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Ukraine Business
and Investment Guide
Tax Issues 2015

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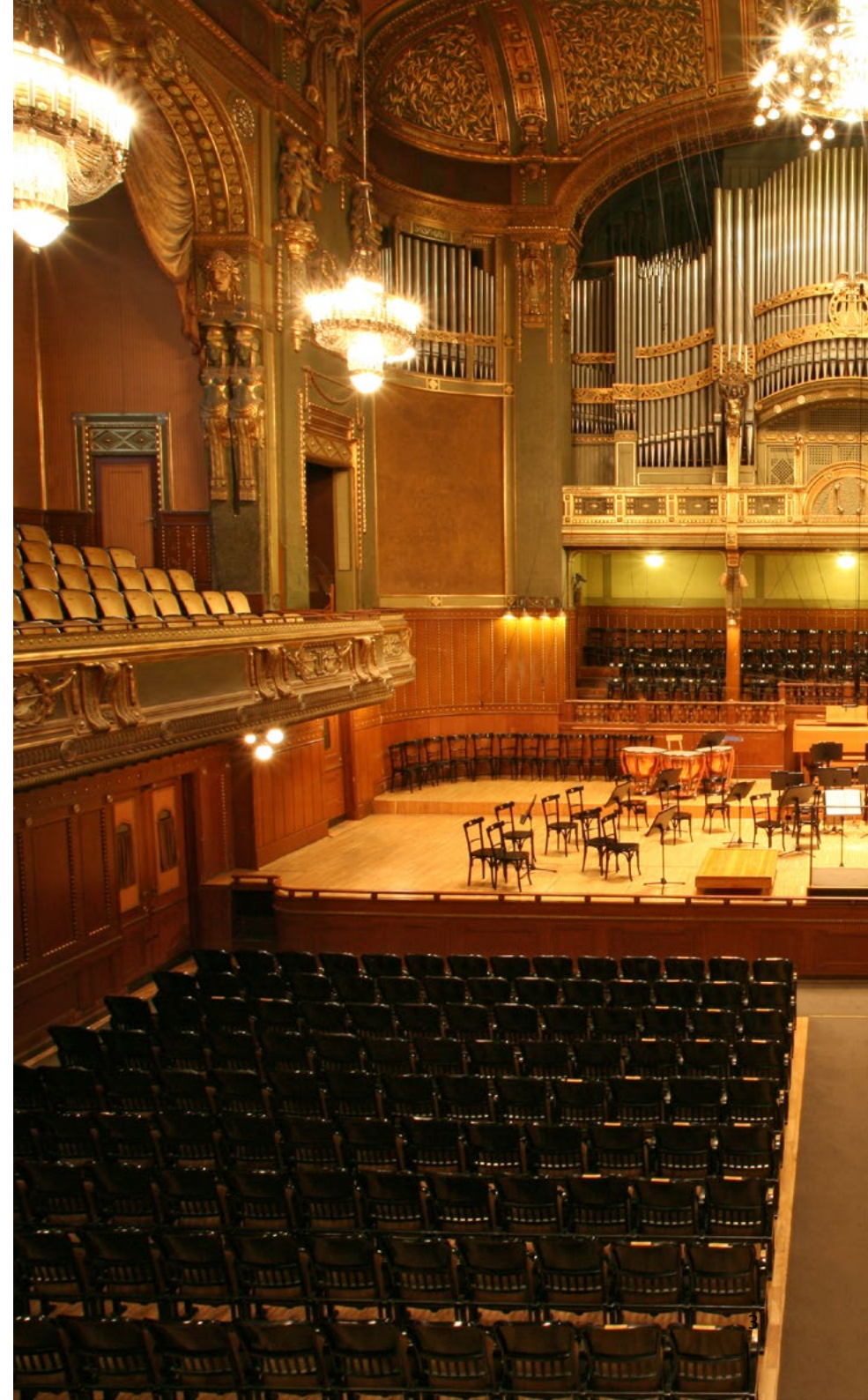
Introduction

Ukraine today represents one of the most attractive emerging markets for international companies. Situated at the crossroads of Eastern Europe, Middle East and Central Asia, the country benefits from a consumer market of 42.9 million people, a favorable climate, rich natural resources, a relatively cheap labor force and well-developed infrastructure. Ukraine has established a reputation as a major exporter of grain, machinery and rolled-metal products. The country's growth rates in the pre-crisis period and its industrial and agricultural potential attracted the attention of investors from across the globe.

The national currency – Ukrainian Hryvnia (UAH) had a triple fall in value in 2014. It reflected unfavorably on the overall welfare of the population and resulted in an unusual demand for foreign currency on the exchange market. Nevertheless, after the EU has opened its market for Ukrainian goods, the hryvnia decrease had a beneficial effect on the competitiveness of domestic manufacturers and agricultural products on overseas markets.

Imports and exports of goods account for the vast majority of favorable economic figures coming out of Ukraine. The country's main import partners are China, Germany, Belarus, Poland, USA, Italy, Hungary, Turkey, France, Lithuania and Russia while its main export partners are Turkey, China, Egypt, Poland, Italy, India, Belarus, Germany, Hungary, Spain, Netherlands, Kazakhstan, Saudi Arabia and Russia.

The nation's main imports are mineral fuels; oil and refining products (natural gas, coal, etc.), nuclear reactors, boilers, machinery; electrical machines; plastics, polymers; pharmaceutical products; vehicles, except railway; ferrous metal; paper and paperboard; chemicals, while its main exports are ferrous metal; grains; vegetable oil and animal fat; ores, slag and ash; mineral fuels; oil and refining products; ferrous metals works; seeds and fruits of oil-bearing plants; wood and wood products; inorganic chemistry products; residues and waste from the food industry.





Despite the country's excellent prospects, several factors have restrained the inflow of investments into Ukraine. This is predominantly caused by the change of political powers in Ukraine, by annexation of part of the Ukrainian territory (Crimea) by Russia and the war in the eastern part of Ukraine (known to be the coal production center). Other factors include inconsistency in the most crucial economic decisions (such as the regulatory approval system and legislation), the shortcomings of the judicial system, the instability of the national currency and weak liquidity in the stock market. Ukrainian GDP experienced a decrease in 2014, falling by 1.12%. However, experts predict growth in 2015 by 1%.

Loans from the world's financial organizations helped Ukrainian economy to survive also helping the banking system to escape the financial collapse. As a result, the size of foreign debt of Ukraine owed to the EU, IMF, separate states and commercial institutions amounted to USD 30.1 billion. Ukraine's national debt has been gradually increasing over the past several years, however, having slightly decreased in 2014 (by 4.5% if calculated in USD), and now amounts to USD 69.81 billion. Business activity, which was recovering during 2011, slowed down in 2012 in line with the overall European recession.

Services of Deloitte Ukraine

Deloitte in Ukraine provides consultations on direct, indirect and personal taxation regarding the following matters:

Business Tax

- Consulting on corporate income tax (CIT) and value added tax (VAT) issues
- Financial accounting and income tax reporting
- Compliance with tax rules and reporting services
- Tax due diligence

International Tax

- Advice on the application of double tax treaties
- International tax planning aimed at improving business efficiency, reducing operating costs and managing economic risks
- Structuring of cross-border investments
- Consultation regarding tax efficient international holding structures
- International tax and tax planning presentations, workshops, conferences and other events etc.
- Assistance in setting up companies in foreign jurisdictions (with involvement of partner legal firms)
- International cooperation with other Deloitte practices ensures a direct and efficient transfer of knowledge.
- The Deloitte network has a worldwide database with tax information covering more than 185 countries. The international network of Deloitte tax professionals provides high quality consulting in all international tax matters.

Transfer Pricing

- Analysis of transfer pricing documentation
- Preparing reports on controlled transactions
- Development of transfer pricing documentation

Customs Services

- Advising on customs clearance matters, identification of customs risks, recommendations on their elimination
- Review of documents covering customs-cleared deliveries, identification of additional customs charges risks, recommendations on their elimination or mitigation

Tax Controversy Solutions

- Tax audit strategy and consulting
- Dispute resolution

Corporate and M&A Solutions

- Legal purchaser and vendor due diligence
- Corporate reorganizations and restructuring
- National and cross-border mergers
- Post-merger integration activities and legal entity reduction
- Corporate law and corporate governance

Commercial Law Solutions

- Legal and contractual framework of supply chain management and distribution networks
- Real estate including acquisition, disposal and portfolio management
- Intellectual property rights including registration, protection and defense
- Competition law

Regulated Industries Solutions

- Labor law issues in restructuring
- National and International social security law
- Pensions and benefits
- Mobility and immigration

Advice on payroll and individual taxes

- Assistance in preparing tax returns
- Registration with the tax authorities
- Advice on various issues relating to structuring employment in Ukraine
- Tax advice on personal income tax and other obligatory charges imposed on employees and employers
- Tax advice to individuals on the application of the relevant provisions of international double tax treaties and on the interpretation of these provisions by the tax authorities
- Advice on legislative requirements with regard to foreign nationals in Ukraine, including obtaining and preparation of documents necessary for their stay and work in Ukraine.

Country profile

Ukraine is located in Eastern Europe, bordered on the west by Poland, Slovakia, and Hungary; on the southwest by Romania and Moldova; on the south – by the Black Sea and the Sea of Azov; on the east and northeast – by Russia, and on the north – by Belarus.

History and government

Ukraine gained independence after the collapse of the Soviet Union in 1991. Particularly, on 16 July 1990, the new parliament adopted the Declaration of State Sovereignty of Ukraine, which established the principles of the self-determination, democracy, independence, and the priority of Ukrainian law over Soviet law. Hence, on 24 August 1991 the Ukrainian parliament adopted the Act of Independence. At the meeting in Brest, Belarus on 8 December, followed by the Alma Ata meeting on 21 December, the leaders of Belarus, Russia, and Ukraine formally dissolved the Soviet Union and formed the Commonwealth of Independent States (CIS).

A referendum and the first presidential elections took place on 1 December 1991.

Ukraine is a unitary republic under parliamentary-presidential form of governance. According to the Constitution, the state power in Ukraine is exercised on the basis of the separation of legislative, executive, and judicial powers.

The Parliament is a representative and legislative body of Ukraine and consists of 450 members.

Banking system

The Ukrainian banking system is two-tiered, encompassing the central state bank of the country and commercial banks. The central state bank of Ukraine is the National Bank of Ukraine (the "NBU"). The main function of the National Bank is to ensure stability of the monetary unit of Ukraine. Other functions of the NBU as a banking sector regulator include issuance of the national currency and organization of its circulation, establishing the rules of conducting banking transactions, exercising the consolidated banking regulation and supervision.

Commercial banks operate under the authorization and supervision of the NBU. They are established as public joint-stock companies or as mutual saving banks. The commercial banks require a license from the NBU to operate. The NBU has established requirements for capital adequacy, minimum statutory capital and minimum regulatory capital.

Currency

The Ukrainian national currency is the Ukrainian Hryvnia, which was introduced in 1996 (currency code – UAH, and the currency symbol - ₴). As of 2 June 2015, the National Bank of Ukraine established the following official exchange rates for the major currencies:

- UAH 21.084888 for USD 1
- UAH 23.130122 for EUR 1
- UAH 3.9804 for RUB 10

Incentives for Foreign Investments

The Ukrainian legislation establishes no special tax regimes for enterprises with foreign investments.

A foreign investor's contribution to the share capital of a Ukrainian enterprise with foreign investment in the form of goods may be exempt from customs duties, provided that the goods are not alienated for three years after the contribution.

Ukrainian tax legislation provides attractive tax incentives for businesses operating in certain prioritized sectors of economy. Brief overview of the most significant tax incentives is given below.





Renewables and Energy Efficiency

The government's support of renewable energy and energy efficiency in Ukraine includes:

- "Green" tariff regime (non-tax incentive). This regime enables to sell electricity produced from renewable energy sources at a special price, higher than traditional energy price.
- Tax and customs incentives, covering VAT and customs duties exemptions of certain operations. Specifically:
 - Import of the following goods is exempt from the Ukrainian VAT and customs duties, provided that (i) such goods are used by a taxpayer for the purpose of own production process and (ii) no identical goods are produced in Ukraine (please note that the below list is not intended to be all-inclusive):
 - Equipment powered by renewable energy sources, equipment and materials for production of energy from renewable energy sources and alternative fuel types, energy-efficient equipment and materials.
 1. Equipment, spare parts and materials for manufacturing of equipment and materials noted in (1).

The list of the above goods is defined by the Cabinet of Ministers of Ukraine.

- The following operations are temporary (until 1 January 2019) exempt from VAT and customs duties (please note that the below list is not intended to be all-inclusive):
 1. Supply of machinery and equipment specified in the Law of Ukraine "On Alternative Fuel Types" on the territory of Ukraine.
 2. Import of equipment and machinery for construction and reconstruction of enterprises producing biofuel and biofuel vehicles (specified in the Law of Ukraine "On Alternative Fuel Types"), provided that such goods are not manufactured in Ukraine.





Mining industry

Mining companies acting under the production sharing agreement (“PSA”) signed with the government (most frequently – oil and gas companies) have a number of tax incentives, in particular (please note that the below list is not intended to be all-inclusive):

- VAT privileges and customs duties exemption:
 - No VAT and customs duties shall be applied to import of goods/property for the purposes of implementing a PSA (no exemption from excise tax is granted)
 - No customs duties and excise tax shall be applied to export of goods produced under a PSA, VAT applies at 0% rate.
- Exemption from withholding tax on profits, received under PSA, repatriated outside Ukraine by a foreign investor’s permanent establishment (“PE”) registered in Ukraine.
- Tax-free financing of the PE’s activity (no corporate income tax shall apply to funds/property received by the PE from the foreign investor to finance the PE’s activity for the PSA purposes).



Agriculture

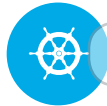
Qualified agriculture producers are entitled to use favorable special tax regimes. For details, please refer to [page 40](#).





IT industry

Temporary, until 1 January 2023, supply of software is VAT-exempt. Such software includes operating systems, computer programs, system administration, websites, online services etc. For more details, please refer to the [Taxation of IT companies](#) section.



Shipbuilding industry

VAT and customs incentives are granted for shipbuilders importing equipment and spare parts, provided that (i) such goods are used by a taxpayer for the purposes of own business activity, and (ii) no identical goods are produced in Ukraine. The privileges are the following:

- Shipbuilders are entitled to defer payment of import VAT – instead of payment of VAT at customs, a VAT promissory note may be issued to the controlling authorities. The promissory note must be paid in cash as of the date when VAT liabilities in relation to sale of the ship arise.
- Equipment and spare parts are exempt from import customs duties (applies temporary until 1 January 2016).

The list of the above equipment and spare parts is defined by the Cabinet of Ministers of Ukraine.





“Priority industries”

Tax and customs incentives are offered to entities undertaking investment projects in “priority industries” (according to the Law of Ukraine “On Promotion of Investment Activity in Priority Industries Aimed at Job Creation”). The list of “priority industries” has been defined by the Cabinet of Ministers of Ukraine, and includes specific sectors in agriculture, machine-building industry, transport infrastructure etc.

An entity in the priority industry may qualify for the incentives, if its investment project (a) meets specific requirements defined by the law (i.e. regarding amount invested, number of new jobs, salary level), and (b) has been approved by the government bodies.

The incentives include:

- Temporary, until 1 January 2018, no customs duties shall apply to import of equipment for the eligible projects (subject to a specific approval of the Cabinet of Ministers of Ukraine).
- The entity is also entitled to postpone payment of import VAT on the above duty-free equipment, by issuing a VAT promissory note. The VAT promissory note must be paid in cash within 60 days (this benefit is effective until 31 December 2022).

As noted, the list of the tax incentives outlined above is not all-inclusive.

At present, the Ukrainian legislation is subject to frequent amendments. Thus, introduction of new incentives/ abolishment of existing ones is possible in the nearest future.



Tax administration

General information

The Tax Code of Ukraine (the "TCU" or the "Tax Code") became effective on 1 January 2011. In December 2014, the government approved large-scale tax reform (effective since 1 January 2015) which includes essential changes to the existing Ukrainian tax rules and administration.

Types of taxes and duties

The list of Ukrainian taxes, levies, and general tax principles is established by the TCU. In accordance with the Tax Code, all taxes and levies are classified as either state or local. State taxes are payable to state budgets, while local taxes are payable to local municipalities (city, regional or specific district councils).

Ukrainian state taxes:

- corporate income tax (CIT);
- personal income tax (PIT);
- value-added tax (VAT);
- excise duties;
- ecological tax;
- resource duties;
- state duties;

Local taxes and duties:

- property tax;
- unified tax;
- parking duty;
- tourist duty.

In addition to the duties outlined in the Tax Code, Ukrainian taxpayers are required to remit obligatory Unified Social Security Contributions.

Payers of taxes and duties

The Tax Code defines the payers of taxes and duties in Ukraine. The following organizations and individuals are considered to be the taxpayers:

- individuals (residents and non-residents of Ukraine), and
- legal entities (residents and non-residents of Ukraine) and their branches, who possess, receive (transfer) objects of taxation or undertake activities (operations) subject to taxation, and who are liable to pay taxes and duties according to the TCU.



Accounting and audit

Accounting

Financial statements of the Ukrainian entities must be prepared either based on the Ukrainian National Accounting Standards (the “Ukrainian GAAP”, developed on the basis of IFRS back in 1999) or IFRS.

In accordance with the Ukrainian legislation public interest entities (Public Joint Stock companies), banks, insurance companies, some other companies operating on financial markets are required to prepare financial statements in accordance with IFRS. The Cabinet of Ministers of Ukraine may provide additional list of entities subject to reporting under IFRS. All other entities may voluntarily choose IFRS as their reporting framework.

According to the Law on Accounting, the Ukrainian GAAP should not contradict IFRS, however, there are some differences between the two sets of standards because the Ukrainian GAAP does not reflect the latest developments in IFRS, and it is less demanding in disclosures.

Obligatory independent audit

The Law on Audit Activity requires that public stock companies, legal entities – issuers of bonds, professional participants of stock exchange market, financial institutions and other business entities, financial reporting of which has to be made officially public, excluding institutions and organizations which are totally financed by the state budget, are required to have their entity and consolidated financial statements audited.

The statutory audit requirement also applies to:

- founders of the banks, entities with foreign investments, public stock companies (excluding individuals), insurance and holding companies, institutions of joint investments, trust entities and other financial intermediaries;
- issuers of securities engaged in public offerings and issuers of derivatives, and also upon receipt of professional activity licenses in the stock exchange market.

Tax Audits

The State Fiscal Service of Ukraine (hereinafter, the “tax authorities”) is responsible for levying taxes and duties, and have the right to perform tax audits. It may perform both scheduled and unscheduled tax audits of taxpayers. Starting 2015, the tax authorities in Ukraine may also check the correctness of the financial accounting of the taxpayer.

Types of tax audits include:

- desk audits;
- regular audits (scheduled or unscheduled; field, in-house and electronic);
- factual audits (at the location where a taxpayer actually performs its business activities; may be carried out without providing the taxpayer with a prior notice);
- transfer pricing audits.

The frequency of scheduled regular audits depends on the tax risk level of the company’s activities:

- high – once per calendar year;
- medium – once every 2 calendar years;
- low – once every 3 calendar years.

The duration of the most common types of tax audits are outlined in the table 1 below:

Table 1

Type of Tax Audit	Large taxpayers	Small taxpayers	Other taxpayers
Scheduled	30 business days, with a possible extension of up to 15 business days	10 business days, with a possible extension of up to 5 business days	20 business days, with a possible extension of up to 10 business days
Unscheduled	15 business days, with a possible extension of up to 10 business days	5 business days, with a possible extension of up to 2 business days	10 business days, with a possible extension of up to 5 business days
Factual	10 calendar days, with a possible extension of up to 5 calendar days		
Transfer pricing	The tax audit can last up to 18 months with the possibility to extend it to another 12 months.		

In accordance with the current Ukrainian legislation, the statute of limitations for general tax purposes in Ukraine is three years (1,095 days) and seven years (2,555 days) for transfer pricing purposes, starting from the deadline for submission of the respective tax return or a later date when the tax return is actually submitted.

In general, periods that have been audited by the tax authorities are considered "closed", and may not be reopened for further tax audits in the future (unless criminal proceedings are initiated against a tax officer who conducted the tax audit of the entity, or against an official of that entity). The statute of limitation period does not apply to tax periods for which a tax return was not filed or deliberate tax evasion was committed, as proved by a court.



Administrative liabilities for breaching tax laws and regulations

The penalties for violations related to the accrual, withholding and payment of taxes depend on the frequency of violations during a period of 1,095 consecutive days (statute of limitations for tax purposes), as follows:

- 25% for the first violation;
- 50% for the second and any subsequent violation;

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

The fines for the violation of tax payment deadlines are as follows:

- 10%, if tax is overdue for less than 30 days;
- 20%, if tax is overdue for 30 days or more.

A penalty of 3% of the transaction value (however, not exceeding UAH 243,000) may be imposed for non-submission of transfer pricing documentation. A penalty of 5% of the volume of controlled transactions may be imposed if such transactions are not reported to the tax authorities.

The fines for the correction of self-identified errors are as follows:

- 3%, if an error from a previous period is corrected by filing an amended tax return (filing an amended tax return is a basis for the tax authorities to perform an unscheduled field tax audit);
- 5%, if an error from a previous period is corrected by amending the tax return for the current period.

Additionally, the TCU provides for accrual of late payment penalties for payment of tax due after the defined tax payment deadline.

Given the substantial changes in the Ukrainian tax legislation, starting 2015 no fines and penalties will be applied to CIT payers for their failure to comply with the requirements regarding CIT calculation, CIT return preparation accuracy and completeness of CIT payment based on 2015 operating results.

Taxpayers have the right to challenge the tax authorities' decisions to accrue tax liabilities and impose penalties up to the highest level of the tax authorities and/or the courts.

Criminal responsibility for tax evasion

In addition to tax and administrative fines and penalties, Article 212 of the Criminal Code provides for criminal responsibility in the event of tax evasion. The officials of the legal entities accused of intentional tax evasion are subject to the fine of UAH 17,000 - UAH 425,000, forfeiture of property and prohibition to occupy some posts up to three years.

As far as entities bear personal responsibility for tax violations, good tax planning and careful compliance should be paid special attention to prevent violations and achieve success.

Types of Business presence

Ukrainian legislation provides for a number of different legal forms through which foreign businesses may operate. Foreign companies doing business in Ukraine most commonly take the form of:

- legal entities (primarily, limited liability companies, public and private joint-stock companies);
- joint ventures (especially in the oil and gas exploration sector);
- representative offices (common for foreign companies that are only planning to perform marketing, promotional and other auxiliary activities).

Foreign investors that plan to carry out active business operations may choose to establish a legal entity in Ukraine, instead of opting for the representative office.

If a foreign investor chooses to do business in Ukraine in a form other than a legal entity, it is important to determine whether that foreign company's presence in Ukraine would lead to the creation of a PE under Ukrainian tax legislation. For an additional discussion of PEs, please refer to [the Taxation of Non-Resident Entities section](#) of this guide.

Representative offices

A representative office of a foreign business in Ukraine is not a legal entity, but rather an "extension" of its parent company. A representative office may either represent its foreign parent company on the market and carry out various auxiliary activities, or carry out business (commercial) activities that may give rise to a taxable PE.

It is also possible to perform certain types of business activities in Ukraine without establishing a representative office or any other formal presence in the country.

Examples of this would include one-time contracts or joint production agreements with Ukrainian partners.

Representative offices that do not carry out business activities and simply function as the representation of a legal entity ("non-commercial representative offices") are only required to register with the Ministry of Economic Development and Trade of Ukraine (hereinafter, the "Ministry of Economy" or "MEU"). However, in practice, non-commercial representative offices also register with the tax authorities and social security funds. Unlike non-commercial representative offices, PEs ("commercial representative offices") are required to register with the local tax authorities and social security funds. Opening of the RO.

Representative offices are legally obliged to register with the MEU.

The registration process for representative offices involves the following steps:

MEU

- filing a set of registration documents, as required by law, and payment of a state registration fee (USD 2,500);
- examination of the documents by the MEU (within 60 working days);
- approval or rejection of the registration (may be appealed in court);
- upon receipt of the approval, inclusion of the RO into the Unified Register of Representative Offices and issuance of a Registration Certificate;
- then the RO is obliged to register with the tax authorities and State Statistics Service of Ukraine within 10 days after its registration with the MEU;
- approval of a design of the official RO seal and opening of bank accounts for the RO.

Upon completion of the above procedures, a registered entity has the right to apply to:

- the respective departments of the Ministry of Internal Affairs to obtain visas and register passports of its employees;
- traffic police offices to register vehicles owned by the representative office.

State tax authorities

- a representative office must file the required documents with the tax authorities in the region/district in which it is located;
- not later than on the next business day after submitting the documents, tax officer shall make a decision on whether to approve or reject the registration;
- the tax authorities issue a Certificate of Registration for a corporate income taxpayer.

Types of legal entities

Ukrainian legislation provides for a number of different forms of a legal entity for carrying out business activities. The two most common types of legal entities envisaged under Ukrainian law are limited liability companies and joint-stock companies. The latter may be public or private.

The main legislative acts regulating these types of legal entities are the Civil and Commercial Codes of Ukraine and the Laws of Ukraine “On Business Entities” and “On Joint-Stock Companies”.

A Ukraine-based company or partnership is considered to be a legal entity upon its state registration.

A Ukrainian business is established and operates on the basis of the constituent (foundation) document, i.e., the Charter. A constituent document should contain the specific information required by law for each type of business. It should be noted that a Ukrainian entity (either a limited liability company or a joint-stock company) may not have a sole founder, if 100% of the founder is owned by a single company.

Generally, Ukrainian legislation does not contain any restrictions or limitations on the level of foreign investments or shared membership by a foreign investor in a Ukrainian business. However, there are some restrictions on foreign ownership in certain highly regulated businesses (e.g., insurance companies, publishing companies, television, etc.). These restrictions should be accounted for prior to investing in Ukraine.

Public joint-stock companies (Publichne Aktsionerne Tovarystvo)

The main difference between public and private joint-stock companies is that the shares of private joint-stock companies are distributed exclusively among the founders, while the shares of public joint-stock companies are offered for public subscription or may be sold publicly on the stock market.

A public joint-stock company (“PJSC”) may have an unlimited number of shareholders. Subject to elaborated disclosure requirements, the PJSCs are the only form of a legal entity whose shares may be openly traded and, thus, are similar to “public” companies in the usual sense.

The minimum authorized share capital for these companies is set at 1,250 minimum monthly wages (as at 1 January 2015, the minimum monthly wage is fixed at UAH 1,218).

Private joint-stock companies (Pryvatne Aktsionerne Tovarystvo)

The most common type of a joint-stock company is a private joint-stock company ("PrJSC"). According to effective legislation, an owner of shares in a PrJSC is limited in terms of transferring its shares to a third party, unless consent has been obtained from the PrJSC's other shareholders.

The PrJSCs are among the most popular corporate vehicles for foreign investors in Ukraine, along with the limited liability companies. The main features of these companies are as follows:

- shareholders are not liable for the obligations of the company, and bear the risk of losses only to the extent of the value of their shares (limited liability);
- the PrJSCs may be involved in any type of activities, provided that the activity in question is not directly prohibited by law;
- the minimum authorized share capital of a PrJSC is determined in the same way as for a PJSC;
- the frequency of shareholders' meetings is established by the Charter, but must be held at least once a year

Among other things, the shareholders' meeting is responsible for electing a Supervisory Board to represent shareholders' interests;

- the company is established for an indefinite period, unless otherwise stipulated by the Charter;
- the day-to-day management functions of a PrJSC are performed by the entity's Board of Directors (or a Director). There are no legislative limitations on the number of members of the Board of Directors;
- the founders have to pay at least 50% of the value of the authorized share capital in order for the company to be allowed to perform activities other than those associated with its foundation purposes. According to the Law of Ukraine "On Joint-Stock Companies," shareholders may use cash funds, property, property and non-property rights, securities (except for promissory notes or any debt securities issued by the PrJSC) as a means of paying for their share in the authorized share capital of the PrJSC;
- an Audit Committee controls the activities of the Board of Directors;
- net (after-tax) profits of a PrJSC are normally distributed between its shareholders on a pro rata basis, according to the company's shareholding structure.

Both public and private joint stock companies may issue ordinary and preferential shares. Unlike ordinary shares, there may be various classes of preferential shares that grant different rights to their owners. All ordinary shares issued by JSC have equal voting and distribution rights.

Unlike shares (participation) in the LLC, shares in a joint stock company, as securities, may be effectively pledged.

If a joint stock company (either public or private) has more than 10 shareholders, establishment of a Supervisory Board is obligatory.

Limited liability companies (Tovarystvo z Obmezhenoyu Vidpovidalnistyu)

Along with the PrJSCs, limited liability companies (hereinafter, the “LLCs”) are among the most popular forms of doing business in Ukraine. As with the PrJSCs, the shares of the LLC cannot be transferred without the consent of the other shareholders. At the same time, the financial and reporting requirements to the LLC are less burdensome than those of the PrJSC.

The main features of the LLC are as follows:

- participants of the LLC have limited liability, which does not exceed their contribution to the company’s authorized share capital;
- the highest management authority of the LLC is its General Meeting of Participants. The frequency of meetings of the participants should be stipulated by the LLC’s Charter. At the same time, the effective legislation stipulates that the meetings of the participants should be held at least twice a year. Additional meetings may be held when required. Responsibility for the day-to-day activities of the LLC rests with its General Director/Director;
- shareholders are obliged to pay the full value of their shares within one year of the company’s state registration;
- net (after-tax) profits of the LLC are normally distributed among its participants on a pro rata basis, according to the stake of each participant in the company;
- there are no legal restrictions on the amount of authorized share capital of the LLC.



Taxation of businesses in Ukraine

Corporate income tax (CIT)

Please note that all of the tax rules described in this section are applicable from 1 January 2015.

General taxpayers

Tax jurisdiction

Legal entities incorporated and operating in accordance with the provisions of Ukrainian legislation are normally treated as tax residents, and are taxable on their worldwide income.

Legal entities incorporated abroad and operating according to the laws of another country are normally treated as foreign tax residents (non-residents), and are taxable on two sources of income:

- business income received in the course of carrying out trade or business activities in Ukraine;
- other non-business income from Ukrainian sources.

Resident companies shall pay corporate income tax (CIT). Currently, CIT is calculated at a flat rate of 18%. In addition to this rate, the following CIT rates are applied to the income received from:

- insurance activity related to the long-term life insurance, voluntary medical insurance and non-state pension schemes (0%);
- insurance activity related to non-life insurance (3%);
- lotteries and gambling activity using gaming machines (10%);
- betting activity, casino gaming and gambling activity reduced on gains paid to gambler (18%).

Small companies with annual net operating income less than UAH 3 million, an average income per each employee more than UAH 2.4 thousand, and in compliance with some other conditions provided by tax legislation, are taxed at 0% CIT rate until 01 January 2016.

Taxation of resident entities

Tax accounting rules

According to the domestic tax accounting rules, taxable item includes profit earned within the territory of Ukraine and worldwide. Such profit is calculated solely based on accounting data by adjusting profit (loss) before tax by the amount of respective differences.

Differences affecting financial profit (loss) before tax include:

- Depreciation;
- Provisions for future expenses and payments (excluding vacation provision and payroll related payments).
- Differences related to financial transactions.

The taxpayer should apply accounting and financial statements data concerning income, expenses and profit (loss) before tax for taxable item calculation.

If taxpayer's annual net revenue for the last reporting period is less than UAH 20 million, such taxpayer may calculate taxable item based only on financial profit (loss) without adjustments (except tax losses carry forward).

Reporting periods

The CIT reporting period is a calendar year. CIT return must be submitted by 1 June of the year following the reporting period. CIT is paid by means of monthly advance payments if taxable income for the previous year exceeds UAH 20 million. Such rule applies to CIT return for 2015.

In 2015, if taxpayers' taxable income for 2014 exceeded UAH 10 million, taxpayers are obliged to make CIT advance payments as follows:

- In January-February 2015: not less than 1/12 of the CIT liability reported in annual CIT return for 2013;
- In March 2015 – May 2016: not less than 1/12 of the CIT liability reported in the annual CIT return for 2014.

The 12-month advance payment period is defined from June of the current reporting period to May of the subsequent reporting period starting from 2016.

If a taxpayer incurred tax losses for the previous year, and in the first quarter of the reporting year obtains profit, such taxpayer is entitled to submit CIT returns for the first half of the year, third and fourth quarters of the reporting year.

Quarterly tax returns must be submitted within 40 days of the last calendar day of each reporting period (i.e. 9 February, 10 May, 9 August, 9 November). Quarterly tax payments should be made within 50 days of the end of a reporting period.

If the filing deadline falls on a holiday or a weekend, it is automatically moved to the next business (i.e., banking) day.

Profit (loss) before tax

Profit (loss) before tax is calculated as a difference between income and expenses for the reporting period in accordance with the local accounting standards (UAS) or IFRS.

The taxpayers should keep recording of income, expenses and other key figures related to the determination of taxable items based on source documents, accounting books, financial statements and other documents related to the calculation and payment of taxes and duties.

Adjustment of profit (loss) before tax

Depreciation

Profit (loss) before tax is increased by:

- an amount of the accrued depreciation of fixed assets or intangible assets in accordance with UAS or IFRS;
- an amount of write-off and impairment of fixed assets and intangible assets, included in the expenses of the reporting period in accordance with UAS or IFRS;
- an amount of residual value of separate item of fixed assets or intangible assets defined by UAS or IFRS, in the event of liquidation or sale of such asset.

Profit (loss) before tax is decreased by:

- an amount of the depreciation of fixed assets and intangible assets calculated in accordance with tax accounting rules;
- an amount of residual value of separate item of fixed assets or intangible assets, defined by tax accounting in the event of liquidation or sale of such asset;
- an amount of revaluations and gains from the recovery of fixed assets and intangible assets value in the amount of losses from the previous period write-off and impairment of such assets in accordance with UAS or IFRS.

Provisions for future expenses and payments

Profit (loss) before tax is increased by an amount of accrued provisions for future expenses and payments in accordance with UAS or IFRS.

Profit (loss) before tax is decreased by:

- an amount of realization of accrued provisions for future expenses and payments, accrued in accordance with UAS or IFRS;
- an amount of provision reduction if it has increased financial profit (loss) before tax.

Vacation provision does not generate differences affecting profit (loss) before tax. Starting from 2015, profit (loss) before tax may be reduced for the amount of vacation provision realization that was accrued in 2014.

Doubtful debts allowance

Profit (loss) before tax is increased by:

- an amount of doubtful debts accrual in accordance with UAS or IFRS;
- an amount of receivables write-off that does not fulfill the criteria of bad debt over debts allowance.

Profit (loss) before tax is decreased by an amount of doubtful debts allowance reduction if it has increased financial profit (loss) before tax.

Thin capitalization rule

Thin capitalization applies when the amount of debt liabilities from non-resident related parties of the taxpayer exceeds by 3.5 or more times its equity capital (for financial institutions and companies engaged solely in leasing activity – by more than 10 times).

Interest expenses on debentures from non-resident related parties exceeding 50% of profit (loss) before tax increased by the amount of financial expenses and depreciation in accounting, increase profit (loss) before tax.

Interest expenses not recognized in the current tax period may be carried forward to future periods and decrease profit (loss) before tax in the amount reduced annually by 5% until fully repaid.

Interest expenses include liabilities on loans, deposits, REPO transactions, financial lease agreement and other borrowings regardless of their legal arrangements.

Other adjustments

Profit (loss) before tax is decreased by:

- an amount of share capital income accrual and dividends that should be received from other CIT payers;
- an amount of tax losses carried forward from the previous periods;
- an amount of impairment of equity instruments reclassified to financial liabilities according to UAS or IFRS, and included in financial profit (loss) before tax.

Profit (loss) before tax is increased by:

- an amount of expenses on royalty paid to non-residents that exceeds royalty income increased by 4% of prior year sales revenue;
- an amount of royalty paid to non-resident companies that are located in low-tax jurisdictions;
- an amount of royalty paid not to the beneficial owners of royalty payments;
- an amount of some other expenses on royalty, stipulated in TCU;
- an amount exceeding 30% of the value of goods purchased (including fixed assets and services) from non-profitable organizations and non-residents (including related parties) in low-tax jurisdictions;
- such restrictions are not applied to controlled transactions (or recognized by the Company as “controlled”) if the price of such transaction is confirmed according to the transfer pricing (TP) rules.

Profit (loss) before tax is also increased by:

- an amount of excess of normal prices according to TP rules of contractual prices for sale of goods and services in controlled transactions;
- an amount of excess of contractual prices of normal prices according to TP rules for purchase of goods and services in controlled transactions;
- an amount of losses from investments to associates, subsidiaries and joint venture according to equity accounting or proportionate consolidation method;
- an amount of interests accrued and revaluation of equity instruments reclassified to financial liabilities according to UAS or IFRS, and included in financial profit (loss) before tax;
- an amount of money paid or goods and services granted to non-profitable organizations, budget-funded entities, and non-government associations that exceed 4% of prior year taxable item.

Restrictions related to low-tax jurisdictions

As an anti-avoidance measure, Ukraine has established restrictions on the deductibility of royalties incurred by resident taxpayers in favor of non-resident entities located in low-tax jurisdictions, and purchase of goods and services from such non-residents.

The official list of low-tax jurisdictions is published by the Cabinet of Ministers of Ukraine and includes the following criteria:

- countries (jurisdictions) where CIT rate is less than 5 percentage points than that set in Ukraine;
- countries that do not provide public access to the entity's structure;
- countries that do not have agreements with Ukraine regarding information sharing.

As of 1 January 2015, such list is not adopted by the Cabinet of Ministers of Ukraine. However, there is an official list of low-tax jurisdictions, published by the Cabinet of Ministers of Ukraine on 25 December 2013.

More information regarding the list of low-tax jurisdictions is represented in [the Transfer Pricing section](#).

Depreciation and amortization allowance

Depreciation allowances are permitted for all capital assets, including both fixed and intangible property, except for land, goodwill, fixed assets under conservation, and non-business related capital assets.

Fixed assets

Fixed assets are defined by the Tax Code as tangible assets (including mineral resources) intended for the use in a taxpayer's business activities for a period exceeding one year or operating cycle, and with a cost exceeding UAH 2,500.

According to the Tax Code, fixed assets are divided into 16 groups according to their minimum useful life for tax depreciation purposes.

Table 2

Groups	Fixed assets included in the group	Minimum useful life, years
Group 1	Plots of land	-
Group 2	Capital expenditure on land improvements unrelated to the construction	15
Group 3	Buildings	20
	Facilities	15
	Transmission devices	10
Group 4	Machinery and equipment	5
	Computers and other automatic data processing equipment; related information read-out and printing equipment; related computer programs (except for payments for programs that are classified as royalties and/or programs treated as intangible assets); other information systems; switch boxes, routers, modules and modems; uninterrupted power supplies and means connecting them to telecommunication networks; telephones (including satellite phones), microphones and portable radio transmitters worth over UAH 2,500	2
Group 5	Motor vehicles	5
Group 6	Instruments, devices, furniture	4
Group 7	Animals	6
Group 8	Perennial plants	10
Group 9	Other fixed assets	12
Group 10	Library funds	-
Group 11	Low-cost non-current tangible assets	-
Group 12	Temporary facilities	5
Group 13	Natural resources	-
Group 14	Reusable containers	6
Group 15	Rented assets	5
Group 16	Long-term biological assets	7

Tax accounting

For tax purposes, fixed assets are depreciated during their useful lives based on financial accounting rules according to UAS or IFRS using one of the following four methods:

- straight line method;
- reducing balance value method;
- accelerated reducing balance value method;
- cumulative method.

The tax depreciation method used should correspond to the taxpayer's UAS policy. However, the taxpayer may not apply the units of production method for tax depreciation calculations.

Depreciation is accrued on a monthly basis. Each fixed asset is accounted for separately and depreciated over its useful life, as defined in the taxpayer's tax policy, but which should not be less than the minimum useful life period indicated in the Tax Code.

If fixed assets' useful life period in financial accounting is more than useful life period according to the Tax Code provisions, the useful life period in financial accounting should be applied in depreciation calculation.

Intangible assets

According to the Tax Code, intangible assets are divided into six groups. Each intangible asset should be accounted for separately and amortized using one of the above mentioned methods over its useful life, taking into consideration the minimum useful life established by the Tax Code.

Table 3

Groups	Intangible assets included in the group	Minimum useful life, years
Group 1	Rights to use natural resources	According to entitling document
Group 2	Rights to use property	According to entitling document
Group 3	Rights to use commercial branding (trademarks, etc.)	According to entitling document
Group 4	Industrial property rights	According to entitling document, but no less than 5 years
Group 5	Copyrights and related rights	According to entitling document, but no less than 2 years
Group 6	Other intangible assets	According to entitling document

Taxation of dividends

Dividends paid by Ukrainian companies are subject to advance corporate income tax, which is calculated based on the statutory tax rate. The taxpayer also may pay dividends apart from the availability of taxable profit for the reporting period. The advance CIT is due prior to or upon the payment of dividends.

The advance CIT regarding the payments of dividends is calculated based on the difference of the amount of dividends to be paid and profit before tax of the reporting period, if the respective CIT liability is paid. If the CIT liability is not paid, the advance CIT is calculated based on the amount of dividends to be paid.

Ukrainian companies may use advance CIT paid to reduce their CIT liabilities for future periods. If a taxpayer does not have sufficient CIT liabilities for a period, then this advance CIT credit may be carried forward indefinitely.

The advance CIT does not apply to dividends paid by:

- individuals;
- taxpayers that have CIT exempt profit according to the Tax Code provisions in the amount of such CIT exempt profit for the reporting period;
- parent companies, whose income mostly consists of dividends received from other legal entities.

Taxation of transactions with securities

The taxpayer should keep the separate accounting of transactions in securities according to UAS or IFRS.

Profit (loss) before tax is increased by:

- an amount of loss from sale and other transfer of securities according to UAS or IFRS;
- an amount of impairment of securities, investment property and biological assets in excess of its prior periods revaluations accounted for by using the fair value method and reflected in financial profit (loss) before tax in accordance with UAS or IFRS.

Profit (loss) before tax is decreased by the amount of profit received from the sale of securities and other disposal in accordance with UAS or IFRS.

Total tax losses of the reporting period (including prior period losses) regarding transactions with securities should be carried forward to the next reporting period.

Tax loss carry forward

Under the general rule tax losses should be carried forward without any limitations on terms or amounts, and decrease profit (loss) before tax of the reporting period.

However, the Ukrainian parliament from time to time introduces restrictions on carry-forward of tax losses. Thus, the taxpayers whose income in 2011 exceeded UAH 1 million, were allowed to utilize tax losses accumulated as of 1 January 2012 in four equal parts during the next four years (2012-2015). There are no restrictions on utilization of tax losses incurred in 2012-2013.

Taxation of insurance companies in Ukraine

Insurance companies in Ukraine are taxed by flat CIT rate (18%) applied to profit (loss) before tax and additional rates applicable to the following incomes:

- insurance premiums accrued under the long-term life insurance agreements, private pension schemes and voluntary medical insurance agreements (0%);
- insurance premiums accrued under insurance and co-insurance agreements other than agreements which are taxed at 0% CIT rate (3%).

CIT accrued on insurance income taxed at 3% is a difference that reduces profit (loss) before tax.

Profit (loss) before tax of insurance company is increased by:

- an amount of insurance reserves accrual (technical and mathematical) according to UAS of IFRS;
- an amount of insurance reserves adjustments (reduction) according to the Methodology of insurance provisions creation approved by the National Commission for State Regulation of Financial Services Markets (Methodology).

Profit (loss) before tax of insurance company is decreased by:

- an amount of insurance reserves (technical and mathematical) adjustments (reduction) that has increased profit (loss) before tax according to UAS of IFRS;
- an amount of insurance reserves accrued according to the Methodology.

Apart from the above differences, the financial profit (loss) before tax is adjusted on accrued and realized provisions for future expenses and payments.

Taxation of banking institutions in Ukraine

General provisions

Banking institutions are taxed in accordance with the general rules based on an indirect method of adjusting accounting profit for tax differences. These tax differences include both general taxpayer's differences and specific differences applied only for banks. The main special bank's tax difference includes allowance (impairment loss provision).

Banking institutions recognize allowance for different assets, which are subject to impairment loss according to IFRS. Write-off of such assets at the account of allowance accrued in the previous period does not affect profit (loss) before tax.

Profit (loss) before tax is increased by:

- excess of the limit for allowance at the end of the reporting period. The amount of the deductible allowance for banks shall not exceed the lower of:
(a) 20% of total book value of all assets to be impaired by allowance accrual (30% for 2015 and 25% for 2016) or (b) credit risk amount calculated at the end of the reporting period in accordance with the Methodology approved by the National Bank of Ukraine (NBU).
- assets' write-off which do not met the criteria of bad debt (excluding write-off at the expense of the excess of the limit).

Profit (loss) before tax is decreased by:

- allowance reversal or bad debt write off which were included to the excess of the limit in the previous periods;
- repayment of amount of bad debt which was written off and this write off was included to the excess of the limit in the previous periods

According to the transitional provisions the positive (negative) difference between allowance calculated as of 01 January 2015 at 30% of total book value of all assets to be impaired by allowance accrual according to IFRS, and allowance calculated under the new rules increases (decreases) profit (loss) before tax during the next 3 year. The amount of allowance for bank's guarantees included to deductible expenses before 01 January 2015 is not considered in the calculation of the difference.

Other specific bank's transactions

Taxation of transactions with securities

Profit (loss) from transactions with securities is taxed as a part of total profit (loss) before tax. In such case, financial profit (loss) from transactions with securities is replaced by profit of transactions with securities according to the rules specified by the Tax Code. If transactions with securities are loss making in tax accounting, such a loss is excluded from total profit (loss) before tax, and carried forward to the next reporting periods.

Taxation of debt sale

Special taxation provisions for such transactions were cancelled. Thus, profit (loss) before taxation for these transactions should be calculated according to general rules.

Value-added tax

Taxable transactions

Ukrainian value-added tax (VAT) is levied on:

- supplies of goods / services within the customs territory of Ukraine
- imports of goods into the customs territory of Ukraine
- exports of goods from the customs territory of Ukraine
- supplies of services involving the international transportation of passengers and luggage by rail, road, sea, river, and air transport.

For VAT purposes, supplies of goods to / from the customs territory of Ukraine include the movement of the goods to / from the territory of Ukraine under any customs regime as prescribed by the Customs Code of Ukraine.

Supplies to / from Crimea are treated as exports / imports for VAT purposes.

VAT is currently levied at:

- 20% on domestic supplies and imports of goods / services
- 7% on domestic supplies and imports of (i) medicines registered in Ukraine in accordance with the list approved by the Cabinet of Ministers of Ukraine, and (ii) medical products and medical equipment for clinical trials authorized by the state authorities
- 0% on exports, duty-free supplies, free customs.

With respect to taxation of services, Ukrainian legislation relies on the concept of "place of supply." Under the general rule, the place of supply of services is the place where the service provider is registered, except as outlined below.

The VAT base is determined as the contractual value of goods / services supplied, but it may not be lower than (i) the cost (for inventory / services), or (ii) net book value (for non-current assets) per financial accounting data.

Exempt transactions

Below is an extensive, but not exhaustive, list of transactions that are specifically exempt from VAT:

- supplies of baby food products in accordance with the lists of foodstuffs adopted by the Ukrainian parliament;
- supplies of periodicals and books, student notebooks and textbooks, study books and supplementary study materials;
- provision of educational services by institutions under the special permission / license to provide such services;
- supplies of special-purpose goods for disabled individuals;
- provision of pensions and monetary assistance to the general public within the framework of approved social programs;
- provision of healthcare services by licensed institutions;
- public transportation services (except for taxis) within an inhabited area;
- religious organization services and supplies (except for excisable goods);

- transfer of land, except for plots of land under buildings, the cost of which is included in the cost of buildings;
- privatization of state and municipal property;
- supplies of apartments (housing stock) in the secondary market, supplies of affordable housing and housing built with the use of state funding;
- charitable contributions to qualifying non-profit organizations;
- provision of services to foreign and domestic vessels engaged in international transportation of passengers, luggage and cargo;
- research and development activities carried out by an individual who receives funding directly from the State Treasury;
- provision of software products until 1 January 2023.

Transactions not subject to VAT

Below is an extensive, but not exhaustive, list of transactions that are not subject to VAT:

- issue of securities by corporate issuers, the National Bank of Ukraine, the state financial authorities, and local bodies;
- provision of insurance services by licensed institutions, including social and pension insurance and intermediary services;
- currency exchange (both national and foreign currencies), circulation of bank metals, banknotes, coins;
- circulation of lottery tickets and monetary prizes / winnings;

- transfer / return of property under an operating lease arrangement;
- transfer of property for storage and return of property from storage;
- payment of salaries, pensions, subsidies in cash;
- payment of dividends, royalties in cash or in the form of securities;
- provision of commission / brokerage or dealer services in relation to the sale or management of securities;
- payment of arbitration duties and reimbursement of other expenses in relation to arbitration court rulings;
- agent and freight services rendered to a marine commercial fleet by shipping agents;
- re-organization of legal entities;
- exports from / imports into the customs territory of Ukraine of goods with a customs value of less than EUR 150;
- imports of goods into the customs territory of Ukraine via international mail, express shipments or in unaccompanied luggage with a total invoice value of less than EUR 150.

Taxpayers

If entities meet certain criteria, they may be subject to mandatory registration as VAT payers – in particular, if the volume of taxable supplies of goods / services exceeds a threshold of UAH 1 million (approximately USD 45,000) for the previous 12-month period.

Entities may also opt for a voluntary registration, irrespective of the volume of taxable supplies.

The above-mentioned requirement to register for VAT purposes applies to both resident and non-resident entities. Although the Tax Code does not stipulate a special procedure for non-resident entities to register for Ukrainian VAT purposes, the only feasible way to do this is via a representative office and / or PE in Ukraine.

If an entity, which is not registered for VAT purposes, imports goods into Ukraine in taxable volumes, it is still obliged to pay VAT during the customs clearance procedure.

Tax base

Domestic supplies

The VAT base is equal to the contractual value of goods / services, including taxes and duties, but it may not be lower than (i) the cost (for inventory / services), or (ii) net book value at the beginning of the corresponding reporting period (for non-current assets) per financial accounting data.

In certain cases, there are special rules for determining the VAT base, in particular:

- in the event of imports, the contractual value of goods imported into the customs territory of Ukraine is treated as the VAT base, but it may not be lower than the declared customs value determined in accordance with the Customs Code of Ukraine (including excise tax and import duties);
- in the event of sales of used goods purchased from non-VAT payers, the VAT base is determined as the seller's commission fees.

Place of supply

Place of supply of goods

The place of supply of goods is the actual location of such goods at the moment of supply, except for the following cases:

- goods being transported – the place of supply is the location of goods at the beginning of transportation;
- goods being assembled or installed by a supplier – the place of supply is where an assembly or installation takes place.

Place of supply of services

The general rule states that the place of supply of services is the place of the service provider's registration, subject, however, to the following exceptions:

- services related to movable property – the place of supply is where the services are actually provided;
- services rendered by the real estate agents and services related to immovable property – the place of supply is the location of real estate;
- cultural, sports, educational, scientific services – the place of supply is where the services are actually rendered.

The place of supply of the below listed services is the place where the recipient of such services is registered (provision of these services to a non-resident recipient does not give rise to Ukrainian VAT),

in particular:

- provision of intellectual property rights;
- advertising services;
- consulting, engineering, legal, accounting, audit, actuarial services, services related to software development, delivery and testing;
- provision of personnel;
- telecommunication services, including transmission of signals, words, images and sounds, or any type of information via cable, satellite, cellular, optical or other electromagnetic communications systems;
- freight forwarding services;
- radio and TV broadcasting services;
- lease of movable property (except for motor vehicles and bank safes);
- provision of agency services in respect of the above-listed services, either at the expense and on behalf of a third party, or on behalf of the service provider but at the expense of a third party

VAT administration

Electronic system of VAT administration

Each VAT payer operates a special account opened with the State Treasury of Ukraine.

The key principle of the electronic system of VAT administration is as follows: a VAT payer is allowed to issue VAT invoices in the amount of VAT which is confirmed by the received VAT invoices and customs declarations, and is actually paid to the special account.

Any overpayment on the special account may be either claimed for reimbursement, or paid to the government to be subsequently set off against future VAT liabilities.

Reporting periods

For VAT purposes, the reporting period is a calendar month or a calendar quarter (for minor taxpayers).

In case of monthly reporting, VAT returns are submitted to the tax authorities within 20 calendar days following the end of each reporting month.

Remittance

Any taxable entity must assess the amount of VAT to be remitted to the government by reducing (“crediting”) output VAT (VAT charged / collected on taxable supplies) with input VAT (VAT paid / incurred on purchased goods and services, including import VAT). VAT liabilities are remitted to the government out of funds on the VAT payer’s special account.

VAT on imported goods is paid by the importer in cash at the customs border. Taxable entities are responsible for paying import VAT.

Input VAT

Input VAT paid / incurred by a taxable entity may be set off against output VAT, provided that such input VAT is related to:

- purchase or production of goods / services with a view to their subsequent use in VAT-able transactions as part of the taxpayer’s business activity;
- purchase or construction of fixed assets with a view to their subsequent use in VAT-able transactions as part of the taxpayer’s business activity.

Where the taxpayer's supplies qualify for VAT exemption, the amount of VAT is not included in input VAT – instead, it is normally treated as a deductible / depreciable expense, depending on the type of expenses.

Where the taxpayer's supplies are subject to VAT (at 20%, 7% or 0%), the amount of VAT is included in input VAT and may be offset against output VAT.

If produced and / or purchased goods, services, non-current assets are only partially used in VAT-able transactions, input VAT may include the VAT amount relating to VAT-able transactions only.

The amount of input VAT which is creditable in a given year is calculated based on the ratio of prior-year VAT-able sales to prior-year total sales. The coefficient thus calculated is applicable throughout a calendar year.

At the end of the year, the coefficient is re-calculated based on the actual volume of VAT-able and non-VAT-able supplies.

Input VAT on non-current assets is re-calculated at the end of the 1st, 2nd and 3rd calendar years following the year in which they were put into operation.

Input VAT may only be recognized by the purchaser based on an electronic VAT invoice, which must be properly issued and registered by the seller with the Unified Register of VAT Invoices.

A VAT invoice must be issued by the supplier on the date when the seller's output VAT arises and is subject to registration within 15 calendar days following the date of issue. Any discrepancy between a VAT return and the Unified Register of VAT Invoices serves as the legal ground for an unscheduled tax audit of both the seller and the purchaser.

If a VAT invoice is not registered by the seller, the purchaser may not recognize input VAT with respect to the corresponding transaction (such non-registration, however, does not relieve the supplier of its obligation to recognize output VAT as appropriate).

If the seller refuses to issue and / or register a VAT invoice, the purchaser has the right to file a claim against such seller within 60 calendar days following the deadline for submission of a VAT return for the period in which such refusal occurred. In reliance on this claim, the tax authorities may conduct an unscheduled tax audit of the seller.

If the seller fails to register a VAT invoice within the initially specified term, the purchaser is still allowed to recognize input VAT based on such VAT invoice in the next reporting period in which it will be registered, provided, however, that such registration takes place within 180 calendar days from the date of issue of the VAT invoice.

For imports, a customs declaration is regarded as a sufficient documentary evidence for input VAT purposes.



Reverse-charge VAT on services provided by non-residents

If a non-resident renders services to a resident taxpayer with a place of supply in Ukraine, such transaction is subject to 20% VAT. Unless the non-resident has a PE in Ukraine, the Ukrainian taxpayer must charge the corresponding amount of output VAT using the so-called “reverse-charge mechanism”, i.e. the resident taxpayer must self-assess VAT on the value of services provided by the non-resident.

Under the reverse-charge mechanism, input VAT is recognized by the resident taxpayer in the reporting period in which the corresponding amount of output VAT is recognized.

Effective from 1 July 2015, the VAT section of the Tax Code will be subject to certain amendments, which, however, will not essentially change the general principles of input VAT rules as outlined above, however mechanism will be significantly changed.

VAT refunds

Standard VAT refund

Under the general rule, the amount of VAT payable to, or refundable from, the government is determined as the difference between the amounts of output VAT and input VAT for a given reporting period.

If input VAT exceeds output VAT, the difference must be used to settle VAT debt (if any) accumulated in the previous VAT periods. If a taxpayer does not have any VAT debt, the taxpayer may claim for a VAT refund or, alternatively, set off the excess amount of input VAT against future VAT liabilities. A VAT refund is limited to the amount of VAT actually paid to the suppliers and the government in the previous and current tax periods.

The remaining portion of VAT receivable is carried forward to the next reporting period. Alternatively, a taxpayer may opt to offset all or part of VAT receivable against its future VAT liabilities.

A taxpayer seeking to claim for a VAT refund must follow specific procedures. In particular, VAT claimed for refund must be confirmed by the tax authorities by means of a VAT refund audit. As part of the tax reform, however, there is a ban on unscheduled VAT refund audits in Ukraine with effect from 1 July 2015. VAT refund will be subject to review within the frames of scheduled full scope tax audit.

Certain categories of taxpayers are not entitled to claim a VAT refund from the government, including:

- entities that have been registered as VAT payers for a period of less than 12 months prior to the month for which a VAT refund is claimed (as an exception to this rule, a VAT refund may be claimed with respect to fixed assets)
- entities with revenue from VAT-able transactions for the preceding 12-month period being lower than the reported VAT refund (this rule does not apply to input VAT related to the purchase / construction of fixed assets).



Automatic VAT refund

An automatic VAT refund may also be obtained by a VAT payer, provided that such VAT payer:

- is not subject to a bankruptcy procedure;
- does not have any tax debt;
- is registered with the State Register of Legal Entities and Individual Entrepreneurs and the official information contained therein does not differ from the actual data insofar as it relates to location, constituent documents, registration status;
- has non-current assets with tax net book value being three times the amount of VAT claimed for refund, or has received from an authorized bank a one-year financial guarantee relating to VAT amounts claimed for refund, and (i) performs sales taxed at 0% VAT (and the volume of such sales accounts for at least 40% of the total volume of sales for the previous 12-month period), or (ii) has invested at least UAH 3 million (approx. USD 135,000) in non-current assets over the previous 12-month period.

Technically, the cash refund under the automatic VAT refund model is similar to the standard VAT refund model with the following exceptions:

- the tax authorities perform a simplified VAT refund audit
- VAT is refunded within a shorter timeframe.

Customs issues

Customs duties are imposed on the majority of goods imported into, and on certain goods exported from Ukraine.

For customs clearance purposes, goods are classified into 97 groups according to the Ukrainian Harmonized System – УКТЗЕД (hereinafter, the “UHS”). The UHS is based on the Harmonized System 2012 edition developed by the World Customs Organization (WCO).

The applicable customs duty rates are based on the ten-digit classification codes assigned to goods under the UHS depending on the specific nature of the goods being imported.

The rates of customs duties are normally expressed as a percentage of value of the goods being imported (“ad valorem duties”). However, in rare cases, goods are subject to a specific duty, which is expressed as a fixed amount of money per unit or kilogram, liter, square meter. Certain goods are exempt from import customs duties.

Import customs duties

Import customs duties are levied based on the classification code and the country of origin of the goods being imported.

Import customs duty rates generally range between 0% and 10%, while approximately 64% of rates of the Ukrainian Customs Tariff do not exceed 5%. However, in some cases, import customs duties are levied at the rates of up to 25% or above.

Since Ukraine joined the World Trade Organization (WTO), the number of countries to which Ukraine grants most-favored-nation status (i.e. applies preferential rates of import duties) has increased. In addition, import duty rates applicable to the goods originating from WTO member states are lower than the general rates applied to the goods originating from non-WTO member states.

Apart from WTO members, the following countries have most-favored-nation status:

- Algeria
- Azerbaijan
- Belarus
- Bosnia & Herzegovina
- Iran
- Kazakhstan
- Lebanon
- Libya
- North Korea
- Serbia
- Syria
- Taiwan
- Turkmenistan
- Uzbekistan

Free trade agreements

Ukraine has signed free trade agreements (hereinafter, the "FTA") with the CIS countries, Macedonia, Montenegro, Georgia and the European Free Trade Association (Norway, Liechtenstein, Switzerland, and Iceland). Goods originating from the states covered by an FTA may benefit from duty exemption upon their import into Ukraine, save certain goods listed as exceptions.

Ukraine has signed the Association Agreement with the European Union (EU) that establishes the Deep and Comprehensive Free Trade Area (DCFTA). In the DCFTA Ukraine has committed itself to harmonizing its national trade-related rules, norms and standards with those of the EU.

In addition, Ukraine will progressively reduce import customs duties for the goods originating from the EU member states and abolish export customs duties during a ten-year transitional period.

The implementation of the DCFTA between Ukraine and the EU starts from 01 January 2016.

Export customs duties

Export customs duties are applicable only to certain limited categories of goods and raw materials, such as livestock, raw hides and skins, oil and sunflower seeds, ferrous metal waste and scrap, gas, natural gas, including liquefied natural gas.

Temporary import surcharge

Goods brought into Ukraine under the import regime (irrespective of the country of their origin and free trade agreements concluded by Ukraine) are subject to a temporary import surcharge at the following rates:

- 10% for agricultural goods and foodstuffs classified in the UHS under groups 1–24;
- 5% for industrial goods classified in the UHS under groups 25–97;
- 10% for goods imported by individuals and being subject to the import duty.

The import surcharge is introduced for 12 months starting from 26 February 2015. The import surcharge does not apply to essential goods, namely: oil products, natural gas, electric power, gasoline, mazout and diesel fuel; medical devices for hemodialysis and treatment of cancer patients; goods granted to Ukraine free of charge under the international (governmental) agreements; certain goods that are not subject to the import duty.

Exemptions

Pursuant to the Customs Code of Ukraine, the import and export of certain goods are fully exempt from customs duties. These goods include:

- transport vehicles of commercial use in the international transportation and the materials required for normal operation of such vehicles;
- materials for Ukrainian ships and ships chartered by Ukrainian companies, and the products of their sea fishery activities;
- currency (Ukrainian and foreign), securities, precious metals;
- imported goods, if the title thereto will be acquired by the Ukrainian state;
- goods owned by individuals who are entitled to exemption under international agreements;
- goods transported as part of international technical support;
- temporary exported or imported goods (previously customs-cleared);
- documents, publications transferred as part of the international exchange between scientific, research educational, and cultural institutions (the list of institutions is specified by the Ukrainian Cabinet of Ministers);
- materials used for the construction of the Chernobyl shelter;
- materials transferred under product sharing agreements;
- archival documents;
- pharmaceutical products and compounds for their production, if not produced in Ukraine (classified in the UHS under groups 28, 29, and 30; the list of such products and compounds is specified by the Ukrainian Cabinet of Ministers);
- renewable and/or alternative energy-based equipment, materials and products (the list is specified by the Ukrainian Cabinet of Ministers). The exemption is applicable only if the goods are used by the taxpayers in their own production activities, and no identical goods are produced in Ukraine;
- goods, materials, tools, etc. transferred for the intelligence agency of Ukraine;
- biofuel-based technologies and equipment that runs on renewable energy (import of such goods is regulated by the Ukrainian Cabinet of Ministers);
- TIR carnet forms;
- goods paid for out of grants under the programs of the Global Fund to Fight AIDS, Tuberculosis and Malaria in Ukraine;
- certain defense products and goods for military purpose.

Special customs procedures

A foreign investor's contribution made to the share capital of Ukrainian foreign investment companies in the form of goods may be exempt from customs duties provided that such goods will not be alienated during three years after having been contributed.

Under inward processing customs procedure, a full exemption from customs duties and import taxes may be granted with respect to the goods being imported into Ukraine for processing and being subject to subsequent exportation from Ukraine.

Under the outward processing procedure, the goods that have been previously exported from Ukraine for processing may be granted a partial exemption from import duties and taxes upon their importation into Ukraine. Under this procedure, import duties and taxes are calculated based only on the value that has been added to the goods outside Ukraine.

The similar procedure is applied to the goods that have been previously exported from Ukraine for warranty repairs and subsequently re-imported. In this case, the repaired goods are subject to a full exemption from import customs duties and taxes upon their return into Ukraine.

Temporarily imported goods may be fully or partially exempt from import duties and taxes if a temporary import procedure is applied. After expiration of temporary import period, the goods must be exported from Ukraine or a different customs procedure must be applied.

Below we provide a description of the existing rules for determining the customs value.

Customs valuation

The customs value is essential for determining the correct amount of customs duty payable on the goods being imported.

The Customs Code provides six methods for calculating the customs value (these methods are taken from Article VII of the General Agreement on Tariffs & Trade).

The basic method of valuation is the transaction value method, which uses the invoice price of the imported goods. Under the transaction value method, the customs value is defined as the price actually paid or payable to the seller, for the goods being imported, when they are sold for export to Ukraine, subject to the adjustments, if required.

However, a number of conditions must be fulfilled in order to apply the transaction value method.

When the transaction value method cannot be used, the other methods should be considered. In such cases, the customs value is determined by proceeding consecutively through other methods, namely:

- method of transaction value of identical goods: uses the value of identical goods sold for export to Ukraine at or about the same time as the goods being valued;
- method of transaction value of similar goods: uses the transaction value of similar goods sold for export to Ukraine. Similar goods would differ in some respects from the goods being valued;
- deductive value method: customs value is calculated based on the unit price at which the imported, identical or similar goods are sold in Ukraine, less the costs and expenses on transportation, customs clearance and sale of the goods in Ukraine;
- computed value method: customs value is determined by calculating the sum of production, general expenses, other costs and profits related to the imported goods based on the information submitted by the actual producer of imported goods;
- reserve method: the customs value is determined based on customs values previously accepted by the customs authority and determined according to any of the above valuation methods, using reasonable means consistent with existing legislation and on the basis of available data.

Customs fees

The customs fees are collected for customs clearance of goods outside regular office hours and at locations other than the customs house premises (in a customs control zone located at the premises of an enterprise, which is storing the goods).

The customs fees (EUR per hour) are as follows:

- customs clearance at locations other than the customs house premises:
 - EUR 20 during regular working hours;
 - EUR 40 during overtime, at night and on weekends;
 - EUR 50 on public holidays.
- customs clearance at customs authorities locations outside regular office hours:
 - EUR 40 during overtime, at night and on weekends;
 - EUR 50 on public holidays.

Furthermore, according to Ukrainian customs laws, expenses on storage of goods at the warehouses operated by the customs authorities should be reimbursed by the owner of such goods starting from the 11th day of storage.

Excise tax

Generally, the excise tax is imposed on taxable items produced in, or imported into, Ukraine. It is also applied to excisable goods which have been contributed to the share capital, sold by retail or transferred within the company for consumption, processing purposes as well as sold or transferred to the company's employees.

The excise tax is not levied on export sales, return of previously exported goods to a Ukrainian importer (goods with defects rendering their import to other countries impossible), supply of electrical energy produced by qualified cogeneration units or from renewable power sources.

For items produced domestically, the excise duties are normally imposed when a taxable item is sold. When excisable goods are imported, the excise duties are due and payable at the time of customs clearance of such goods.

The excise tax is imposed on ethyl spirit and other distillates, alcoholic drinks (including beer), tobacco products, oil products, gas and electrical energy, motor vehicles, motor fuels and its components.

After the adoption of the latest amendments to the Tax Code, the number of excisable goods and applicable rates increased.

Taxable goods

Alcohol

An excise tax is imposed on alcoholic items classified in the Ukrainian Harmonized System - УКТЗЕД (hereinafter, the "UHS") under headings 2103 (aromatic bitters), 2106 (compound alcoholic preparations), 2203 (malt beer), 2204 (wine of fresh grapes), 2205 (vermouth and other flavored wines), 2206 (other fermented beverages), 2207 (undenatured ethyl alcohol of an alcoholic strength by volume of 80 % vol or higher; ethyl alcohol and other spirits denatured) and 2208 (undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 % vol; spirits, liqueurs and other spirituous beverages).

The excise tax on alcoholic products is levied at various rates in UAH per liter, or per liter of 100% spirit.

Tobacco

The excise tax is imposed on tobacco items classified in the UHS under headings 2401 (unmanufactured tobacco; tobacco refuse), 2402 (cigars, cheroots, cigarillos and cigarettes), 2403 (manufactured tobacco and substitutes).

The excise tax on tobacco is levied at flat rates in UAH per kilogram (net weight). With regard to cigars and cigarettes, the combined rates, calculated as the sum of percentage of sales turnover and the rate in UAH per 1,000 items, are applied, but not less than established minimum excise liabilities.

Oil products, fuels and natural gas

The excise tax is imposed on certain oil products and natural gas classified in the UHS under headings 2707 (benzol) 2710 (light distillates, gasoline, motor and jet fuels, gas oils, mazout), 2711 (liquefied natural gas), 3826 (biodiesel and mixtures thereof) and certain products classified under headings 2905 11 00 00 (methyl alcohol), 3824 90 98 00 (alternative motor fuel).

The excise tax for natural gas, fuels and oil products is levied at various rates in EUR per 1,000 kg.

Motor vehicles

The excise tax is imposed on motor vehicles classified in the UHS under headings 8702 (motor vehicles for the carriage of ten or more persons), 8703 (cars and other passenger vehicles), 8704 (motor vehicles for the transport of goods), 8711 (motorcycles), 8716 (trailers and semi-trailers), and 8707 (bodies for cars and passenger vehicles).

The excise tax on motor vehicles is levied at various rates, normally, in EUR per item or per cm³ of the vehicle's engine capacity. For trailers and semi-trailers intended for housing or camping, the tax is levied per vehicle. Significantly lower rates are applied to buses and cargo vehicles, which have been in use for more than 5 or 8 years.

Electrical energy

Wholesale supply of electrical energy classified as 2716 00 00 00 under the UHS is subject to excise tax at the ad valorem rate of 3.2%.

Excise tax on retail trade in excisable goods

Effective from 1 January 2015, the excise tax is levied on the sale of excisable goods (alcoholic drinks, tobacco products) through the retail trade networks. The rate is to be set by local authorities at the rate of 5% of the cost of products sold.

Other taxes

Special taxes

A special tax is levied on insurance and advertising income payable from Ukraine to non-residents. The tax should be accrued on top of the payment (i.e., the gross amount) at the below rates, and is non-recoverable for a taxpayer (see table 4 below).

Table 4

Ukrainian-source income	Withholding tax rate
Insurance income	0%/4%/12%
Income from advertising services	20%

Special tax regimes

Taxation of agricultural companies

Ukrainian tax legislation allows agricultural producers to choose between the special tax regimes and the general system of taxation.

Since 1 January 2015, the favorable tax regime for agricultural producers was transferred into the 4th group of the unified tax payers.

VAT

Agricultural producers can take advantage of a special VAT regime until 1 January 2018. In order to be entitled to use this regime, agricultural companies must report revenue from the last 12 calendar months' sales of agricultural products they have produced in the amount of at least 75% of their total sales revenue.

According to the rules governing the special VAT regime, VAT collected from agricultural producers is not payable to the government, but should instead be retained by these companies and transferred to special bank accounts of agricultural producers. These funds may only be used for the business purposes of agricultural producers.

Taxpayers on special VAT regime should apply the electronic VAT administration system.

Export of grain and industrial crops is exempt for both traders and agricultural producers from 1 January 2015 until 31 December 2017.

Table 5

Group	Legal status	Number of employees	Gross income, UAH	Activities allowed	Rate
1	Individuals	none	Not more than UAH 300,000	<ul style="list-style-type: none"> • Market trade (retail) • Domestic services provided to population 	Up to 10% of the statutory minimum wage per month
2	Individuals	not more than 10	Not more than UAH 1,500,000	<ul style="list-style-type: none"> • Services provided to population • Manufacturing and/or sale of goods • Catering activities 	Up to 20% of the statutory minimum wage per month
3	Individuals and legal entities	not limited	Not more than UAH 20,000,000	All except prohibited activities	2% of income (for VAT payers), or 4% of income (for VAT non-payers)
4	Agricultural producers (legal entities and individual farmers)	not limited	The main criteria requires the agricultural producers to report their revenue for the last 12 calendar months' sales of agricultural products produced in the amount of at least 75% of the total sales revenue	The company must be incorporated as an "agricultural enterprise," in any legal form allowed by the law, and must be engaged in the production/cultivation, processing, and distribution of agricultural products	The tax rates vary from 0.09% to 3%. The tax base is calculated based on the normative monetary value of one hectare of agricultural land applying the indexation coefficient set on 1 January of the reporting year

Unified tax system

Starting from 1 January 2015, the number of main groups of unified taxpayers reduced from six to four. Taxpayers from the former 4th, 5th and 6th groups were automatically transferred to the 3rd group. No special registration renewal is required.

Basic parameters for the groups of unified taxpayers are described in the Table 1 below.

Starting from 1 July 2015, the taxpayers of 3rd group should use cash registers in their business activity. Starting from 1 January 2016, it is also mandatory for the 2nd group.

If the taxpayers of the 2nd and 3rd groups start using cash registers before 1 July 2015, they will not be subjected to tax audits regarding usage of cash registers until 1 January 2017.

For the 4th group the amount of taxes payable to the government is calculated based on the total area of land and its value. All land taken into account should be used for agricultural production purposes and should be either owned or rented by the taxpayer.

The agricultural producers, which take advantage of a special tax regime (i.e. fixed agricultural tax) were automatically transferred to the 4th group of the unified tax system.

The detailed rates for the 4th group effective from 1 January 2015 are presented in the Table 6 below.

The deadline for the submission of the 4th group reporting is 20 February of a reporting year that ends on 31 December (i.e. the report is submitted in advance).

The payments should be made on a quarterly basis, within 30 days of the end of the reporting quarter, with the following quarterly allocation:

- Q1 = 10%;
- Q2 = 10%;
- Q3 = 50%;
- Q4 = 30%.

Table 6

Types of land plots owned or used by a taxpayer	Unified tax rate, % per hectare value
Plough lands, haying lands and pastures	0.45
Plough lands, haying lands and pastures in mountainous regions	0.27
Perennial plantings	0.27
Perennial plantings, located in mountainous regions	0.09
Lands of water fund	1.35
Plough lands, haying lands and pastures, owned or rented by agricultural producers, which are set up to grow plants or crops (including vegetables) indoors	3

Taxation of IT companies

VAT

For the period until 1 January 2023 all supplies of software within the customs territory of Ukraine are exempt from VAT.

In terms of the TCU, supplies of software includes the following:

- results of computer programming in the form of operating system;
- system programs;
- application software programs;
- entertainment and/or educational computer programs and its components;
- web-sites and/or online services.
- cryptographic data protection services.

However, the wording of this exemption is somewhat ambiguous, thus resulting in different interpretation by the taxpayers and tax authorities.

Anti-avoidance provisions

General restrictions

Ukraine does not have general anti-avoidance rules. However, to prevent tax avoidance, the following restrictions are imposed:

- 30% increase of profit before tax for transactions with non-for-profit organizations, except government-financed organizations;
- b.30% increase of profit before tax for transactions with a non-resident registered in a low-tax jurisdiction;
- c. deduction of royalties paid to non-residents is limited to the amount of income in the form of royalties, increased by 4% of net profit of the previous period.

Royalties are non-deductible if paid to:

- non-resident registered in a low-tax jurisdiction;
- non-resident, if not a beneficial owner of such royalties;
- non-resident, if IP right to the royalty-bearing item first arose in Ukraine;
- non-resident if not taxed on royalty in its jurisdiction;
- legal entity not subject to CIT or paying at a lower than standard rate.

However, all of the above mentioned expenses are deductible if confirmed in accordance with the transfer pricing rules.

The Cabinet of Ministers of Ukraine sets the list of the low-tax jurisdictions for the purpose of application of the above mentioned restrictive measures. The following criteria are taken into account:

- The corporate income tax rate of the jurisdiction is 5 or more percentage points lower than the rate set in Ukraine;
- The jurisdiction has no publicly available information on the ownership structures of the legal entities;
- There are no international treaty between the jurisdiction in question and Ukraine that includes the provision on the exchange of information.



The list of low-tax jurisdictions was adopted on 14 May 2015. It includes the following jurisdictions::

- Republic of Austria
- Anguilla
- The Principality of Andorra
- Antigua and Barbuda
- Aruba
- Commonwealth of the Bahamas
- Barbados
- The Kingdom of Bahrain
- Belize
- Bermuda Islands
- Republic of Bulgaria
- Bosnia and Herzegovina
- British Virgin Islands
- Brunei Darussalam
- Republic of Vanuatu
- United States Virgin Islands
- Guadalupe
- Guernsey
- Gibraltar
- Special administrative regions of China - Hong Kong
- Grenada
- Georgia
- Jersey
- Ireland
- The Autonomous Community Canary Islands of the Kingdom of Spain
- Republic of Cabo-Verde
- Caiman Islands
- The State of Qatar
- Kyrgyz Republic
- Republic of Cyprus
- Autonomous Province of Kosovo and Metohija of Serbia
- Curacao
- The Kingdom of Lesotho
- The Republic of Liberia
- Lebanese Republic
- The Principality of Liechtenstein
- Grand Duchy of Luxembourg
- Special Administrative Region of China Macao
- The Former Yugoslav Republic of Macedonia
- Federal Territory of Labuan Malaysia
- Maldives
- The Republic of Malta
- The Kingdom of Morocco
- Martinique
- Republic of the Marshall Islands
- Federated States of Micronesia
- The Republic of Moldova
- Montserrat
- The Republic of Nauru
- Niue
- United Arab Emirates
- Sultanate of Oman
- Isle of Man
- Cook Islands
- Turks and Caicos Islands
- Republic of Palau
- The Republic of Panama
- The Republic of Paraguay
- Commonwealth of the Northern Mariana Islands
- Autonomous region of Madeira Portuguese Republic
- The Republic of San Marino
- Democratic Republic of Sao Tome and Principe
- The Republic of Seychelles
- Saint Vincent and the Grenadines
- Saint Kitts and Nevis
- Saint Lucia
- The Republic of Singapore
- Sint Maarten (Dutch part)
- The Republic of Sudan
- Democratic Republic of Timor-Leste
- Turkmenistan
- The Republic of Uzbekistan
- French Guiana
- Montenegro
- Switzerland
- Jamaica

Transfer pricing

Starting from 1 January 2015, significant changes to the Ukrainian transfer pricing regulations entered into force. These changes generally bring the Ukrainian TP legislation closer to the OECD Guidelines.

Given below is a brief overview of the most important provisions.

Controllable transactions

The new regulations apply only to cross-border transactions (previously, domestic transactions also were subject to control). In addition, new TP rules do not apply to value-added tax (only to corporate income tax).

The following cross-border transactions are defined as controlled:

- transactions with non-resident related parties;
- transactions with non-residents registered in low-tax jurisdictions (exhaustive list of these jurisdictions is established by the Cabinet of Ministers of Ukraine).
- sales of goods through non-resident commission agents;
- transactions between related parties that involve independent intermediaries with no substantial functions;

Mentioned above groups of transactions with the same counterparty shall be treated as controlled provided that both conditions are met:

- volume of transactions exceeds UAH 1 million or 3% of the taxable income;
- revenue of a taxpayer and/or its related parties exceeds UAH 20 million for a tax year.

TP methods

Taxpayers can choose one of the following methods to substantiate the arm's length nature of their controllable transactions:

- comparable uncontrolled price method (CUP);
- resale price method;
- "cost plus" method;
- transactional net margin method (TNMM);
- profit split method.

Taxpayers may choose the method that they deem to be most suitable. However, if CUP can be applied along with any other, preference should be given to CUP. Ukrainian TP rules also envisage the formal preference of the resale price method and "cost plus" method over the TNMM and profit split method.

Reporting requirements

The reporting period is a calendar year. Taxpayers are obliged to submit the following TP reporting documents with respect to transactions performed after 1 January 2015 (previously, only TP documentation and report were envisaged):

- TP documentation (during one month after receipt of respective request from the tax authorities);
- an Annex to the Corporate Income Tax Return with information on controlled transactions performed;
- Report on controlled transactions if the volume of controlled transactions with the same counterparty exceeds UAH 5 million during the reporting period. The respective report should be submitted by 1 May of a year, following the reporting.

Advanced pricing agreement with tax authorities

Only major taxpayers may enter into advance pricing agreements with the tax authorities in respect of the pricing approach to controlled transactions. The subject may include a broad range of transactions, data sources, etc.

Tax liability adjustments

In case of any deviation from the arm's length price (margin) range, tax liabilities should be adjusted in accordance with the median of the arm's length range. This relate to both self-adjustments as well as adjustments made by the tax authorities.

Penalties for non-compliance with the TP reporting rules

The following penalties for failure to submit the Report on controlled transactions and TP documentation are envisaged by the regulations:

- 100 minimum wages (approx. UAH 121 thousand) for non-submission of the report on controlled transactions;
- 5% of the amount of transactions not included in the mentioned report;
- 3% of the amount of transactions, but no more than 200 minimum wages (approx. UAH 244 thousand) for all non-declared transactions, for non-submission of the TP documentation.

Specific TP rules

Special TP rules apply to export/import of certain exchange commodities to/from certain jurisdictions. They openly require the use of the CUP method, with the focus being on comparison of prices with the recognized exchanges.

Taxpayers are allowed to use other (i.e. margin-based methods). However, to use them the taxpayers are required to disclose information on all related parties in the supply chain and the profit margins earned by these related parties.



Ukrainian-sourced income of foreign companies

Non-resident entities are subject to taxation on two types of income in Ukraine:

- business income (i.e., active income) derived from carrying out business in Ukraine;
- non-business income (i.e., passive income) received from Ukrainian sources.

Taxation of both business and non-business income may be subject to the provisions of international double taxation treaties. Therefore, preferential tax treatment or provisions may be available for non-resident taxpayers under the appropriate double taxation treaties signed between Ukraine and their respective jurisdictions.

Taxation of business income

Business income of non-residents, obtained via a PE situated in Ukraine, is taxed in a similar way to income earned by regular corporate taxpayers in Ukraine. The term “permanent establishment” in domestic tax legislation is similar to the definition of a PE stated in Article 5 of the OECD Model Tax Convention on Income & Capital. Therefore, a non-resident’s income that is attributable to Ukraine via the activities or assets of its PE is subject to taxation in Ukraine on a net basis at the general tax rate.

Permanent establishment (PE)

The definition of a PE in Ukrainian legislation is very similar to that provided by the OECD Model Convention. A PE of a non-resident is defined as a fixed place of business through which the non-resident carries out all or part of its business activities. The term PE includes headquarters, branches, offices, factories, workshops, mines, oil or gas wells, quarries and any other places where natural resources are extracted. It also includes persons acting on behalf of non-resident in course of its business activity in Ukraine. Starting 2015, the example of PE in the Tax Code also includes a server located in Ukraine. Additionally an agency PE includes cases when a person is negotiating the substantial parts of the contract for non-resident in Ukraine.

Activities carried out by a non-resident company in Ukraine for the purpose of providing assistance or preparatory services with regard to that non-resident company’s activities (e.g., conservation, demonstrations, delivery, data gathering, etc.) do not lead to the creation of a PE. The net income attributable to a PE is calculated using one of the three methods below. These methods are applied in the order in which they are listed below (i.e., if the first method cannot be applied, the second should be used, and so forth).

Calculation of attributable income

Direct method

This method should be used when a non-resident entity maintains a separate profit and loss statement with respect to the PE’s activities. Allowable expenses are deducted from gross taxable income and the difference is reported as taxable income.

These expenses are deductible, regardless of whether they were incurred inside or outside Ukraine, provided that they are supported by the appropriate source documents.

Split balance sheet method

This method is used for non-resident companies with activities in multiple countries that do not have readily available gross taxable income figures that may be allocated to their operations in Ukraine. It uses the Ukrainian share of the resident’s worldwide gross taxable income, deductible expenses, number of employees, and book value of its assets to determine taxable income.

This method involves significant practical issues and is almost never used in practice.

Indirect method

The indirect method is used for the PEs for which the amount of attributable income cannot be practically determined using the direct method, and which cannot provide the information required to use the split balance sheet method.

In order to calculate net taxable income of a PE, a 30% profit margin is applied to the gross taxable income attributable to the PE.

Taxation of non-business income

Non-business income from Ukrainian sources is normally subject to withholding tax, provided that it is not attributable to a non-resident's PE in Ukraine. Taxes should be withheld by a resident taxpayer prior to or upon payment of income to a non-resident.

Ukrainian-source income

The following types of the Ukrainian-sourced income are subject to the withholding tax:

- interest income – interest on debt obligations issued to a resident entity;
- dividend income – dividends from a resident entity;
- royalty income – royalties received from a resident entity;
- rental income – rental/lease income received from a resident entity;
- income from immovable property – income from the sale of immovable property located in Ukraine;
- insurance income – premiums for insuring or reinsuring against risks in Ukraine or the risks to resident entities operating abroad;
- winnings – income from lotteries (except for the state lottery),
- commissions, brokerage or agent fees – income received from residents or PEs of non-residents for services provided by a non-resident (or its PE) in Ukraine;
- other types of income – freight, engineering services, profits from trading in securities, donations, etc.

Withholding tax

The withholding tax rates provided in Table 7 normally apply (unless more favorable rates are provided for by a relevant double taxation treaty). In order to benefit from any applicable treaty relief, a non-resident should provide the Ukrainian taxpayer with a tax residency certificate issued annually by the tax authorities of such payer's country of residence. The amount withheld should be remitted to the government when the income is paid to the non-resident.

Table 7

Ukrainian-source income	Withholding tax rate
Dividends	15%
Interest	15%
Royalties	15%
Income from international freight transportation	6%
Other Ukrainian-source income	15%

Unified Social Contribution

General principles

The Unified Social Security Contribution (USSC) is regulated by the Law of Ukraine "On Collecting and Accounting of Unified Social Security Contributions to Compulsory State Social Insurance". The law provides for the consolidation of all social insurance functions within the Pension Fund of Ukraine and for the payment of the USSC using a single payment order.

The base for the USSC is capped at seventeen minimum monthly cost of living and is equal to:

- UAH 20,706 from 1 January 2015 to 31 November 2015;
- UAH 23,426 from 1 December 2015 to 31 December 2015.

Effective laws set the amount of the USSC as a percentage of the accrual base between the minimum amount of the USSC payment and the above maximum accrual base depending on the category of the payer.

In the event that the accrual base (except of remuneration under civil contracts and secondary employment) does not exceed minimum wage set for month for which income is accrued, the amount of the Unified Social Contribution is calculated as the above minimum wage for respective month multiplied by the USSC rate prescribed for an appropriate category of payer. For example, as of 1 January 2015, if the 34.7% accrual base rate is applied, the minimum amount of the USSC is UAH 423.

The USSC rates are summarized below in Table 8.

Table 8

Type	Employer's contribution	Employee's contribution
Enterprises and PEs using a hired labor force (labor contracts)	36.76-49.7%	3.6%
Employers paying remuneration under civil law contacts	34.7%	2.6%
PEs registered as taxpayers under the simplified tax system	34.7%	
Individuals engaged in independent professional activities	34.7%	
Sick-leave payment	33.2%	2%
Disabled persons	8.41%	3.6%

The base for the USSC includes basic salary and additional salary, other encouraging and compensating payments, remuneration paid to individuals under civil contracts, compensation of sick leave and maternity leave. List of payments that do not fall under accrual base of USC No. 1170 is approved by the Cabinet of Ministers of Ukraine.

The USSC is charged for gross amounts (not allowed for taxes and other compulsory fees due for deduction from the above base of accrual).

Innovation in legislation

The Law of Ukraine “On Amending Section VIII “Final and Transitional Provisions” of the Law of Ukraine “On Collection and Accounting of the Unified Contribution to Compulsory State Social Insurance” as to payroll unburdening (hereinafter, the “Law”) which came into force starting from 13 March 2015 provided for:

- The introduction of new criteria for application of a degression factor to the rates of the USSC in 2015.
- The USSC payers may apply the degression factor if they meet the following criteria:
 - the USSC base per insured person in the reporting month has increased by 20% and more as compared to the average monthly USSC base for 2014 per insured person;
 - after applying the factor, average payment per insured person in the reporting month will not be less than the average payment per insured person in 2014;
 - the number of insured persons in the reporting month does not exceed 200% of the average monthly number of insured persons in 2014. This condition does not apply to self-employed persons and individuals who employ other persons under labor contracts.

- In 2015, the following formula will be used to calculate the factor:

$$\text{Factor} = \frac{\text{Average monthly USSC base per person in 2014}}{\text{USSC base for the reporting month per person}}$$

- In 2015, minimum value of the factor will be 0.4. In 2016, a 0.6 factor will apply.
- The factor will be applied at the time of calculating salary (income) of individuals and/or remuneration under civil contracts, temporary disability, and maternity allowance.

The USSC payers being in arrears will be disqualified from applying the degression factor until such arrears are fully settled.



Taxation of individuals

Personal income tax

Tax base for individuals

The Personal Income Tax (hereinafter, PIT) base for Ukrainian and foreign nationals, as well as stateless persons, depends on their tax residency status.

It is important that tax residency is different from nationality, citizenship, and residency for currency control purposes.

Ukrainian tax residents are subject to PIT on their worldwide income, whereas non-residents are only subject to taxation on the Ukrainian-sourced portion of their income. Ukrainian-sourced income means the following types of income:

- employment income received for the work on behalf of Ukrainian entity/business regardless of which entity pays the income, i.e. Ukrainian or foreign
- personal income received from Ukraine (interest income received from the Ukrainian bank, dividend income received from the Ukrainian entity, sale of property registered in Ukraine, etc.).

Income is taxed, irrespective of whether it is received in cash or in kind.

In the event that an individual receives benefits in kind, the amount of taxable income is determined based on the fair market value of the property, services or other benefits received.

The following benefits received by an individual are specifically exempted from inclusion in the tax base:

- income received in the form of interest on investments in securities issued by the central executive body that implements the state financial policy and bonds of the National Bank of Ukraine;
- alimony received from residents, as defined by a respective court ruling, or in accordance with the Family Code of Ukraine;
- principal amount of deposit with Ukrainian banks and non-banking financial institutions as well as principal
- amount of credit received by an individual;
- shares received from the capitalization of retained earnings, provided that the allocation ratio of shares between shareholders remains unchanged;
- compensation of apartment and car rental costs for employees, where such benefits are envisaged by an employment agreement or collective agreement;
- amounts received from employers for certain types of medical treatment and services;
- income of a private entrepreneur who has opted into the simplified system of taxation;
- insurance payments under agreements other than life insurance or non-state retirement insurance agreements in accordance with the conditions prescribed by law.

The reporting period is a calendar month and year.

Depending on their tax position for the year, individuals may be required to file annual tax return for the respective year; while companies and tax agents are required to file quarterly reports (1 DF Form) and keep monthly payroll.

Tax residency status determination

The Tax Code establishes the following rules for determining the tax status of an individual:

- an individual is considered to be a tax resident of Ukraine if he/she has a permanent home in Ukraine ("permanent residency test")
- if an individual has a permanent home in more than one country, he/she is considered a tax resident in the country with which he/she has the closest personal and economic ties ("center-of-vital-interests test")
- if it is impossible to determine the country of residence using either the permanent residency or center-of-vital-interests test, the individual is considered a Ukrainian tax resident if he/she is present in Ukraine for at least 183 days cumulatively during a particular reporting year, including the days of arrival and departure counted as separate days
- if tax residency status cannot be determined based on the 183-day test, the individual is considered a Ukrainian tax resident if he/she has Ukrainian citizenship.

In addition, the Tax Code sets a self-recognition procedure according to which an individual can voluntarily elect to be a Ukrainian tax resident.

While it is important that domestic laws provide tax residency rules, such provisions may be overruled by the respective provisions of double tax treaties (DTTs).

Please note that the domestic rules used to define tax status are, in many ways, similar to those suggested by the Model OECD Tax Convention. Since Ukraine is not a member of the OECD, Ukrainian tax authorities may ignore the Commentary to the Model Tax Convention.

Tax rates

The following PIT rates are generally applied:

- 15% on the worldwide income of tax residents and the Ukrainian-sourced income of non-residents up to the yearly threshold of 10 minimum monthly wages (UAH 12,180 as of 1 January 2015)
- 20% on the worldwide income of tax residents and the Ukrainian-sourced income of non-residents above the threshold of 10 minimum wages applied to annual income amount

- 30% on income from winnings and prizes
- 0% on inheritance from immediate relatives, income from the first sale of qualifying residential property and plots of land not exceeding the limit for free land transfers (provided that the property has been in ownership for more than 3 years)
- 5% for tax residents on: income from the sale of commercial property; income from the second and any further sale of residential property within one reporting year; income from the sale of movable property by its owner, other than the first sale of a vehicle; income from the sale of plots of land over the maximum area for free land transfers; on dividends issued by a resident issuer; and on inheritance paid to non-relatives
- 15%/20% for tax non-residents on: income from the sale of commercial property; income from the second and any further sale of residential property within one reporting year; income from the sale of movable property by its owner other than the first sale of a vehicle; income from the sale of plots of land over the maximum area for free land transfers; on dividends issued by a resident issuer; and on inheritance paid to non-relatives.
- 20% rate for passive income (interest, income from investments, etc.). Dividends are subject to 20% and 5% rates, whereas the 5% rate applies to dividend income paid by resident companies that are corporate income tax payers in Ukraine.

Tax deductions

The Tax Code provides for a list of deductible items that are specifically included into an individual's taxable income. The following deductions from personal income tax obligations considered as results of reporting tax year are allowed:

- Ukrainian mortgage expenses
- Charity contributions to qualified charity funds
- Tuition fees paid to Ukrainian universities
- Contributions to voluntary life/pension insurance.

Only tax residents who received employment remuneration in Ukraine may apply for the tax deduction.

State registration of taxpayers

Individuals who qualify as Ukrainian taxpayers should be registered with the State Fiscal Service of Ukraine.

Registration is confirmed by obtaining a personal tax ID number that is used for the following activities: incorporation of a legal entity in Ukraine, opening and operating a bank account, submission of a personal tax return, payment of PIT, claiming tax credit, and entering into civil agreements that provide for the payment of tax/state duties.

Tax agents

In general, Ukrainian employers (companies, other legal entities and representative offices of foreign companies) are considered tax agents with regard to the income they pay to individuals.

Tax agents are responsible for withholding PIT and Unified Social Security Contributions from the income they pay to their employees, and for remitting such tax to the government when paying income (in accordance with the PAYE principle).

When income is paid in kind or in cash, a tax agent is required to remit the relevant tax to the government on the first banking day following the payment/provision of the income to the individual. The tax is calculated using the gross-up method. If income is accrued by an employer but not paid to an employee, the relevant tax is required to be remitted to the government within 10 days following the month in which such income was accrued.

The payment of PIT on salaries and other taxable compensation items is the responsibility of the tax agent. Tax agents are required to remit the tax to the government in a timely manner in order to avoid financial penalties, which can be significant (up to 75%).

Reporting requirements for individuals

Tax agents are generally obliged to file personal income tax reports to the tax authorities on a quarterly and monthly basis. At the same time, in order to claim a tax credit with regard to certain expenses incurred during a calendar year, individual taxpayers need to file the annual tax return.

In certain cases, an individual is required to submit a tax return, such as when they receive taxable income from sources other than a tax agent (e.g. foreign income), or from two or more tax agents, where the individual in question's total annual income exceeds the threshold of 120 minimum wages, and also when claiming a tax credit. The annual PIT return should be submitted to the Ukrainian tax authorities by 1 May of the year following the reporting year. The respective tax (if any) must then be paid by 1 August of the same year.

Military contribution

First introduced in August 2014 until 31 December 2014, the military contribution has been extended indefinitely, until abolishment by the respective legislative regulations.

The rate of the military contribution remains 1.5% of individuals' taxable income.

The tax base of the military contribution has been set equal to the PIT base.

Tax agents are responsible for withdrawal and payment of the military contribution on individuals' taxable income. In a no-tax-agent case, the obligation to report and pay the military contribution lies with a taxpayer.

Currency control

The hryvnia (UAH), the Ukrainian currency, has limited convertibility. Residents and non-residents may hold hard currency and UAH accounts with authorized banks, and may import and exchange currency in accordance with the procedures established by the The National Bank of Ukraine (NBU). However, currency operations that take place in Ukraine fall under the state currency control regulations, a key feature of which is the concept of residency.

For the purposes of currency regulations and control requirements, a resident of Ukraine is defined as follows:

- any person, including foreign citizens permanently residing in Ukraine;
- legal entities, representative offices or other structural subdivisions thereof located and performing business activities on the Ukrainian territory;
- Ukrainian diplomatic, consulate, trade and other official governmental institutions abroad that enjoy diplomatic privileges and immunity;
- representative offices or other structural subdivisions of Ukrainian companies and organizations abroad, if such subdivisions perform representative functions only and are not engaged in business activities.

Any other person or structural subdivision that is not a resident of Ukraine is treated as non-resident for exchange control purposes.

Foreign currency control regulates the following relations:

- in general, only local currency may be used in business transactions between residents;
- the means of payment between residents and non-residents involved in international transactions, in connection with trade and investment activities, is generally taken to be foreign currency;
- foreign currency proceeds received by a company from its foreign clients must be credited to a local bank account within 90 days of the export date of the services or goods in question. Failure to comply with this provision will result in the Ukrainian company being liable to pay a penalty of 0.3% of the non-received proceeds for each day of the delay;
- Goods must be imported into Ukraine within 90 days from when prepayments were made by a Ukrainian company to its suppliers. Failure to comply with this provision will result in the Ukrainian company being liable to pay a penalty of 0.3% of the non-received proceeds for each day of the delay.



Certain transactions involving local and foreign currency are subject to licensing by the NBU (e.g. settlements made in foreign currency on the Ukrainian territory). Ukrainian residents are also required to obtain an individual license to make investments abroad. Investing abroad includes purchasing securities issued by foreign entities, opening an account with a foreign bank and issuing or taking out foreign-currency loans. If one party to a currency transaction has obtained the required license, the other party is also treated as having acquired it. These licenses are issued for a limited period, and with a limited amount of foreign currency specified. The procedure for obtaining an individual license is quite onerous, and requires a specific set of documents to be submitted to the NBU for approval.

Starting from February 2015, the official exchange rate is set according to the market factors (the NBU refused to use an indicative exchange rate).

One should also consider the series of restrictions introduced by the NBU on a temporarily basis. Such measures may be divided into the following groups:

- Ban on certain foreign currency transactions influencing the investment climate of Ukraine (e.g. ban on the payment of dividends to foreign investors abroad)
- Currency control limitations influencing the business (e.g. mandatory sale of 75% of foreign currency earnings)
- Currency control limitations applicable to individuals (e.g. restriction to sell cash foreign currency to one individual on one business day in one banking institution for more than equivalent of UAH 3,000).



Property tax

The property tax is a general category that includes the following components:

- Land fee;
- Immovable property tax;
- Transport tax.

Land fee

The land fee is paid as (i) land tax or (ii) land rent depending on the legal title to the land plot.

The land tax is imposed on entities and individuals who own plots of land or possess them on the permanent use right basis.

The basis for the land tax is the evaluation amount of the land plot, or its area if the plot has not been evaluated.

Local authorities set the yearly land tax rates within the following limits:

- For evaluated land plots:
 - If a taxpayer owns the land plot: no more than 1% of the value estimate of a land plot for farmland, and no more than 3% for non-farmland
 - If a taxpayer has a permanent use right to the land plot: no more than 12% of the value estimate of a land plot (regardless of its belonging to farm- or non-farmland);
- For non-evaluated land plots – no more than 5% of the value estimate of a standard land plot in respective oblast.

The land rent is imposed on entities and individuals who rent land plots owned by the state or communities.

The amount of rent shall be set by the parties to the Lease Agreement, but in any event its yearly amount shall be within the range of 3-12% of the value estimate of a land plot.

Tax authorities calculate the amount of land fee payable for individuals, while legal entities shall calculate it themselves and submit respective tax returns. Individuals pay land fee once per year, and legal entities pay it on a monthly basis.

Immovable property tax

The immovable property tax is imposed on entities and individuals who own residential or non-residential buildings and premises (land plots excluded). There is a number of exceptions, e.g. industrial buildings, agricultural buildings designated for use directly in agricultural production, certain social services buildings etc.

The yearly tax rate shall be set by local authorities; however, such tax rate may not in any event exceed 2% of the minimal salary amount per 1 square meter of the taxable area of the object. In 2015, such maximum amount is UAH 24.36 per 1 square meter. As a rule, local authorities set lower rates for buildings used in education, healthcare, nonprofit organizations etc.

Tax authorities calculate the amount payable for individuals, while legal entities shall calculate it themselves and submit respective tax returns. Individuals pay immovable property tax once per year, and legal entities pay such tax on a quarterly basis.

Transport tax

The transport tax is imposed on entities and individuals who own automobiles with cylinder capacity over 3,000 cc that are used less than 5 years. The yearly tax rate is UAH 25,000 per every automobile satisfying the above criteria.

Tax authorities calculate the amount payable " for individuals, while legal entities shall calculate it themselves and submit respective tax returns. Individuals pay transport tax once per year, and legal entities pay such tax on a quarterly basis.

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