

Sanctions and war in Ukraine: tax considerations

Our experts identify the top five tax considerations for Heads of Tax and Financial Directors of global businesses.

1. Paying tax

- Taxes due in Russia may be used to finance the war in Ukraine. However, do sanctions actually prevent paying tax in Russia?
- If taxes should in principle continue to be paid in Russia, how? How do the sanctions against the Russian Central Bank affect the ability to transmit funds to pay Russian taxes? What happens if a business cannot pay tax due in Russia?
- If an intragroup transaction or payment has been frustrated by sanctions, does the tax liability remain in respect of the goods and / or services that have been provided?
- How can we change our processes in order to pay tax without contravening sanctions (which is also illegal)?

2. Operational change

- The sanctions regime has a profound impact on business operational structures and supply chains. Some businesses have paused operations, e.g. sales, manufacturing, exports/imports. Others are taking steps to withdraw entirely, terminating contracts and cutting ties with Russian operations.
- These operational changes will likely have tax implications, such as:
 - employment / payroll taxes on moving staff or terminating employment;
 - tax treatment of asset write downs, deemed disposals and terminated contracts; and
 - treatment of losses and written off intra-group loans to Russian subsidiaries;
 - validity of existing tax rulings.
- What tax consequences arise on the nationalisation of assets or intangible rights (such as IP rights) by the Russian state?

3. Jurisdiction

- Pausing or ceasing operations in Russia will reduce profits. What are the effects of this on transfer pricing profit allocation and policies?
- If a function previously performed in Russia is to be completed in a different country from now on, and supply chain flows are shifted, what changes do businesses need to make for direct and indirect tax purposes?
- How can businesses protect themselves from audits of corporate restructurings that are being undertaken at pace?

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4. At risk transactions

- As relations with Russia deteriorate, businesses are exposed to heightened risks of evasion and criminality within their supply chains, such as:
 - customs duty risks on imports – anti-dumping duties, fraudulent misdescription and disguised origin of goods; and
 - crypto risks – concealed payments and related evasion.
- What can businesses do to control and minimise these risks? How can the attendant civil and criminal liabilities best be managed?

5. Retaliation through tax

- Tax compliance and controversy are likely to be used as a means of retaliating against ‘Western’ businesses withdrawing from Russia, such as:
 - withdrawing from ongoing tax dispute resolution processes (e.g. the Mutual Agreement Procedure);
 - aggressive tax audits of ‘Western’ businesses that remain;
 - allegations of tax fraud and evasion; and
 - refusing to honour prior tax rulings (e.g. Advance Pricing Agreements in transfer pricing).
- ‘Western’ governments could also use tax as a means of challenging Russia, e.g. UK government suspension of tax co-operation with Russia and Belarus in respect of the exchange and sharing of tax information “to inflict economic pain on President Putin’s regime”.

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