

JEL CLASSIFICATION: G21, E58

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

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Summary. The article analyzes importance and opportunities of bank security in the framework of customer information protection and financial flows. It also investigates world trends that change approaches to the concept and use of bank security

(developed economies, emerging economies). The characteristic of bank security principles in Ukraine is given, typical stereotypes of Ukrainian customers are analyzed

Key words: *High Net Worth Individuals (HNWI), client capital protection, bank secrecy, the Organization of Economic Cooperation and Development (OECD), FATF, tax legislation*

Current financial crisis, its protracted nature makes scientist economic world, political leaders and heads of international financial institutions looking for possible solutions to the challenges.

One of the most effective solutions is the reconsideration of the issues of so-called “financial engineering”: tax planning, optimizing of taxes amounts. If until recently such operations were not considered as a serious crime in a number of jurisdictions worldwide, in the new paradigm of the global economy tax evasion is recognized as one of the main threats. Leaders of Great Eight (G8), Great Twenty (G20), the Organization of Economic Cooperation and Development (OECD) coordinate their actions and intend to implement actively the principles of system control and transparency in business.

In such a situation emerging in the press “obituaries”, dedicated to the “death of bank secrecy” in another country, can not be attributed only to journalists engaging in sensationalism. Obviously, under increasing pressure banking secrecy as last obstacle blocking the private capital from the all-seeing eye of the state, will not be able to survive and remain unchanged.

Banking secrecy – is a legal principle under which banks do not have the right to disclose information about the accounts and transactions of its customers, except under certain conditions (e.g., in the case of criminal offence investigation). Obligation to main-

tain banking secrecy enshrined in the framework of voluntary confidentiality provisions, or more statutory requirements.

But if in the twentieth century banking secrecy was considered as a progressive institution, aimed at protecting the rights of citizens from excessive state intervention in society and found overwhelming support, in the XXI century, the situation has changed dramatically.

At the moment, according to a survey of one of the leading newspapers in Switzerland “Blick”, 56 % of respondents supported abolition of bank secrecy. There can be found a lot of reasons for this change in the society, and this attitude is based on the fact that banking secrecy is mentioned often in the context of scandals involving tax evasion and criminal activities financing. International non-governmental organizations and the governments of developed countries accuse the principle that in the modern world it is one of the main tools of the shadow economy and organized crime.

With regard to the main part of Ukrainian clientele there is the illusion that it will affect Ukraine (and other CIS countries) on some leftover principle. A lot of people do not try to analyze seriously the fundamental changes that occur in the world.

One can find certain sense in such a position, but we must remember FATF prompt and sharp reaction in 2003, when Ukraine was put on the blacklist,

which created significant problems for Ukrainian companies and the state as a whole.

Also, do not forget that Ukraine in 2008 ratified the OECD Convention “On mutual administrative assistance in tax matters”, and the fact that the State Tax Service of Ukraine did not use very active this assistance previously, does not mean that the situation will not change in the nearest future. Ukraine has also signed and ratified the Protocol in May 2010 to the Convention which has entered into force September 1, 2013 and significantly increases the powers of tax authorities to collect and use information, including bank secrecy.

Experts keep indicating that wealthy people must realize that in fact their choice is limited by two possible options: to pay taxes in accordance with the laws of his country, or change their place of residence.

However, banking secrecy and its observance is not only a question of protection or client fair of tax audits. The principle of banking secrecy provides the client, his family, his capital an important component: the protection of personal information from falling into the wrong hands. Based on this principle, the requirements of tax transparency and their strengthening do not mean that banking secrecy has lost its importance.

Quite often the client is concerned about this aspect. There are a lot of reasons, like:

1. dramatically low level of Ukrainians confidence in the state, the financial system, fiscal and law enforcement bodies, to each other;
2. high levels of corruption, lack of transparency of government action;
3. risks of ownership, frequent raider attacks and the like;
4. low legal and financial competence of Ukrainian citizens;
5. institutional system of Ukraine is lacking planned work and unified strategy in the sphere of citizens education, information and information flows including banking secrecy defense;
6. “wild capitalism” of 90s impact.

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All above make the customer to solve actively the problem of his property protection outside Ukraine or use any non-transparent solution in Ukraine.

There is criminal responsibility for violating bank secrecy in Ukraine. Moreover, the Criminal Code contains two different basis of criminal responsibility – collecting or illegal use of the bank secrecy information and bank secrecy divulgence.

The presence of criminal responsibility for violation of the rules ensuring the safety of banking secrecy, as well as a sufficiently detailed and broad definition of banking secrecy, should provide adequate protection of this category of information.

Comparative analysis shows that the situation with banking secrecy in Ukraine in general corresponds to the global trends. Ten years ago the difference in the level of protection of banking secrecy in Ukraine and Switzerland has been striking, but today taking into consideration general legal situation in Ukraine, we can say there is no fundamental difference. Yes, banking information remains protected from unauthorized access, unless there is consent of the client, but this protection is not absolute even in Switzerland. Public authorities may, if necessary obtain information on the availability of accounts and even a list of account transactions. What is more importantly, access to this information through intergovernmental agreements, is open to law enforcement and fiscal authorities of other countries.

Principle and fundamental problem of Ukrainian business-society, owners of large private capital, is Ukrainian reality misunderstanding and rejection of the international practice changes. Incompetence, ignorance in legal and financial issues would cause significant complications in the future, both in terms of financial solvency and reputation and in financial operations as such. In the nearest future the National Bank of Ukraine and the banking system of Ukraine itself are to inform about rules and new paradigm norms of the modern world of finance and a new understanding of banking secrecy. They also must transform existing Ukrainian practice in accordance with generally accepted standards of OECD countries.

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