Оптимизация налогов транснациональных корпораций: реализация и критика

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Аннотация

В современном мире не существует единого международного налогового кодекса, регулирующего налогообложение деятельности транснациональных корпораций. Особенно это важно в настоящее время, когда роль, которую играют транснациональные корпорации в экономической и политической жизни государств, постоянно усиливается. В статье представлен обзор основных методов налоговой оптимизации, важность их применения для компаний, а также их принципиальное отличие от уклонения от налогов и критика со стороны общества. Были проанализированы практические примеры оптимизации налогов крупнейших транснациональных корпораций. На основе полученных результатов исследования были сделаны выводы о необходимости создания международно-правового регулирования деятельности транснациональных корпораций.

Ключевые слова: транснациональные корпорации, налоговое регулирование, оптимизация налогов, уклонение от налогов, корпоративная социальная ответственность

Tax optimization of transnational corporations: implementation and criticism

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Annotation

In today's world, there is no single international tax code that regulates the taxation of transnational corporations. This is of particular importance now, when the role, which transnational corporations play in the economic and political life of states, is constantly increasing. The article provides an overview of the main methods of tax optimization, their application to companies, as well as their fundamental difference from tax evasion and criticism from the public. Practical examples of tax optimization of the largest transnational corporations were analyzed. Based on the results of the study, conclusions were drawn on the need to create international legal regulation of the activities of transnational corporations.

Keywords: transnational corporations, tax regulation, tax optimization, tax evasion, corporate social responsibility.

The role of transnational corporations in the world economy has grown significantly over the past decades. Thus, TNCs contribute to the development of the investment environment and influence the political, financial, economic and social processes in the host country. Taxes are one of the most significant expenditures of a company, that is why, companies face great pressure to optimize their tax policies and reduce their tax liabilities as much as possible. Determining the tax conditions for transnational corporations has a special place in the financial policy of a corporation. This is due to the fact that TNCs operate in different tax systems. The tax systems of the countries where the structural divisions of these corporations are located and the country of nationality of the parent company differ in many respects. The methods of optimization of tax payments in the home country and host countries affect the economic efficiency of operations of a transnational corporation. Consequently, the tax policy and tax planning of TNCs consist of the distribution of the tax burden between the country of origin, host countries and specific "tax havens".

Tax optimization is a completely legal and lawful practice of avoiding corporate tax payments not their evasion. Tax avoidance (tax optimization) is defined by the Financial Times as "using the tax law to obtain a tax advantage that the government never intended". In other words, tax avoidance complies with law, but it goes against the idea of what legislators intended. On the other hand, tax evasion is the "practice of using illegal methods to avoid paying tax". The difference between the two terms related to tax policy is obvious. One problem is that sometimes what is called ‘tax avoidance’ in fact lies in a grey area between avoidance and evasion.

Nevertheless, nowadays tax optimization is sometimes considered to be unethical because paying taxes in the countries where a transnational corporation operates is part of its corporate social responsibility. Companies which optimize their tax payments by using legal loopholes and overseas tax havens might be at a risk of harming their reputation. In the eyes of society these companies refuse to pay necessary funds which would have contributed to the development of education, healthcare, and infrastructure in the countries in which they operate. Another argument is that without state-funded research, infrastructure, law and order, or banking systems no individual or business would be able to operate successfully and make profits. So, this implies that tax avoiders prosper at the expense of states which they refuse to fairly contribute to. According to ActionAid International developing countries lose around $138 billion each year because of tax optimization schemes performed by transnational corporations [2]. Since 2014, a research provider RepRisk has identified the most serious implementations of tax optimization in three different sectors, with a number of transnational tech companies such as Apple Inc. and Alphebet Inc. at the top of the list [10].

Retail sector is quite frequently associated with tax avoidance. One of the companies operating in this sector is a well-known international fast food restaurant chain McDonald's. As a huge transnational corporation, McDonald's operates restaurants in 120 countries all over the world, which gives the head office plenty of opportunities for tax optimization. For the past 3 years, starting in 2014, McDonald’s has experienced some severe criticism concerning its tax optimization techniques, attracting attention of tax authorities from several states. For instance, in 2015, a resonant report with a speaking name “Unhappy Meal” was published by a coalition of European and American trade unions, calling on the governments all over the world to conduct a research on McDonald’s tax avoidance. As McDonald's mostly operates through franchises, receiving franchise payments as royalties, it has plenty of opportunities for tax avoidance. Because profit, dividend, royalty and other tax rates may vary significantly from country to country even inside the European Union, McDonald’s as a transnational corporation may use different tax optimization techniques.

In 2009, McDonald's restructured its business in Europe. This process was widely reported as “for the purpose of tax optimization” and contains several steps. Firstly, McDonald’s moved its European Headquarters from London, United Kingdom to Geneva, Switzerland for tax purposes. Secondly, an intellectual property holding company, named MCD Europe Franchising Sàrl, was established in Luxembourg right after the change in their tax policy concerning the tax on income received from royalty payments and intellectual property. After this, all royalties that McDonald's received from its franchisees were redirected to MCD Europe Franchising Sàrl in Luxembourg, which has lower interest rate compared to other European countries. These tax optimization strategies were estimated to cost European governments about 1 billion Euro in tax revenues.

McDonald’s states undistributed earnings of 12.6 billion Euro reinvested in operations outside the United States, being therefore tax-deductible. In 2008, this figure was 4.9 billion Euro only, meaning that McDonald’s Corporation has been retaining additional 7.7 billion for the following years, not paying taxes on those earnings. MCD Europe Franchising Sàrl based in Luxemburg, which is a tax-deductible intellectual property entity with low tax rates, has become McDonald’s largest subsidiary in Europe, receiving 3.7 billion Euro in royalties from other branches. However, the reported tax payment of this branch was only 3.3 million Euro, being 0,01% of the income [4].

Therefore, the effective tax rate of MCD Europe Franchising Sàrl was only 1.4%, being low even compared to the Luxembourg’s generous tax rate of 5.8% on royalties and intellectual property earnings. What is more, the “Unhappy Meal” report claims that MCD Europe Franchising Sàrl employs only 13 workers and earned 834 million Euro in revenues in the year 2013, giving on average the unbelievable figure of 64 million Euro per worker [8]. In 2016 the European Commission publically revealed that these numbers are the result of a preferential tax agreement between McDonald's and Luxemburg's tax authorities.

The tax strategy of the world's largest coffee retailer Starbucks has also raised suspicion among European authorities. The company always emphasizes its desire to demonstrate ethical attitude and good corporate social responsibility, however, it has been in negative headlines several times over its tax optimization methods. The US company reported losses in the largest European markets for several years, despite the revenues of hundreds of millions of dollars.

In 2014, when EU bodies launched an official investigation on Starbucks, the head office of its European unit in Amsterdam reported a profit of 407 million Euro ($ 446 million). The company attributed this profit to the received dividends of 502 million Swiss francs ($ 527.8 million) from the Swiss subsidiary [11]. The Swiss division, where, according to official documents, there are fewer than 40 employees, specializes in the purchase of coffee. All raw materials, which operate Starbucks coffee shops around the world, are purchased by the Swiss division of the company. At the same time, coffee itself is never physically delivered through Switzerland, and coffee houses purchase it with a 20% mark-up. This was reported to the British authorities in 2012 by the former chief financial inspector of the company Troy Alsted. Then British officials expressed doubts about the "rationality" of such a mark-up.

Starbucks for a long time insisted that the complex ramified structure of the company in Europe was not specifically created for tax avoidance. According to the management, the head office of the European branch was originally located in Amsterdam because of close ties between the city and the coffee industry. In 2012, there was a boycott in the UK against Starbucks when it was disclosed that the company had used legal loopholes to decrease its UK tax payments to a minimum. In 2014, the company was again faced with criticism following the claims that it had only paid GBP 8.6 million ($ 11.5 million) in UK corporate taxes since 1998 while having incomparably high revenues [9]. After numerous public criticisms, in 2014 the coffee chain relocated its European headquarters from the Netherlands to the United Kingdom. However, tax experts argue that this would not have any considerable impact on its tax bill in the UK: by charging its sister companies high royalties fees, Starbucks had been posting a loss in its Netherland's headquarters since 2010.

The tax advantages in the Netherlands are obvious. An office in Amsterdam paid only 2.6 million Euro of taxes at 407 million Euro of pre-tax profit for 2014. The tax payment of less than 1% of profits was part of the agreement with the Dutch authorities, which attracted the attention of European regulators [6]. The preliminary decision in November 2014 accused the Dutch authorities of letting the company use the unfair methods to decrease its tax liabilities.

According to the EU investigation, the subsidiaries of the company Rain City and Emerald City, in the Netherlands, did not pay taxes at all. Emerald City is owned by a Hong Kong firm that controls the operations of Starbucks in Beijing and North China, as well as the disbanded Alki unit based in London. European regulators were interested in Alki, which registered the rights to all intellectual property of Starbucks for the countries of Europe, Middle East and Africa. Alki received tens of millions of dollars with all network companies in these regions. In a preliminary decision, the European Commission questioned the legality paid by Alki to Starbucks, which did not pay taxes in the Netherlands. It is also unknown whether Alki paid taxes in the UK before its liquidation. So, overall what Starbucks did was pay unjustified inflated price for green coffee beans to Switzerland-based Starbucks Coffee Trading Sàrl and a very substantial royalty to Alki for coffee-roasting know-how (not reflecting its market value), which reduced their before-tax profit and, consequently, tax payments.

At the end of 2015, the EU Commission ordered Starbucks to pay back approximately EUR 30 million in taxes after claiming that the arrangement between the company and the authorities of the Netherlands had artificially reduced the firm’s tax burden. In their statement, the European Commission explained that tax incentives are "absolutely legal phenomenon. However, in this case, which is being investigated, the features of the artificial methodology of calculating profits that are subject to tax incentives were noted. " Investigators of the European Commission found that when calculating profits, domestic prices of companies, so-called transfer prices, that are not relevant to the situation on the market were taken into account instead of market prices for company products.

Probably one of the most infamous companies for its tax avoidance schemes in technology sector is Google. The company itself and its parent Alphabet Inc. have been accused of using various techniques in order to avoid paying international corporate taxes. Numerous European governments, among which there are the UK, Italy and France, have openly criticized the company for transferring profits to the European head-quarters of Google situated in Ireland, where the corporate tax rates are much more favorable than in other countries of Eurozone.

It has not been only European operations of Google that were subject to question and investigations. Truthout, the US-based nonprofit organization, stated in July 2015 that Google only paid 1.4% of its profits to the state budget, whereas the required rate in California is 8.84%, meaning that more than five-sixths of tax payments were avoided. Moreover Australian Taxation Office has the company under audit due to the alleged corporate tax avoidance. Because of the increasing tax avoidance by multinationals, such as Google, Australian government had to implement the Diverted Profits Tax (DPT) and it has already had an impact on the behavior of these companies and prompted them to restructure their tax affairs. The DPT laws apply to TNCs that have global revenue of more than $1 billion, $25 million of which are generated in Australia. Companies that fall under this description will be taxed at a higher rate – 40 percent instead of the normal rate of 30 percent [3]. The DPT came into effect on 1 July 2017 and is expected to tackle the problem of tax avoidance by TNCs and encourage them to provide with sufficient information to the authorized body for timely resolution of tax disputes.

It was however the UK's experience that Australian government followed. In January 2016 UK tax authorities managed to make Google pay 130 million British pounds ($187.5 million) in back taxes for its sales in the UK between 2005 and 2015 after a six-year investigation by Her Majesty's Revenue and Customs (HMRC). Nevertheless, this payment of back taxes was widely criticized as not being enough and disproportionally small. Google declared turnover of over ₤1 billion in the UK, profits of which are taxed according to the British corporate tax law. However the real figures come closer to ₤6 billion in UK sales revenue as is filed in Google's parent company's accounts – Alphabet Inc. [1]. One of the reasons for this discrepancy is that its business in the UK is primarily treated as marketing and development services, while the actual sales from operating activities are booked in Ireland, where the tax rate are significantly lower. This tax avoidance prompted British government to action and as the result a new policy was implemented that included DPT and changes in royalties' taxation. In his budget speech, Philip Hammond, the Chancellor of the Exchequer, said: "Multinational digital businesses pay billions of pounds in royalties to jurisdictions where they are not taxed – and some of these royalties relate to UK sales. So, from April 2019, and in accordance with our international obligations, we will apply income tax to royalties relating to UK sales, when those royalties are paid to a low-tax jurisdiction." The diverted profits tax of 25%, quickly dubbed by media as "Google Tax", was at first perceived to be aimed at a few particular TNCs, such as Google, Amazon, Facebook, etc., that diverted their profits generated in the UK to other countries with a purpose of tax optimization. However since its effective date of 1 April 2015 it has become more apparent that this new and costly tax regime will also catch most companies with operations in tax havens of UK, such as Guernsey and Jersey.

Even though world's leading countries try to scrutinize multinationals' tax arrangements and prevent tax avoidance with new policies and laws, there are still cases of successful tax optimization that prove the legality of such arrangements. One of such example is the recent prosecution of Google by French tax authorities. In February 2016, Alphabet Inc. was ordered to pay €1.6 billion in unpaid taxes and this amount was non-negotiable. French authorities alleged that Google Ireland Limited, the daughter company that is responsible for European operations of Google, had not paid the right amount of corporate taxes from 2005 to 2010. On May 24, 2016, French authorities raided Google's head office in Paris as part of the tax fraud investigation, claiming that the company may have breached its tax obligations to France. However, after a year of litigation the Paris administrative court handed Alphabet a reprieve from a later adjusted €1.1 billion bill for back taxes [12]. The court justified its sentence with the fact that Google Ireland has no permanent establishment in France via the company Google France, also a subsidiary of the US group Google Inc. This also meant that Google Ireland that was legally responsible for operations in France is not a tax resident of this country and is not obliged to declare its income or pay taxes, proving the legality of tax optimization scheme set by Google and other TNCs.

Talking about the other huge multinationals in technology sector that are abusing tax systems of different countries for their benefit, we cannot forget about Amazon.com Inc. We had already mentioned it being one of the targets of British anti-tax avoidance laws and rightfully so. Being the largest internet-based retailer in the US with revenues exceeding $100 billion in 2015, Amazon is constantly criticized for avoiding its tax obligations around the world. In May 2014, Amazon among other multinationals was criticized by the government of German state of Baden-Wurttemberg. Germany is Amazon’s biggest market outside North America as annual reports of the company suggests, generating $11.9 billion in sales revenue. But main German operating unit of Amazon – Amazon.de GmbH – only paid €11.9 million ($16 million) in tax in 2014. This unit manages the German website and deliveries but is funded by payments from the Luxembourg companies. In 2014 this subsidiary stated a profit of just €32 million on which it paid its tax of €11.9 million. The company was accused of exploiting legal loopholes by processing most of its revenues through companies in Luxembourg, where it gains the actual profits and pays significantly less taxes via favorable effective tax rates for intellectual property rights (5.8%) and transfer pricing. Such practices cause German budget to suffer losses of up to €160 billion annually [5].

The European Commission was concerned with this state of affairs and had launched a series of investigation concerning large multinationals in Luxembourg and their tax arrangements with the governments. The so-called “cosmetic” tax arrangements between Amazon and Luxembourg could cost the company hundreds of million euros in back tax penalties. So, on 7 October, 2015, a 23-page report was presented by the Commission concerning the alleged aid to Amazon by way of a tax ruling that took place in 2003. The Commission had its doubts about the legality and compatibility with the internal market of this agreement as of 2015 and initiated the necessary procedure to tackle this problem. In the end of 2017 Amazon was finally ordered to repay €250 million in back taxes due to illegal tax advantages that were provided by Luxembourg all these years, which allowed the company to have three-quarters of profits to go untaxed, decreasing the competitiveness of local rivals [7]. As members of the Commission say that they are still looking into other multinationals’ tax avoidance schemes, such as Apple and Google in Ireland, Starbucks in the Netherlands and Fiat in Luxembourg.

In conclusion, it is clear that for the solution of issues associated with tax regulation of transnational corporations coordinated international actions of several leading countries are needed. It would be useful to unite host countries, develop a unified policy towards TNCs and practical cooperation at the level of legislation, tax and law enforcement agencies. The OECD proposes to force corporations to disclose the breakdown of profits, sales and taxes by countries to the tax authorities; establish strict rules that will block the transfer of high-value intangible assets to tax offshores; tighten the requirements for the opening of foreign branches by transnational corporations; adjust the existing legislation to neutralize the tax advantages TNCs.

Список использованных источников

1. Амброуз С. Изучение панорамы неравенства // ActionAid International. – 2015.
2. Барфорд В., Холт Дж., Google, Amazon, Starbucks: рост «угасания налогов» // BBC News. – 2013.
3. Годовой отчет 2010 Alphabet Inc., Инвестиционная деятельность [Электронный ресурс] – Режим доступа. – https://abc.xyz (дата обращения 28.02.2018).
4. Годовой отчет 2010-2015 McDonald’s Corporation [Электронный ресурс] – Режим доступа. - http://corporate.mcdonalds.com (дата обращения 26.02.2018).
5. Годовой отчет 2010-2015 Starbucks Corporation [Электронный ресурс] – Режим доступа. - https://s22.q4cdn.com (дата обращения 26.02.2018).
6. Европейская комиссия, «Государственная помощь SA.38944 (2014 / C) - Предполагаемая помощь Люксембурга Amazon Inc. в виде налогового решения». – 2014.
7. Европейская комиссия, «Государственная помощь: Комиссия расследует механизмы трансфертного ценообразования по корпоративному налогообложению Apple (Ирландия), Starbucks (Нидерланды) и Fiat Finance and Trade (Люксембург)». – 2014.
8. Кантер Дж., Скотт М. Налоговое соглашение Amazon с Люксембургом может нарушить правила // The New York Times. – 2015.
9. Клиффорд К. Борьба с уклонением от уплаты налогов: сравнительное исследование общих правил борьбы со злоупотреблениями в Европе // General Tributaria. - 2013. – № 14. – С. 15-16.
10. Новый налог на прибыль от налогов в Великобритании // Price Waterhouse Coopers [Электронный ресурс] – Режим доступа. - https://www.pwc.com (дата обращения 28.02.2018).

11. Специальный отчет RepRisk, Оптимизация налогообложения, 2016 г. [Электронный ресурс] – Режим доступа. – https://www.reprisk.com (дата обращения 28.02.2018).

12. EPSU, EFFAT, SEIU и War on Want. Несчастная еда. € 1 миллиард в уклонении от налогов в меню в McDonald's. – 2015.

References

1. Ambrouz S. Izuchenie panoramy neravenstva // ActionAid International, 2015.

2. Barford V., Kholt Dzh., Google, Amazon, Starbucks: rost “ugasaniya nalogov” // BBC News, 2013.

3. Godovoi otchet 2010 Alphabet Inc., Investitsionnaya deyatel'nost' https://abc.xyz

4. Godovoi otchet 2010-2015 McDonald’s Corporation http://corporate.mcdonalds.com

5. Godovoi otchet 2010-2015 Starbucks Corporation https://s22.q4cdn.com

6. Evropeiskaya komissiya, «Gosudarstvennaya pomoshch' SA.38944 (2014 / C) - Predpolagaemaya pomoshch' Lyuksemburga Amazon Inc. v vide nalogovogo resheniya», 2014.

7. Evropeiskaya komissiya, «Gosudarstvennaya pomoshch': Komissiya rassleduet mekhanizmy transfertnogo tsenoobrazovaniya po korporativnomu nalogooblozheniyu Apple (Irlandiya), Starbucks (Niderlandy) i Fiat Finance and Trade (Lyuksemburg)», 2014.

8. Kanter Dzh., Skott M. Nalogovoe soglashenie Amazon s Lyuksemburgom mozhet narushit' pravila // The New York Times, 2015.

9. Klifford K. Bor'ba s ukloneniem ot uplaty nalogov: sravnitel'noe issledovanie obshchikh pravil bor'by so zloupotrebleniyami v Evrope // General Tributaria, 2013, No. 14, pp. 15-16.

10. Novyi nalog na pribyl' ot nalogov v Velikobritanii // Price Waterhouse Coopers https://www.pwc.com

11. Spetsial'nyi otchet RepRisk, Optimizatsiya nalogooblozheniya, 2016 g. https://www.reprisk.com

12. EPSU, EFFAT, SEIU i War on Want. Neschastnaya eda. € 1 milliard v uklonenii ot nalogov v menyu v McDonald's, 2015.