twenty, reconsidered its recommendations.

New list of predicate offenses used for money laundering has been expanded and now includes, among other things, tax crimes.

In practice, this means that the entire arsenal of financial monitoring, used by States to prevent terrorism, can be used both to identify operations on tax evasion and to prevent transactions with income earned as a result of tax evasion.

Earlier, in 2010, to improve the ability of fiscal authorities to track optimization schemes, the model convention of the Organization for Economic Cooperation and Development (OECD) included amendments on taxes to tightened disclosure provisions. Since then, more than 600 agreements on information exchange have been signed, which among other things significantly restricted banking secrecy. One of the most powerful moments was to provide information to the authorities of EU countries by British offshore on all holders of offshore bank accounts.

In 2010, the U.S. passed a law on fiscal discipline (FATCA-Foreign Account Tax Compliance Act), relating to the use of foreign accounts. According to this law, payments made to foreign financial institutions in 2014 will be subject to 30 % tax in the case of refusal to provide information about the account holders – U.S. citizens. Foreign financial institutions are required to enter into agreements with the U.S. Internal Revenue Service to transfer her data on U.S. account holders.

One of the breakthrough moments are the principles that have been adopted on the basis of the work of 39 summit of G8 (held in Lough Erne, Northern Ireland, UK), and which in turn are actively promoted by countries of the Organization for Economic Cooperation and Development.

The final declaration of the summit in seven of the ten points is directly devoted to the fight against tax evasion. And although the declaration is merely a set of world leaders wishes, its appearance will have far-reaching implications for global finance and for the owners of large private capital.

To cover Minimization scheme, the new G8 Declaration stipulates the introduction of the principle of tax collection at source of income. That is why it is necessary to install separate taxation of corporate income in the country (as well as control over the in-

ternal flow of funds). This will prevent widely used tradition to carry the costs of business in a high tax jurisdiction, and profits – to offshore.

Among the priorities named by the leaders of G8, is automatic exchange of information between fiscal authorities around the world, which should make it impossible to tax evasion.

It is obvious that Ukraine does not remain out of these processes, and this is connected with another Ukrainian customers fear associated with banking secrecy and its safety aspects. Fear of the actions of the State Service for Financial Monitoring of Ukraine (SCFM). This state agency was formed in 2003 in order to monitor and legalization of criminal funds prevention.

Task of above service of Ukraine, as a subject of public monitoring, is the collection, processing and analysis of information on financial transactions subject to compulsory financial monitoring. Furthermore SCFM provides implementation of state policy in the field of legalization of criminal funds prevention. In the area of SCFM control and responsibility is work of state information system, the exchange of information received from the competent authorities of foreign states and international organizations.

Taking into consideration the fact that law provides the use of the information received by SCFM for the purpose of tax evasion and legalization of criminal funds prevention and terrorism financing prevention, no one can guarantee 100 % safety of this information. Actually there is no any clear instruction aimed at customer understanding the structure of information flows (i.e. which authorities have the right to use the information, how they get their data, to which organs the access is denied, etc.).

Ignorance always leads to the desire to avoid such a risk. Partly for that reason financial planning so popular in the West makes on progress in Ukraine: client is simply not ready to open information to banking specialist, possibilities to interpret laws and laws frequent changes do not inspire confidence in the future. For owners of large private capital confidentiality requirements are often the highest priority. As a consequence, the issue of financial monitoring is closely linked to the principle of conservation of bank secrecy.

SCFM is the supervisory body, but it doesn't include punishing functions. Its main task: to collect and process information about "suspicious" transactions and transmit them by the competent authorities. Daily employees SCFM receive several thousands of messages on the financial transactions that fall under the category of "need to be checked".

Possible reaction is suspending of financial transactions and preparing generalized data for the period of suspension of the transaction (depending on the situation from three to seven days) to law enforcement agencies, authorized to take a decision in accordance with the criminal procedure legislation.

Obviously, the risks of “banking secrecy” non-compliance in this case are very large. But it should be noted that similar rules exist in the entire civilized

world. These rules, as already stipulated in this article, improved, unified and overlooked become the principles of international use. We should expect that Ukraine will follow these trends.

In the area of risk we will find the clients of financial institutions that get accustomed to the rhythm of business-life known as “wild capitalism”, i.e. to legal nihilism, corruption and other diseases of the period of primitive accumulation of capital.

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