

# Ukraine

## Legal Provisions

Compiled by:

**INTEGRITES LAW FIRM**

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### **GENERAL REMARKS**

In 2014, Ukraine signed the European Union Association Agreement that defined its political reforms direction and the country's development course in general. Since that time, Ukraine has taken serious steps forward integration with the European Union (hereinafter – the EU) and keeps improving its political and economic environment to create favorable and transparent conditions for doing business as well as to attract new foreign investments.

During 2017-2018, Ukraine showed economic growth caused by several factors. Business has been developing and the profitability of operating companies has been increasing during three years in a row. The free trade agreement between Ukraine and the European Union made it possible to integrate into western markets stimulating export growth and investment inflow into the country's economy.

The National Bank of Ukraine (hereinafter – the NBU) introduced several reforms to comply with the EU norms and terms of the International Monetary Fund (hereinafter – the IMF) increasing the requirements to the banks, making them more stable and risk resistant. The NBU introduced currency control liberalization to ease restriction on export-import transactions and foreign direct investment as well as to reduce restrictions for indirect investment and debt capital flow.

In order to ensure the sustainable economic growth, Ukraine signed a Memorandum on cooperation with the IMF. Ukraine has already accepted many key reforms to meet the requirements of the IMF among which were restructuring of the central bank and financial sector in general, introducing pension and tax reforms, changes to corporate governance and companies' activities.

Furthermore, on 18 January 2018 the Parliament of Ukraine adopted a new version of the Law of Ukraine “On Privatization of State Property” (hereinafter – Law on Privatization) which introduced a new simple and clear procedure for privatization of public (state and municipal) property. It gave a classification of privatizations defining them as large (the assets of which exceed UAH 250 Mio) and small (all other), introduced electronic auctions for privatization and professional external advisor to support the privatization procedure for large businesses. One of the most important features of the Law on Privatization, that is important for investors to know, is that there is an option to turn to English law upon the request of the buyer and to choose the international arbitration court for any disputes.

One of the main and the most important IMF requirements was to take serious steps in fight against corruption and to establish the Anticorruption court to consider cases against the officials related to inappropriate use of budget funds, power abuse, unlawful enrichment and bribery. On 26 June 2018, President of Ukraine signed the Law of Ukraine 2447-VIII “On Establishment of the Supreme Anticorruption Court” (hereinafter – the Law on Anticorruption Court) and it is considered as a starting point for further reforms. According to the Law on Anticorruption Court, the new court is necessary to be formed within a year and should consist of at least 35 judges, 10 of which are representatives of the Appeal Chamber.

Understanding rich potential and favorable climate conditions of Ukraine, the IMF also requested to conduct several reforms in energy sector to make all procedures transparent for attracting new investors and protecting their rights and interests. This step was also important to harmonize the Ukrainian legislation with the EU standards. Thus, in April 2017 the Parliament of Ukraine adopted the Law of Ukraine “On Electricity Market” to introduce competitive mechanisms for the electricity market functioning and to ensure the free choice of an electricity supplier. Today, the energy sector keeps developing in Ukraine and many positive changes occurred, such as adoption of The Energy Strategy of Ukraine until 2035, development of the new Power Purchase Agreement and proper implementation of the “green” tariffs.

Recently, significant changes occurred in the tax system as well. In 2017, Ukraine joined the Base erosion and Profit Shifting plan (hereinafter – the BEPS plan) and it keeps working on implementing its minimum standard (BEPS action plan). As a next and notable step (Action 15 of the BEPS plan) in tax field was signing of Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (hereinafter – MLI Convention) on 23 July 2018. BEPS plan is supposed to harmonize tax rules between over 70 countries worldwide, to create more transparent tax environment. As for Ukraine, it is an excellent opportunity to fight with aggressive tax planning, to improve the quality of tax authorities’ work and to protect business rights.

Obviously, Ukraine still faces many challenges on its path to improve economy, to harmonize the legislation with EU standards and IMF requirements, to eliminate some gaps in national legislation and to create favorable and, what is more important, predictable conditions for doing business and new

investors to come. It is believed that within the next few years, such fields as machine building, transport, agriculture as well as energy generating and distribution companies, are considered to experience profitability and loan growth.

## **CUSTOMS**

The principal law governing customs regulations in Ukraine is the Customs Code of Ukraine, dated 13 March 2012 as further amended.

It establishes different types of customs regimes: import/export, re-import/re-export, transit, temporary export/import, processing of goods in/outside the customs territory of Ukraine, bonded warehouses, special customs zones, duty-free trade stores, and rules related to destruction of goods and to abandonment of goods in favour of the state. An importer/exporter of goods is required to file a customs declaration and submit it to the customs authorities prior to customs clearance of goods. The customs declaration usually includes description of the goods, customs value, volume, customs regime.

Based on the experiment in Odessa Commercial Sea Port, the government of Ukraine set an ambitious goal to organize the work of customs in compliance with the European standards and requirements. For this purpose, on 25 May 2016 the Decree of the Cabinet of Ministers of Ukraine No. 364 "On selected issues related to the implementation of the "Single Window" procedure for customs, sanitary, epidemiological, veterinary, phytosanitary, ecological, radiological and other kinds of state control" (hereinafter – the Decree) was adopted. The Decree stipulates the establishment of "Single Window" (unified electronic system) to allow different control services and customs authorities automatically exchange information about the goods passing through the Ukrainian border as well as the results of the conducted state control. The "Single Window" created favorable conditions to maintain relations with key partners, in particular, for trade development. It also significantly simplified the procedure reducing the level of bureaucracy, which experts believed to be the main obstacle for development of the Ukrainian customs service. It is necessary to mention that the importance of establishing the "Single Window" was recognized by the World Customs Organization (WMO Framework), the United Nations Economic Commission for Europe (Recommendations 33-35 of the Center for Trade Facilitation and Electronic Business), the Association Agreement between Ukraine and the EU (Article 76 on the application of EU guidelines).

This year, the Ministry of Finance of Ukraine, together with the State Fiscal Service of Ukraine and the State Treasury Service of Ukraine introduced the Single Treasury Account (hereinafter – the STA) for enterprises to pay their customs duties. It is expected that in September 2018, a pilot project on the STA implementation will be launched, and all companies will be able to voluntarily use it for customs payments. Starting from 16 April 2019, the STA will be used by all enterprises, as a matter of course.

The implementation of STA simplifies the procedure whereby each customs office has its own treasury account. As per this amendment, the entrepreneur has only one account from which customs payments will be written off at customs clearance at any customs office.

## **IMPORT AND EXPORT REGULATIONS**

In Ukraine, most of the goods may be imported and exported without any restrictions as to their quantity. Some types of goods are subject to obligatory certification of their quality. Customs clearance routinely involves the phyto- and sanitary, radiology controls.

Nevertheless, certain types of goods may be imported and exported only based on respective licenses. The quota regime may also apply to import and export of certain commodities. Lists of commodities, the export and import of which are subject to licensing, and quotas have been updated by the government for 2018.

Moreover, VAT administration of commodity imports and exports has significantly improved over the past year, as the latest amendments to the regulation of electronic VAT accounts were introduced last year.

## **CURRENCY REGULATIONS**

The national currency of Ukraine is hryvnia (UAH). Foreign currency may be used for domestic operations in Ukraine subject to receipt of the NBU's individual licenses. The foreign currency may be purchased and transferred abroad only in a limited number of cases allowed by the law. Settlements under foreign economic agreements (agreements between the residents and the non-residents of Ukraine) may be exercised in foreign currency without license.

The proceeds under export contracts shall be credited into Ukrainian exporters' local bank accounts within 180 days of the customs clearance of goods, or the date of signing of transfer and acceptance protocol with respect to works or transport services (export of other services is not restricted). If a Ukrainian importer should make an advance payment for the goods, services or works, such goods shall be imported and services or works shall be accepted within 180 days from the date of payment.

Ukrainian residents can obtain loans from non-residents subject to obtaining the NBU license (registration) and with maximum interest rates set by the NBU (7-11% p.a.). These requirements do not apply to loans taken from foreign states or under the state guarantee, as well as from international financial organizations where Ukraine is a member, or which have been granted equal status by Ukraine as compared to other international financial organizations (hereinafter – the IFO). The authority to control funds flows under such loans has been granted to the local servicing banks.

In order to stabilize the national currency and apply necessary measures regarding circulation of foreign currency during crisis period in Ukraine, the NBU has been re-issuing orders on administrative restrictions on the outflow of foreign capital since the second half of 2014. Started from the end of 2018, however, the emphasis was on the liberalisation of such measures, especially in view of the new Law on Currency. The order No. 410 “On Settlement of the Situation in the Monetary and Foreign Currency Markets of Ukraine” that is currently in force, inter alia, provides the following:

- requirement for mandatory conversion of 50% of foreign currency earnings into national currency (however, there are some exemptions such as foreign direct investments, interbank transactions, charitable funding, loans from foreign states and IFOs, guarantees and investment insurance, grants and technical assistance);
- restriction on early loans’ repayment (except, inter alia, by authorized Ukrainian banks, or in favour of a foreign lending bank, or where, and to the extent, covered by the foreign export credit agencies or disbursed by the IFOs, or when re-financing is obtained, or in the course of the debt to equity swap; other prepayment is possible in an amount that does not exceed USD 2,000,000 per calendar month, or equivalent in another foreign currency);
- limitations for banks to purchase and transfer foreign currency to foreign investors in connection with sale or redemption of corporate rights in the limited liability company (capital repatriation) (up to USD 5,000,000 per calendar month);
- restriction for banks to sell foreign currency or precious metals for cash (in excess of equivalent of UAH 15,000 per day per person), sell precious metals via bank transfer (in excess of equivalent of 3,216 ounces of gold per week per client);
- prohibition for banks to purchase and transfer foreign currency for cross-border payment of dividends to foreign investors, except dividends (accrued up to year 2017 inclusive) that do not exceed USD 7,000,000 per calendar month (or equivalent in another foreign currency);
- requirement for banks to control the offsets and netting of cross-border payments (with respect to export) for any amount in the freely convertible currency (and Russian rouble) or in any other currency if the equivalent exceeds USD 500,000 – except netting of the telecommunications traffic and roaming services;
- purchase and transfer of foreign currency based on the NBU licenses. There are a few exceptions such as transfers by individuals based on e-licenses; transfers under suretyships/guarantees securing loans from IFOs or under ECA cover; investments by legal entities not exceeding USD 2,000,000 per calendar year (or equivalent in another foreign currency); other transfers of legal entities not exceeding of USD 50,000 per calendar month (or equivalent in another foreign currency).

Ukrainian legislation provides rather strict foreign currency control. Ukrainian residents who violated foreign currency rules may be brought to liability starting from imposition of financial sanctions to suspension of their foreign economic activities.

Ukrainian banks are responsible for clients' identification and financial transactions monitoring. Mandatory financial monitoring is required in case if the transaction amount is more than UAH 150,000 (equivalent in another foreign currency), inter alia payment abroad except for import of goods; cash transactions; transactions with an offshore (or non - AML complying) jurisdiction or to/from anonymous account; transactions with a newly established legal entity/entrepreneur; in other instances where the bank is suspicious about the transaction. Moreover, to perform the bank stability requirements, Ukrainian banks are required to closely monitor risky transactions – those in favor of a third party as a beneficiary; under suretyships; in favor of an assignee; setoffs; payments of penalties, dividends; where there is no clear adequacy between the payer's business activity/monetary flows and transaction amount, etc.

#### **CURRENCY LIBERALIZATION EFFECTIVE AS OF FEBRUARY 2019**

In 2018, Ukraine underwent a major currency regulation reform. On 7 July 2018, the Law of Ukraine No. 2473-VIII "On Currency and Currency Operations" (hereinafter – the Law on Currency) entered into force altering the Decree on Currency Regulation No. 15-93 that had been in effect since the early days of independence. This step was aligned with Ukraine's strategy towards implementation of the Association Agreement between the EU, the EURATOM and their member states, and Ukraine dated June 27, 2014.

The Law on Currency introduced new currency regulation policy and triggered action by the National Bank of Ukraine (the "NBU"), the National Commission for Securities and Stock Market, the National Commission for State Regulation of Financial Services Markets and the Cabinet of Ministers of Ukraine (the "CMU") to adopt respective regulations for implementation. Such by-laws shall be published not later than January 8, 2019. The Law shall become fully operative on February 7, 2019.

The Law introduces new currency regulation policy based on the freedom of contract; the currently practiced exceptional principle requires a license for all cross-border transfers of capital except few. Market instruments are expressly prioritized over the administrative ones. Restrictions shall be established only by laws, however, a wide discretion is also granted to the NBU regulations.

Upon the Law becoming fully operative, residents of Ukraine shall have the right to:

- open accounts abroad and use them for currency transactions
- acquire currency values abroad and transfer them in and out of Ukraine.

Non-residents shall have the same rights as residents of Ukraine, including, in particular, to open accounts in Ukrainian financial institutions and to perform currency transactions using such accounts.

The Law cancels most of the existing currency restrictions, in particular:

- “catch-all” licensing requirement (the Decree on Currency Regulation No. 15-93 dated 19.02.1993)
- registration of foreign loans (Decree of the President No.734/99 dated 27.06.1999). Maximum interest rates set by the NBU’s regulation No.363 dated August 3, 2014 remained unaffected by the Law.
- mandatory 180-days term in export/import transactions (the Law of Ukraine "On Procedure for Settlements in a Foreign Currency")
- reporting of currency assets abroad and their return to Ukraine (Decree of the President No. 319/94 dated 18.06.1994). The Parliament has, however, kept a limit of EUR 10,000 for individuals for undeclared cross-border transfer of currency assets.
- restrictions and penalties in payments between entrepreneurs (so-called “payment discipline”) (Decree of the President No. 227/95 dated 16.03.1995)
- mandatory reporting of bank accounts opening to tax authorities before performing operations on such accounts (Decree of the President No. 41/98 dated 21.01.1998). The CMU’s respective Order No.721 dated August 18, 2015 is likely to be cancelled too.
- all existing licenses issued by the NBU (except for general licenses) shall lapse upon entry of the Law into force.

Despite cancellation of the Law on “180-days rule”, the NBU retains the right to set term limitations in export/import relations with respect to goods (works and services seem to have been set free as compared to the existing law, although the Law lacks consistency in this regard). Advance payment by a resident has been set as one and only starting point for calculation of imported goods receipt – bills of exchange seem to have been excluded from the allowed payment means. The duration of the temporary limitations, thus, is only limited by the international treaties, such as six-month rule and exceptional circumstances rule under the Articles 63-66 of Treaty on the Functioning of the European Union, which Ukraine must implement in the trade relations with the EU member states. Penalties for non-compliance with the payment/delivery term remained the same – 0.3% of outstanding payment/value of non-delivered goods for each day of delay. To suspend running of the mandatory period the residents would be able to revert to extrajudicial remedies in addition to litigation and arbitration stipulated to date, however objectivation through submission to “competent authorities” would still be required (foreclosure for instance, by a notarial writ).

One of the most debated novelties of the Law is the NBU’s right to introduce protective measures which, according to the NBU’s officials, allows NBU to support stability, and, arguably, hold back or even reverse the liberalization, such as:

- compulsory sale of foreign currency revenue;
- limitations of terms in export/import of goods;
- regulating capital flow transactions;

- permits for and / or limits on entering into certain currency transactions;
- allocation of funds (reserves) for currency transactions;
- temporary regulation and supervision of certain entities involved in the currency transactions.

Protective measures under the Law can be summarized as follows:

#### Grounds for introduction

- Unstable financial state of the banking system
- Deterioration of the country's payment balance
- Threat to stability of the country's banking/financial system

#### Duration

- Up to 6 months individually, up to 18 months in aggregate during any consecutive 24 months

#### Extension

- Up to 6 months at a time

#### Approval

- By the NBU Council – in case (i) a new protective measure is introduced before 6 months lapsed since introduction of the previous similar measure, (ii) the existing protective measure is reenacted for another 6-month period

#### Reporting

- NBU reports to the Parliamentary Committee on status and results of each protective measure. The reports shall be made public

#### Cancellation

- By the NBU Board (which can, but is not obliged to consult with the NBU Council)

Penalties for violation of currency regulations may be imposed:

- by the NBU on banks and financial institutions – up to 20% per cent of such institution's net equity (in Ukrainian - vlasnyi kapital);
- by fiscal authority on non-banking entities – up to 100% of the amount of transaction, and cannot be issued beyond 6 months after the date when respective violation will have been detected by the regulator and 3 years after the date of violation. The NBU's decisions on penalties will qualify as enforcement documents.



While eliminating liability for many of the specific violations (e.g. opening and using foreign currency accounts abroad), the Law strengthens liability for some of them that remained in force, for instance, fines for the illegal use of currency assets have been increased from EUR 17-25 to EUR 285-570 (equivalent to amounts in Hryvnias are approximate). The Law also introduces a “catch-all” liability for violation of currency transactions order – fines are within the range of EUR 570-1,700, and specific liability of the officers in the financial institutions – with fines in the range of EUR 1,700-2,300. Powers to monitor and report to the NBU currency violations have been delegated to the banks, financial institutions and the national postal operator; in their role of the ‘currency supervision agents’, they shall be suspending currency transactions if violations are detected. Neither the NBU, nor the currency supervision agents may intrude in currency transactions otherwise. The Law does not pardon currency violations committed prior to its date of effectiveness.

## **REGISTRATION PROCEDURE FOR PRODUCTS**

There are no uniform rules and procedures for products registration in Ukraine. There are not so many types of products to be registered with the state authorities as a precondition to introduction into civil turnover. For example, medicines and certain food products (including new food products entered to the market, nutritional supplements, and flavours) must be registered with the Ministry of Healthcare of Ukraine and pesticides and agrochemicals are to be registered with the Ministry of Ecology and Natural Resources of Ukraine.

## **STANDARDS, TECHNICAL RULES, LABELLING REGULATIONS**

There are certain types of goods (special equipment for self-defense, fire-fighting items, some tobacco products, oil products, construction materials) that must be certified by the Ukrainian State Certification System (hereinafter – the UkrSEPRO conformity certificate), which confirms that imported goods meet Ukrainian technical standards and requirements. Products with mandatory certification cannot be imported without UkrSEPRO conformity certificate. The state authority responsible for the product certification is the State Inspection of Ukraine for Consumer Rights Protection. At the same time, the List of Products Subject to Mandatory Certification in Ukraine has been significantly reduced in 2015-2016 with cancellation of mandatory certification for the following products: detergents, agricultural equipment, bicycles, road vehicles, all food products (including alcohol and most tobacco products) and pipes.

Labeling shall provide customers with full and accurate information about the products and they can make a conscious choice. Labeling must not contain any misleading information. Generally, the information on products must contain, inter alia, the name of the product, information about basic characteristics of the product, information on any hazardous components, information about the

manufacturer/seller of the product, date of production, information about storage conditions, best before date (service life).

Detailed description of labeling requirements regarding a specific kind of product is available in the Technical Regulations on Product Labeling Rules. For instance, there are Technical Regulations for Food Products Labeling approved by the State Inspection of Ukraine for Consumer Rights Protection, Technical Regulations on Electric Lamps and Fixtures Energy Labeling Rules approved by the Cabinet of Ministers of Ukraine, Technical Regulations on Detergents approved by the Cabinet of Ministers of Ukraine etc. The Antimonopoly Committee of Ukraine and the State Inspection of Ukraine for Consumer Rights Protection exercise active control over compliance of legal entities with requirements on product labeling. As practice shows, the fines imposed on legal entities for failure to comply with legislative requirements for product labeling may be significant.

## **TAXES**

The basic taxes imposed on any business entity in Ukraine include the following:

- 18% Corporate Profit Tax (hereinafter – the CPT),
- 15% withholding tax on the income with Ukrainian source;
- 20% Value Added Tax (hereinafter – the VAT);
- 18% Personal Income Tax (hereinafter – the PIT);
- 22% Unified Social Tax payable by the Employer (hereinafter – the UST).

### **CPT**

Every business entity in Ukraine must register as a corporate CPT payer. Standard CPT rate is 18%. Specific types of businesses are taxed under special regimes with lower or higher tax rates ranging within 0% - 30% with the exceptions established by law. The tax base of the CPT is determined according to the national or international accounting standards subject to adjustment according to a limited number of tax adjustments as specified in the Tax Code of Ukraine.

Starting from 2018, there have been significant changes and additions in the adjustment of the object of taxation for corporate profit tax purposes.

Moreover, according to recent amendments, the financial result before tax shall be reduced by the amount of accrued income from the participation of other CPT taxpayers in the charter capital, taxpayers of flat rate tax and the amount of accrued income in the form of dividends payable in the favor of participant in the charter capital by other taxpayers (except for joint investment institutions and taxpayers whose profits are exempt from taxation in accordance with the provisions of the Tax Code of Ukraine).

Taxpayers with total annual turnover up to UAH 20 million may refuse to apply tax adjustments (except for carry forward of losses).

Started from 1 January 2018, all taxpayers without any exceptions were granted the right to file a tax return within 60 calendar days following the last calendar day of the reporting (tax) year. Previously, only taxpayers with an annual tax period had such a right.

### **Permanent Establishment**

A permanent establishment (hereinafter – the PE) in Ukraine is a fixed place of business through which the business activities of a non-resident entity are fully or partially carried out on the territory of Ukraine. According to the Tax Code of Ukraine, prior to commencement of its business activities the PE must register with the Ukrainian tax authorities pursuant to the established procedures. The PE that has commenced its business activity prior to the registration with the Ukrainian tax authorities shall be deemed to be engaged in tax evasion, and profits received by the PE shall be regarded as concealed from taxation.

### **Withholding tax**

Income received by foreign residents from Ukrainian sources is subject to taxation in Ukraine. The standard rate is 15%, unless reduced by the applicable treaty on avoidance of double taxation (so called double-tax treaties or DTT). Ukrainian-source income includes interests, dividends and royalties received from residents of Ukraine, lease payments, income from sale of real estate located in Ukraine, income from transactions with securities/corporate rights, income from joint ventures, some other types of income of non-residents received from business activity in Ukraine. Professional services (except for engineering services) are not considered to have a Ukrainian source. Income from sales of products is not subject to withholding tax.

### **BEPS and anti-avoidance rules**

Ukraine has committed to implement the minimum standard of action plan on base erosion and profit shifting (hereinafter – the BEPS), which includes the following actions:

- Action 5 – Harmful tax practices;
- Action 6 – Treaty abuse;
- Action 13 – Transfer pricing documentation;
- Action 14 – Making dispute resolution mechanisms more effective.

In order to implement the abovementioned BEPS actions, the following steps have been taken:

- Introduction of significant amendments to the Conventions on avoidance of double taxation signed by Ukraine that are now in the process of implementation and negotiations. Double tax treaties signed by Ukraine must comply with the requirements of the latest OECD Model Tax Convention on Income and on Capital, which, inter alia, include cancellation of zero withholding tax rates and extension of opportunities to exchange information between the member states;

- Ukraine signed the MLI Convention that simultaneously amended all the DTTs and made them compliant with the up-to-date OECD requirements.
- Introduction of draft law on Controlled Foreign Companies rules.
- According to the information provided by the Ministry of Finance of Ukraine, the Common Reporting Standard will be signed by the end of 2020.

## **VAT**

According to the Tax Code of Ukraine, the standard VAT rate that is equal to 20% (7% for medical and pharmaceutical products) is charged on the majority of transactions related to supply of goods, works and services and the prices for them should include the VAT amount. Noteworthy, 0% VAT rate is applied to export of goods from Ukraine.

A legal entity must be registered as a VAT payer, if the total value of transactions related to goods or services supply that are subject to VAT accrued (paid) to such entity during the last 12 calendar months, and exceeds UAH 1,000,000.

Taxable base is the contractual value of goods or services.

Started from 1 January 2018 and until 31 December 2019, the taxpayers can obtain a permit to pay VAT in instalments (within 24 months), while importing facilities for own production to the customs territory of Ukraine. Such facilities have to be manufactured outside Ukraine and have no analogues in Ukraine.

As of today, it is specified that starting from 1 January 2013 and until 1 January 2023, supply of software products, as well as transactions with software products, fee for which is not considered as royalties, are exempted from VAT.

## **Personal income tax and military tax**

According to the Tax Code of Ukraine, the PIT is withheld by the employer at the basic rate of 18%. At the same time, the rate may be lower in specific cases stipulated by the law. Additionally, the employer shall withhold (temporary) 1,5% military tax from the employee's salary. Ukrainian employer is liable for correct and timely contribution of PIT and military fee.

## **Unified Social Tax**

Ukrainian employers must pay the unified social tax (hereinafter – the UST) to the state social insurance funds. The UST accrues on the monthly basis at the rate of 22% on each wage. This contribution is a deductible expense of the employer for the purposes of CPT and on top of the payroll.

In the past year, amendments to the Law of Ukraine “On the Collection and Accounting of the Unified Social Tax to Mandatory State Social Insurance” were performed introducing new rules for the accrual and payment of the UST starting from 1 January 2018. The maximum value of the UST accrual basis has increased up to 15 minimum wages that is UAH 55,845 (approx. EUR 1,734) per month as for 2018 year.

Starting from 1 January 2018, farms will be obliged to pay the UST, but the private entrepreneurs who received a pension as well as retired farmers are exempt from paying the UST for themselves.

## **Transfer Pricing Rules**

Currently the Tax Code of Ukraine provides transfer-pricing restrictions applicable for the CPT purposes.

Taxpayers involved in the so-called 'controlled' transactions will have to show their tax liabilities based on the arm's length pricing. In addition, they will need to report information about such transactions.

Transactions that are subject to control include:

- any taxable transaction with related non-resident party;
- any taxable transaction with non-resident party from the low tax (offshore) jurisdiction;
- any taxable transaction with non-resident party that is not subject to the CPT;
- sale of goods through a non-resident commission agent.

The official list of low tax jurisdictions as well as the list of legal forms of business that are not subject to the CPT are determined by the Cabinet of Ministers of Ukraine and experience amendments from time to time.

The above transactions are subject to control, if the annual revenues of the taxpayer exceed UAH 150 Mio and the annual volume of transactions with each counterparty exceeds UAH 10 Mio (compared to UAH 50 Mio and UAH 10 Mio respectively in 2017).

As of 2018, the taxpayer's transactions with its permanent establishment are also subject to control, provided the annual volume of such transactions exceeds UAH 10 Mio.

Another restriction that became effective as of 2018 is that in transactions with non-resident parties that are not subject to the CPT, only 70% of the transaction value is deductible.

## **Tax incentives as of 2018**

VAT exemption applies to:

- supply of software, if payment for such supply is not treated as royalties;
- international postal matters;
- soybeans, rape plant and rocket cress;
- import of electric vehicles – until December 31, 2018.

## **Reporting and Control**

For the purposes of tax control over transfer pricing the reporting period is a calendar year. By 1 October of the year following the reporting year, the taxpayer must submit annual reports on controlled transactions in the foregoing year as well as transfer pricing documentation within one month of a request by the tax authorities.

The report on controlled transactions must be submitted exclusively in electronic form by electronic means according to the law on electronic document circulation and electronic digital signature.

Violation of the transfer pricing rules may trigger additional tax liabilities based on regular prices and application of penalties by the tax authorities:

- failure to submit the report – a penalty in the amount of 300 minimum wages established as of 1 January of the reporting (fiscal) year;
- failure to disclose a controlled transaction – a penalty in the amount of 1% of the value of the transaction not included into the report, but not more than 300 minimum wages established as of 1 January of the reporting (fiscal) year for all undisclosed controlled transactions;
- failure to submit requested documents – a penalty in the amount of 3% of the value of the respective transactions, but not more than 200 minimum wages established as of 1 January of the reporting (fiscal) year for all controlled transactions performed in the respective year.

### **Expected Changes**

#### **Common Reporting Standard**

According to the official information of the Ministry of Finance of Ukraine, starting from 2020 Ukraine will start automatic exchange of information on financial accounts under the OECD's Common Reporting Standard (hereinafter – the CRS) within the framework of the international program of the struggle with tax avoidance.

Guided by the CRS rules, financial institutions of Ukraine will collect information about the accounts of their customers (companies / individuals) to whom the requirements for automatic exchange (reportable accounts) apply and will pass it to the fiscal authorities. The fiscal authorities, in turn, transmit this information to the fiscal authorities of the country of company's tax residence and / or the country of tax residence of the controlling person (beneficiary) of such company.

#### **Zero Declaration**

Due to the expected adoption of the law on so-called "Zero Declaration" in Ukraine – starting from 2019, residents may be able to exercise the right to voluntarily declare their undeclared income, property, property rights without verification of legality of its origin. Such income will be charged with 2,5% PIT, with some exceptions. In addition, submission of a zero declaration provides for release of the person from legal liability for violation of tax legislation, legislation on the unified social tax, and currency legislation.

#### **Exit capital tax**

This year, the draft law No. 8557 "On Amendments to the Tax Code of Ukraine with regard to the Exit Capital Tax" was registered in the Parliament and marked as urgent by the President. According to the plan, exit capital tax will replace corporate profit tax starting from 1 January 2019. The key changes in the draft law relate to postponement of taxation of profit until it is distributed in the form of dividends or payments equal to them and abolition of the repatriation tax. It is proposed to apply the following rates of the exit capital tax:

- 15% - on capital withdrawal transactions (e.g., dividends distribution);
- 20% - on transactions equal to capital withdrawal (except for the transactions taxable at a rate of 5%);
- 5% - on funds paid as fulfillment of debt obligations to related non-resident individuals in specified cases under this law.

## **ENERGY MARKET**

In April 2017, the Parliament of Ukraine adopted the Law of Ukraine "On Electricity Market" that came into force in June 2017. However, the new electricity market (hereinafter – the New Market) will become fully operational in July 2019. The purpose of the New Market is to introduce competitive mechanisms for the electricity market and to ensure free choice of an electricity supplier. The New Market provides various mechanisms for purchase/sale of electricity, including bilateral agreements, day-ahead market, intraday market and balancing market.

In addition, the New Market provides separation of monopoly activities (transmission, distribution) from competitive activities such as production, supply and trading, i.e. a power distribution entity may not supply power. Finally, producers of energy from the renewable energy sources are entitled to sell electricity to the so-called "guaranteed buyer" (hereinafter – the GB), i.e. an entity which is obliged to purchase electricity from renewable energy sources producers under the "Feed-In Tariff", known in Ukraine as the "Green Tariff".

Therefore, it is expected that starting from 1 July 2019, the electricity market will become more attractive to investors. At the same time, certain current regulations associated with the New Market may be changed. In particular, in 7 June of 2018 the new Draft Law No.8449 "On amending of some laws of Ukraine about ensuring competitive conditions for the production of electric energy from alternative energy sources" (hereinafter – the Draft Law) was introduced to the Parliament of Ukraine. It introduces a new support system for renewable energy projects that will apply to the solar parks with capacity exceeding 10 MW and wind farms with capacity exceeding 20 MW and provided that such farms were not granted the Feed-In Tariff. According to the Draft Law, such support will be distributed based on tenders to be conducted by the GB. GB will buy electricity from renewable energy sources producers – winners of the tender and will compensate the difference between the day-ahead market price and the tender price to them. The tender price will be fixed in EUR.

### **Gas Market**

In 2015, the Parliament of Ukraine adopted the Law of Ukraine "On Natural Gas Market" the main purpose of which was to harmonize the Ukrainian gas market with the EU Third Energy Package. The Law came into force in October 2015 and enabled integration of the Ukrainian gas market with the EU markets. In particular, it envisaged unbundling of gas transmission system operator from gas production and supply functions. In addition, the Law established the principle of tariff regulation of natural

monopolies and free market prices in competitive segments of the gas market as well as created access to gas transmission and distribution networks for private sector, allowing private companies to sell gas to any consumer, including households.

## **COMMERCIAL LAW**

The Commercial Code of Ukraine is the basic legal act regulating commercial relations in Ukraine. The Code sets forth the main principles of economic activity in Ukraine and regulates economic relations arising between legal entities and other participants of economic relations. Furthermore, the Code declares freedom of commercial activity as one of the fundamental principles. Restriction of competition, abuse of dominant position, unfair competition, illegal use of items of intellectual property and business reputation are directly prohibited by the Code. Noteworthy, there are some discrepancies between provisions of the Commercial Code of Ukraine and the Civil Code of Ukraine that could lead to uncertainty of legal regulation of specific relations.

Among the most important novelties of commercial law we would like to highlight the following. The system of public procurement in Ukraine was significantly reformed according to the recently adopted Law of Ukraine "On Public Procurement" dated December 25, 2015 (the "Public Procurement Law"), which approved full transition of public procurement to electronic procurement system ProZorro. The reform covers several areas, including training of buyers, simplification of access for business to bidding procedures and introduction of tenders in electronic format.

Starting from 1 August 2016, all public procurements have been held in compliance with the Public Procurement Law. Adoption of this law facilitated implementation of the EU-Ukraine Association Agreement and creation of an e-procurement system. It is a significant development in Ukraine's fight against corruption through ensuring transparency and accountability of the public procurement process.

## **SETTING UP COMPANIES**

Under Ukrainian law, a business may operate as a joint stock company (hereinafter – "JSC"), limited liability company (hereinafter – "LLC"), additional liability company, general partnerships, limited partnerships, production cooperatives. Foreign investors tend to set up companies in form of LLC due to their simplicity and operational advantages.

In 2018 Ukraine approved a new Law of Ukraine "On Limited Liability and Additional Liability Companies" and brought the Law Ukraine "On Amending Certain Legislative Acts of Ukraine on Corporate Contracts" into effect. These laws provide the companies' shareholders with significant freedom in regulating their corporate relations, facilitate active participation of shareholders in the



company's management, provide more mechanisms of control by the shareholders over the activities of the executive body, and move the national corporate legislation closer to the European standards. The Law provides for a transition period of one year upon entry into force. During this period, the provisions of the companies' charter will remain valid to the extent they are in line with the new law.

## **JOINT VENTURE OPPORTUNITIES**

Unincorporated joint ventures and partnerships exist as investment vehicles, but have uncertain legal status and are not widely used. Joint ventures typically involve establishment of a separate legal entity (JSC or LLC) in Ukraine. However, the Civil Code of Ukraine does recognize the concept of a joint venture without the need to establish a separate legal entity. In such cases, the relationship between the parties is governed by an agreement. Such agreements are commonly referred to as "joint activity agreements".

The use of joint activity agreements is still relatively unexplored. There are no minimum capital requirements or capital impairment rules to contend. A partner may still withdraw by giving three months' notice, but legislation considers that this could be treated as a breach of contract and that it may necessitate payment of damages.

## **PROMOTION OF INVESTMENT**

Ukraine guarantees protection of foreign investments and this should be taken into consideration while structuring investment into Ukraine. The special legal act governing protection of foreign investments in Ukraine is the Law of Ukraine "On the Regime of Foreign Investments".

Foreign investment can be made in different forms, including, participation in companies, purchase of moveable and immoveable property, obtaining of title to land use, property rights, etc. There are limitations concerning foreign shareholding in some state regulated businesses, for instance, insurance companies.

The law stipulates that foreign investments are protected in Ukraine and may not be nationalized and that foreign investors have the right to claim reimbursement of damages, including loss of profit, incurred in connection with acts or omission by the state bodies or state officials of Ukraine. The compensation to be paid to foreign investors shall be prompt, adequate and effective. Mandatory registration of foreign investments had been abolished in June 2016, which significantly simplified handling of foreign capital in Ukraine and gave equal rights to all investors.

Noteworthy, Ukraine grants protection to foreign investments under more than 70 bilateral investment treaties.

## **ENTRY CONDITIONS, WORK PERMITS, RESIDENCE PERMITS, LABOUR LAW**

Ukrainian labor legislation, which is based on the labor code of the Soviet period, can be considered as employee-oriented. The labor standards are comparatively high, beginning with the establishment of a maximum probationary period, which is generally 3 months, and ending with rather complex set of actions to be taken by employer for dismissal, including, issuance of respective order, handover of labor book, annual leave compensation, etc. Trade unions, although practically having minimal influence, formally remain as an advantage for promotion and protection of employees' rights with wide authorities. Currently, new Labor Code of Ukraine, which is expected to give more protection to employer, is being elaborated and considered by the Parliament of Ukraine.

Citizens of many countries do not need a visa to enter Ukraine and stay up to 90 days (the full list of countries can be found at <https://mfa.gov.ua/en/consular-affairs/entering-ukraine/visa-requirements-for-foreigners> ). The citizens of other countries must have a valid passport and a visa to visit Ukraine.

In order to stay legally on the territory of Ukraine for over 90 days, it is necessary to obtain a temporary or permanent residence permit. The type of such permit can be issued depending on the purpose of stay in Ukraine, namely for employment, education, marriage, international technical support, scientific, cultural or religious activity.

In order to be legally employed in Ukraine, a foreign national is required to obtain the individual taxpayer's code and work permit.

Since 27 September 2017, the procedure for obtaining work permit has been simplified. The list of documents to be submitted by an employer has been shortened. For example, the certificate about absence of criminal proceedings and the certificate from the healthcare institution are not required anymore. However, the law requires that the minimum salary of a foreign employee is set at the level of 10 minimum wages, which currently constitutes UAH 37,230 (approx. EUR 1,200).

In practice, work permits are issued for a 12-month period with the option of annual renewal. In some cases, the work permits can be issued for a 3-year period (applicable to such categories of employees as "seconded foreign employees" or "internal corporate assignee", "IT professionals" or "foreign creative professionals").

Obtaining a work permit usually takes 2 - 3 weeks. Simultaneously, the foreigner may apply for an individual taxpayer's code. This takes about 1 week.

A foreign employee may apply for a temporary residence permit on the basis of the obtained work permit. The temporary residence permit will be issued for one year. Obtaining this document usually takes for about 1 month.

## **PROCEDURES FOR COLLECTING PAYMENT**

Collection of payments in Ukraine may be conducted through pre-trial procedures (negotiations, mediation), or court proceedings.

Typically, commercial courts are authorized to consider the cases on collecting payments arising out of commercial contracts. Upon the statement of the creditor, a court may secure a claim by freezing assets or bank accounts of the debtor.

Enforcement of court judgments can be performed by the State Enforcement Service or private enforcement companies, which started operating in Ukraine in 2017.

It is also important to mention that the payments under notarized agreements can be enforced based on the notarial writ, which serves as an enforcement document (similarly to a court judgment).

Recognition and enforcement of foreign arbitral awards in Ukraine became more efficient after introduction of the new Commercial, Civil and Administrative Procedure Codes of Ukraine in December 2017. The new Civil Procedure Code of Ukraine entrusted exclusive jurisdiction as to the recognition and enforcement of arbitral awards as well as setting aside procedures on the territory of Ukraine to the Kyiv Appellate Court. At this, the Supreme Court serves as an appellate court.

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