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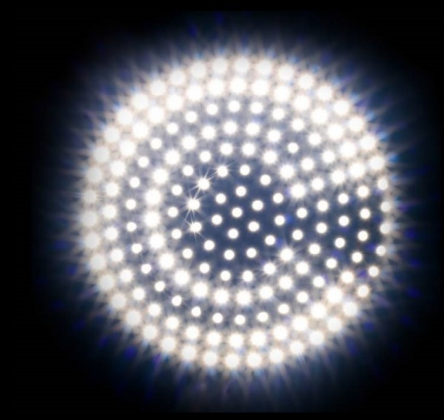
International Tax
Ukraine Highlights 2017



Investment basics:

Currency – Ukrainian Hryvnia (UAH)

Foreign exchange control – Only local currency generally may be used in business transactions between residents. Foreign currency may be used in cross-border transactions between residents and nonresidents. Foreign currency proceeds received by a company from its foreign clients must be credited to a local bank account no later than 120 calendar days after the date goods or services are exported; penalties are imposed for noncompliance. Similarly, goods generally must be imported into Ukraine within 120 calendar days after prepayments have been made by a Ukrainian company to a foreign supplier.

Additionally, 65% of foreign currency income must be converted into Ukrainian currency upon receipt. A Ukrainian resident must obtain a license to invest abroad, particularly when purchasing shares/securities issued by a foreign entity, purchasing assets or transferring funds to an account with a foreign bank, etc. In certain cases, a Ukrainian entity can make investments abroad using its own foreign currency (borrowed funds or purchased foreign currency may not be used).

Accounting principles/financial statements – Ukrainian accounting standards generally are in line with IFRS, but differ in certain areas. Financial statements must be prepared on a quarterly basis.

Joint stock companies, banks, insurance and certain other companies (as listed in a government decree) must prepare financial statements in compliance with IFRS. Other companies may opt to prepare financial statements in compliance with local GAAP or IFRS.

Principal business entities – These are the limited liability company, private and public joint stock company, representative office and branch/permanent establishment (PE) of a foreign corporation.

Corporate taxation:

Residence – A legal entity incorporated and operating under Ukrainian law generally is considered a tax resident; a legal entity incorporated abroad and operating according to the laws of another country normally is treated as a nonresident.

Basis – A resident entity is taxed on worldwide income received or accrued within the reporting period, depending on the type of income. A nonresident company is taxable on business income derived from carrying out trade or business activities in Ukraine and other nonbusiness income received from Ukrainian sources. A branch or PE of a nonresident in Ukraine is treated as a separate entity for tax purposes.

Nonresidents acting in accordance with the provisions of the Chernobyl Shelter Fund Grant Agreement between Ukraine and the European Bank for Reconstruction and Development are not subject to tax and can conduct their economic activities in Ukraine without registration.

Taxable income – Taxable income is calculated based on accounting data by adjusting profit (loss) before tax by the amount of book/tax differences.

Taxpayers with income (excluding indirect taxes) not exceeding UAH 20 million may calculate taxable income based only on accounting data, without any adjustments for book/tax differences (except for losses carried forward from previous periods).

Taxation of dividends – Dividends received by a domestic company from another domestic company/corporate income tax (CIT) payer are not subject to corporate income tax.

Dividends received by a domestic company from a nonresident are included in taxable income.

Dividends paid by a Ukrainian company are subject to advance corporate income tax (ACT) at the general CIT rate. The ACT base is the amount of dividends paid by the company that exceeds the company's taxable profit for the year from which such dividends are payable. ACT is due at the time the dividends are paid. In cases where the CIT liability for the year is unsettled, ACT is calculated based on the full amount of dividends paid.

A Ukrainian company may reduce its CIT liability for ACT paid, and any excess ACT may be carried forward indefinitely to reduce the taxpayer's CIT liability in a future period.

The amount of ACT paid on dividends is not refundable to the taxpayer and may not be used to reduce taxes other than CIT.

ACT does not apply to certain dividends (i.e. dividends paid by a holding company out of dividend income received from subsidiaries, dividends paid by a company out of tax exempt profit and dividends paid to individuals).

Capital gains – Capital gains are treated as ordinary income and taxed at the standard corporate tax rate.

Losses – Tax losses generally may be carried forward indefinitely. Restrictions sometimes are imposed for certain periods. The carryback of losses is not permitted.

Rate – The corporate income tax rate is 18%. Certain types of businesses (e.g. insurance, lotteries, etc.) are taxed under special regimes, which may provide lower tax rates.

Surtax – No

Alternative minimum tax – No

Foreign tax credit – Foreign tax paid may be credited against Ukrainian tax or deducted from taxable income under an applicable tax treaty. The credit or deduction is limited to the amount of Ukrainian tax payable on the foreign income.

Participation exemption – No

Holding company regime – No

Incentives – Incentives are provided only to entities that are founded by the public institution of disabled people.

Withholding tax:

Dividends – A 15% withholding tax is levied on dividends paid to a nonresident, unless the rate is reduced under a tax treaty.

Interest – A 5% withholding tax is levied on interest paid to nonresidents on loans made to Ukrainian residents from qualifying Eurobond issuance proceeds starting in 2017. Otherwise, a 15% withholding tax is levied on interest paid to a nonresident, unless the rate is reduced under a tax treaty.

Royalties – A 15% withholding tax is levied on royalties paid to a nonresident, unless the rate is reduced under a tax treaty.

Technical service fees – A 15% withholding tax is levied on technical service fees paid to a nonresident for engineering services, unless the rate is reduced under a tax treaty.

Branch remittance tax – There is no branch profits tax specifically imposed in the CIT section of the tax code, and the Ukrainian tax authorities generally agree that no tax should be withheld if there is a tax treaty between the country of the head office of the branch and Ukraine. In the absence of a treaty, the tax authorities may require payment of a 15% tax on the repatriation of after-tax branch profits.

Other – A 20% surtax applies to payments to nonresidents for advertising services performed outside Ukraine.

Other taxes on corporations:

Capital duty – No

Payroll tax – No

Real property tax – Land tax is imposed on the owner/user, at rates generally up to 12% of the land's estimated value depending on the location and use of the land.

Legal entities (including nonresidents) that own residential or nonresidential real estate are subject to tax at a rate equivalent to 3% of one minimum salary as of 1 January of the reporting year per square meter owned. If the real estate's total area exceeds 300 square meters (for apartments) and/or 500 square meters (for houses), the amount of tax calculated will be increased by UAH 25,000 per year per property (or part thereof).

Social security – Salary or similar employment compensation paid to an employee is subject to a unified social security contribution at a rate of 22%.

Stamp duty – No

Transfer tax – No, but see "Other," below for state duty and mandatory pension fund contributions triggered by transfers of real estate.

Other – A state duty is imposed on the transfer of real estate and vehicles; mandatory pension fund contributions of 1% for land/buildings and 3-5% for vehicles also apply.

The import or manufacturing/extracting of cars, alcoholic beverages, tobacco products, fuel, gas, etc. is subject to excise tax at rates specific to each product.

Anti-avoidance rules:

Transfer pricing – The transfer pricing rules generally are based on the OECD transfer pricing guidelines. The rules apply to taxpayers with annual revenue (less indirect taxes) exceeding UAH 150 million that engage in controlled transactions exceeding UAH 10 million with one counterparty. Controlled transactions include (1) transactions with nonresident related parties; (2) sales or purchases of goods and services under commission agreements with nonresidents; (3) transactions between related parties (one of which is a nonresident) through one or more unrelated intermediaries that do not perform significant functions; (4) transactions with nonresidents registered in the low-tax jurisdictions included in the list issued by the Cabinet of Ministries of Ukraine (CMU); and (5) transactions with nonresidents in specified legal forms (to be included on a list that will be issued by the CMU) that do not pay corporate tax or are not tax residents of the country where they are registered.

The CMU list of low-tax jurisdictions includes: (i) countries with a corporate income tax rate at least five percentage points lower than the Ukrainian rate; and (ii) countries that have not concluded agreements with an information exchange provision with Ukraine.

The transfer pricing rules provide five permissible transfer pricing methods: comparable uncontrolled price method, resale price method, cost-plus method, transactional net margin method and profit-split method. Special regulations are anticipated for cross-border sales of goods, which are traded on a commodity exchange, with residents in the jurisdictions included in the CMU list.

Taxpayers are required to submit a report of controlled transactions by 1 October and other transfer pricing documentation within one month of a request by the tax authorities.

Thin capitalization – Thin capitalization rules apply to all loans received by resident companies from nonresident related parties where the debt is greater than 3.5 times the company's equity. Deductions for interest paid on such loans is limited to 50% of profits before tax (plus the amount of financing expenses and depreciation) for the relevant tax period. Nondeductible interest may be carried forward to future periods, but the carryforward amount is reduced by 5% annually.

Controlled foreign companies – No

Disclosure requirements – Individual shareholders (beneficial owners) must be disclosed at the time a legal entity registers with the state and at the time of a merger or acquisition.

Taxpayers are required to submit certain transfer pricing documentation, see "Transfer pricing, above."

Other – Ukraine does not have a general anti-avoidance rule. However, to prevent tax avoidance, limitations are imposed on the deductibility of payments to non-profit and government-financed organizations; payments to nonresidents registered in "low-tax" jurisdictions; and royalty payments to nonresidents.

The deductibility of royalty payments is restricted to 4% of the previous year's taxable profit increased by current year's income from royalties if the payment is made to a nonresident entity and the transaction does not fall within the scope of the transfer pricing rules. The restriction may be avoided, however, if the payment made is an arm's length price and this is supported by proper documentation.

Royalty payments are nondeductible if paid to (i) a nonresident that is not the beneficial owner of the royalties; (ii) a nonresident whose IP rights relating to the royalties originated in Ukraine; (iii) a nonresident that is not taxed on the royalties in its jurisdiction; (iv) or a legal entity that is not subject to corporate income tax or pays at a rate lower than standard rate applicable in its jurisdiction.

Compliance for corporations:

Tax year – Calendar year

Consolidated returns – Consolidated returns are not allowed; each entity must file a separate return.

Filing requirements – The corporate income tax return must be submitted within 40 days following the quarterly reporting period. Certain companies (newly established, agricultural producers, and entities with annual income less than UAH 20 million) may submit their annual tax return within 60 days following the end of the calendar year.

Penalties – Penalties and/or fines apply to late payments (120% of the national bank's discount rate); failure to comply with filing requirements; and accuracy-related penalties (25% of the underpaid amount for the first violation, 50% for the second violation and thereafter). Significantly reduced penalties apply for understatements revealed by the taxpayer.

A penalty of up to 75% of the understated tax liability will be imposed for failure to pay withholding tax to the government or withhold personal income tax.

Penalties of up to 300 minimum salaries may be imposed for failure to submit complete or timely transfer pricing documentation, including the report on controlled transactions.

Rulings – A taxpayer may request an explanation of the tax treatment of a particular issue. A taxpayer may not be subject to a penalty for acting on the basis of a ruling issued by the tax authorities.

Personal taxation:

Basis – Residents are taxable on their worldwide income. Nonresidents are taxed only on Ukrainian-source income.

Residence – There are several criteria for residence: (1) an individual is tax resident in Ukraine if he/she has a permanent home in Ukraine; (2) if an individual has a permanent home in more than one country, he/she is considered a tax resident in Ukraine if he/she has closer personal and economic ties (center of vital interest) with Ukraine; (3) if it is impossible to determine residence under either of the preceding tests, an individual will be deemed to be tax resident in Ukraine if he/she is present in Ukraine at least 183 days cumulatively during a calendar year (not counting the day of arrival and the day of departure); and (4) if tax residence still cannot be determined, the individual will be deemed a tax resident if he/she is a Ukraine national. The presence of the individual's family in Ukraine also is a factor in determining tax residence.

Filing status – Joint filing is not allowed in Ukraine; each individual must file his/her own return.

Taxable income – Income is taxable whether obtained in cash or in kind. Taxable income includes employment income (including in-kind benefits); proceeds from trading or professional activities (including proceeds from intellectual property); proceeds from the alienation of property; gifts and prizes; insurance payments; dividends and interest; investment income; and contributions to unqualified pension plans made on behalf of a taxpayer by another person/employer.

Capital gains – The taxation of capital gains depends on the source of the gains (see under "Rates," below).

Gains derived from the sale of a house, apartment (or part thereof), room or village house (including a land plot) are not subject to tax if only one such sale takes place during the year, provided the owner has held legal title for at least three years before the sale (the three-year ownership period does not apply to inherited property). The rate is 5% if the taxpayer makes more than one sale per year.

Deductions and allowances – Deductions are available for social security contributions, mortgage interest (for real estate located in Ukraine), contributions to listed charities, educational expenses for the taxpayer and his/her immediate relatives and medical expenses (limited amounts).

Rates – The general personal income tax rate applied to employment income is 18%.

There are number of specific income types exempt from personal income tax (i.e. interest on government bonds, state aid for low income families, etc.).

A temporary military duty of 1.5% of taxable personal income applies to salary, other incentive and compensatory payments and other benefits and remuneration accrued (paid or provided) to a taxpayer.

Dividend income obtained by resident individuals from resident entities is taxed at a rate of 5%. Other passive income is taxed at 18%.

Gains derived from the sale of movable property are subject to a 5% rate.

Gains derived from the first sale of motor vehicles during the year are not subject to tax. Subsequent sales of motor vehicles by the same person will be subject to a 5% tax.

Other taxes on individuals:

Capital duty – No

Stamp duty – No

Capital acquisitions tax – No

Real property tax – Separate taxes apply for buildings and for land. An individual must pay tax annually if one of the following conditions is met: (1) the area of his/her apartment(s) is more than 60 square meters; (2) the area of his/her dwelling house(s) is more than 120 square meters; or (3) the total area of his/her apartments and houses is more than 180 square meters.

If an individual owns real estate with an area of less than the square meters mentioned above, there are no tax obligations related to the real estate; otherwise, the excess over these square meters is taxed at a rate of up to 3% of the minimum wage per square meter.

An additional payment of UAH 25,000 applies to owners of apartments over 300 square meters and houses over 500 square meters.

Additionally, land tax is imposed on the owner/user, at rates generally up to 5% of the land's estimated value depending on the location and use of the land.

Inheritance/estate tax – Inheritances (real estate, chattels, securities, corporate rights, etc.) and gifts are taxable at the following rates: 0% if the recipient is a resident classified as a close relative (i.e. parent, spouse, parent of spouse, child/adopted child); 5% if the recipient is a resident not qualified as a close relative; and 18% if the recipient (not a relative) is a nonresident but the testator was a resident (or vice versa).

Net wealth / net worth tax – No

Social security – No

Other – Owners of cars with an average market value exceeding 750 minimum wages and manufactured less than 5 years ago are subject to tax in the amount of UAH 25,000 per annum per vehicle.

Compliance for individuals:

Tax year – Calendar year

Filing and payment – Employers and other taxable entities are considered the tax agents of individuals, and are responsible for withholding personal income tax and unified social security contributions from salaries and other remuneration, which must be remitted by the tax agent before or at the time the income is paid (or on the following banking day if income is paid in kind.) The tax agent also is responsible for filing personal income tax reports on a quarterly basis.

If an individual receives taxable income from sources other than from a tax agent (e.g. foreign income), he/she must file a personal income tax return by 1 May of the year following the reporting year, and pay the tax due by 1 August. Annual tax return filing also is required if an individual wishes to claim a tax credit for certain expenses incurred during the calendar year.

There is no filing obligation if income is received entirely from Ukrainian tax agents; income is derived from the sale/exchange of real property or from gifts, and personal income tax has been paid during notarization of such transactions; or income is derived from an inheritance that is taxed at the 0% rate.

Penalties – Penalties are imposed for late payments and understatements.

Value added tax:

Taxable transactions – VAT is levied on the supply of goods and services in Ukraine and on the import/export of goods and auxiliary services. Certain supplies are not subject to VAT (e.g. the issuance of securities, insurance services, payment of dividends, royalties and services (except for transport services) supplied outside Ukraine). VAT-exempt supplies include domestically produced baby food products, published periodicals, student notebooks, textbooks and books.

Rates – The standard VAT rate is 20% for domestic supplies and for imported goods and auxiliary services. A 7% VAT rate is applied to supplies of pharmaceuticals and healthcare products. Exported goods and auxiliary services are zero-rated. For VAT purposes, services that are included in the customs value of imported/exported goods are considered auxiliary services.

Registration – Registration is required (for residents and nonresidents) if turnover exceeds UAH 1 million during any rolling 12-month period. A legal entity may apply for voluntary registration if such registration is deemed necessary by the entity.

Filing and payment – The tax period (and the filing and payment obligations) is either a calendar month or calendar quarter (depending on turnover). Monthly returns must be submitted within 20 calendar days of the last calendar day of each reporting month. Quarterly returns must be submitted within 40 calendar days of the last calendar day of each reporting quarter.

All VAT invoices must be registered with an electronic register (Unified Register of VAT Invoices) maintained by the tax authorities, and which provides the basis for recognition of input VAT. The entitlement to such recognition is valid within 365 days.

Each VAT payer must use a special VAT account opened with the State Treasury of Ukraine to account for VAT paid at customs, input VAT from suppliers and VAT to be invoiced, and out of which to pay VAT liabilities to the government.

Source of tax law: Ukrainian Tax Code, of 2 December 2010 (as amended); Law of Ukraine No. 996-XIV of 16 July 1999 “On Accounting and Financial Reporting in Ukraine”

Tax treaties: Ukraine has more than 60 tax treaties.

Tax authorities: State Fiscal Service of Ukraine

Contact:

Victoria Chornovol (vchornovol@deloitte.ua)

Andriy Servetnyk (aservetnyk@deloitte.ua)