

**Deloitte.**

Taxation and  
Investment in Ukraine  
2017

Reach, relevance and reliability



# Contents

## **1.0 Investment climate**

- 1.1 Business environment
- 1.2 Currency
- 1.3 Banking and financing
- 1.4 Foreign investment
- 1.5 Tax incentives
- 1.6 Exchange controls

## **2.0 Setting up a business**

- 2.1 Principal forms of business entity
- 2.2 Regulation of business
- 2.3 Accounting, filing and auditing requirements

## **3.0 Business taxation**

- 3.1 Overview
- 3.2 Residence
- 3.3 Taxable income and rates
- 3.4 Capital gains taxation
- 3.5 Double taxation relief
- 3.6 Anti-avoidance rules
- 3.7 Administration
- 3.8 Other taxes on business

## **4.0 Withholding taxes**

- 4.1 Dividends
- 4.2 Interest
- 4.3 Royalties
- 4.4 Branch remittance tax
- 4.5 Wage tax/social security contributions
- 4.6 Other

## **5.0 Indirect taxes**

- 5.1 Value added tax
- 5.2 Capital tax
- 5.3 Real estate tax
- 5.4 Transfer tax
- 5.5 Stamp duty
- 5.6 Customs and excise duties
- 5.7 Environmental taxes
- 5.8 Other taxes

## **6.0 Taxes on individuals**

- 6.1 Residence
- 6.2 Taxable income and rates
- 6.3 Inheritance and gift tax
- 6.4 Net wealth tax
- 6.5 Real property tax
- 6.6 Social security contributions
- 6.7 Other taxes
- 6.8 Compliance

## **7.0 Labor environment**

- 7.1 Employee rights and remuneration
- 7.2 Wages and benefits
- 7.3 Termination of employment
- 7.4 Labor-management relations
- 7.5 Employment of foreigners

## **8.0 Deloitte International Tax Source**

## **9.0 Contact us**

# 1.0 Investment climate

## 1.1 Business environment

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

Ukraine gained independence after the collapse of the Soviet Union in 1991 and is a unitary republic under a 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 the representative and legislative body of Ukraine and consists of 450 members.

The primary sectors of the economy are manufacturing (ferrous metallurgy, machinery, chemical industry, food industry and consumer goods), agriculture, and the supply of electricity and natural gas, etc.

The main exports are metals (ferrous and nonferrous), agricultural products (grain, sunflower seeds, etc.), foodstuffs, machinery and equipment, raw materials, textiles, etc. Primary imports include fuel and energy products, petroleum products, raw materials and products of the chemical industry, machinery and electronics.

Ukraine's major trading partners are the CIS countries, European Union (EU) countries (primarily Germany, Hungary, Italy and Poland) and Asian countries (chiefly China and Turkey).

### Price controls

Some categories of goods and services are regulated at the state level. State regulation of prices (tariffs) of goods is based on the Law of Ukraine "On Prices and Pricing", together with the Commercial and Civil Codes of Ukraine. Legislative acts specifying those types of good whose price is subject to state regulation are issued by the Cabinet of Ministers, relevant ministries and state administrations.

### Intellectual property

#### Copyrights

The main legislative acts governing copyrights are the Civil Code of Ukraine and the Law of Ukraine "On Copyright and Related Rights". Ukraine is a signatory to the:

- Berne Convention for the Protection of Literary and Artistic Works (1886);
- Universal Copyright Convention (1952);
- International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961);
- Convention Establishing the World Intellectual Property Organization (1967);
- WIPO Copyright Treaty (1996);
- Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms (1971); and
- Agreement on Trade-Related Aspects of Intellectual Property Rights (1994).

Generally, the duration of copyright protection in Ukraine is for the author's life plus 70 years after his/her death.

## **Patents**

The main legislative acts governing patents are the Civil Code of Ukraine and the Law of Ukraine "On Protection of Rights to Inventions and Utility Models". Ukraine is a signatory to the:

- Paris Convention for the Protection of Industrial Property (1883);
- Eurasian Patent Convention (1994);
- Strasbourg Agreement Concerning the International Patent Classification (1979);
- Patent Cooperation Treaty (1970); and
- WIPO Patent Law Treaty (2000).

Patents for inventions are granted for 20 years from the date of filing of an appropriate application.

Declarative patents for utility models are granted for 10 years from the date of filing of an appropriate application.

## **Trademarks**

The main legislative acts governing trademarks are the Civil Code of Ukraine and the Law of Ukraine "On Protection of Rights to Trademarks". Ukraine is a signatory to the:

- Paris Convention for the Protection of Industrial Property (1883);
- Madrid Agreement for the International Registration of Marks (1891);
- Madrid Protocol (1989);
- Trade Mark Law Treaty (1994); and
- Singapore Treaty on the Law of Trademarks (2006).

Trademarks are registered for a term of 10 years from the date of filing of an appropriate application and this may be extended for another 10 years.

## **Industrial designs and models**

The main legislative acts governing industrial design and models are the Civil Code of Ukraine and the Law of Ukraine "On Protection of Rights to Industrial Models". Ukraine is a signatory to the:

- Hague Agreement Concerning the International Registration of Industrial Designs (1925);
- Locarno Agreement Establishing an International Classification for Industrial Designs (1968); and
- Agreement on Trade-Related Aspects of Intellectual Property Rights (1994).

A patent for an industrial model is issued for a term of 10 years from the date of filing of an appropriate application and may be extended for up to a further five years.

## **1.2 Currency**

The currency in Ukraine is the Ukrainian Hryvnia (UAH).

## **1.3 Banking and financing**

Ukraine has a two-tier banking system, comprising the central state bank (the National Bank of Ukraine or NBU) and commercial banks. The NBU's main function is to ensure the stability of Ukraine's national

currency. Other functions include the issue of money and arrangement of money circulation, regulation of banking transactions, and consolidated banking regulation and supervision.

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

## **1.4 Foreign investment**

Generally, Ukrainian legislation does not restrict or limit the extent of foreign investment or equity participation of a foreign investor in a Ukrainian business. However, there are some restrictions on foreign ownership that apply to highly regulated businesses (e.g. insurance companies, publishing companies, television, etc.).

Ukrainian legislation does not provide for any special tax regimes for enterprises with foreign investment. However, a foreign investor's contribution to the share capital of a Ukrainian enterprise in the form of goods may be exempt from customs duties, provided that the goods are not alienated for three years after the contribution.

## **1.5 Incentives**

Ukraine provides attractive incentives for businesses operating in a wide range of prioritized sectors of the economy, although the legislation governing the incentives is frequently amended.

### **Renewables and energy efficiency**

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

- A "green" tariff regime (nontax incentive), enabling the sale of electricity produced from renewable energy sources at a special price, which is higher than the traditional energy price;
- An exemption from Ukrainian VAT and customs duties on certain types of imported equipment and materials; and
- A temporary exemption from VAT and customs duties for specified operations (until 1 January 2019).

### **Mining**

Mining companies operating under production sharing agreements (PSAs) with the government (for the most part, oil and gas companies) can benefit from a number of tax incentives, including:

- No VAT or customs duties on the import of goods/property for the purposes of implementing a PSA;
- No customs duties or excise tax and a 0% VAT rate on the export of goods produced under a PSA,;
- Exemption from withholding tax for the income earned under a PSA and repatriated outside Ukraine by a foreign investor's permanent establishment (PE) registered in Ukraine; and
- Tax-free financing of a PE's activity.

### **Agriculture**

Until 2022, a special grant from the government is available for agricultural producers of certain goods. The grants are distributed in proportion to the amount of VAT paid on the supply of the goods by each producer.

## **Information technology**

Until 1 January 2023, the supply of software is VAT-exempt. Software includes operating systems, computer programs, system administration, websites, online services, etc.

## **Priority industries**

Tax and customs incentives also are offered to entities engaged in investment projects in "priority industries" as defined by the Cabinet of Ministers of Ukraine, in particular, agriculture, machine-building, transport infrastructure, etc. An entity operating in the priority industry may qualify for the incentives if the project has been approved by the government and meets specific legal requirements regarding the minimum amount of investment, number of new jobs created, etc. The incentives include:

- An exemption from customs duties on the import of equipment for eligible projects, subject to specific approval from the Cabinet of Ministers of Ukraine (available until 1 January 2018).
- The ability to postpone payment of import VAT on equipment imported duty-free by issuing a VAT promissory note to be paid in cash within 60 days. This benefit is available until 31 December 2022.

## **Tax relief in nongovernment controlled areas of Ukraine**

Whilst antiterrorist operations continue and military activity is ongoing in Ukraine, the import and supply within Ukraine of protective clothing and other equipment, medicines for the injured, defense products, etc. are VAT exempt.

During the period of antiterrorist operations, real estate located in temporarily occupied territories or on the border between government and nongovernment controlled areas is exempt from property and land tax, although agricultural land in the border area remains subject to land tax.

## **Aircraft industry**

VAT incentives are offered to entities in the space and aircraft industries, for example, refueling activities and aircraft maintenance are not subject to VAT.

## **Other incentives**

Certain incentives are granted only to entities founded by a public institution for disabled people.

Until 31 December 2021, small entities (with net income of less than UAH 3 million) may enjoy tax holidays and apply a 0% corporate income tax rate, provided certain other conditions are met.

## **1.6 Exchange controls**

The Ukrainian Hryvnia has limited convertibility. Currency operations in Ukraine are subject to state currency control regulations, which are based on the concept of residency. For these purposes, a resident of Ukraine is defined as:

- Any person, including foreign citizens, permanently residing in Ukraine;
- Legal entities, representative offices or other structural subdivisions thereof located and performing business activities in Ukraine;
- Ukrainian diplomatic, consulate, trade and other official governmental institutions abroad that enjoy diplomatic privileges and immunity; and

- Representative offices or other structural subdivisions of Ukrainian companies and organizations abroad, if such subdivisions perform representative functions only and are not engaged in any business activities.

Any other person or structural subdivision that is not a resident of Ukraine is treated as a nonresident for currency control purposes.

Residents and nonresidents may hold hard currency and UAH accounts with authorized banks, and may import and exchange currency in accordance with the procedures established by the NBU.

Foreign currency control regulations apply in the following areas:

- Generally, only local currency may be used in business transactions between residents.
- Payments between residents and nonresidents involved in international transactions in connection with trade and investment activities are, for the most part, made in foreign currency.
- Foreign currency proceeds received by a company from foreign clients must be transferred to a local bank account within 180 days of the date of export of the relevant goods or services. Failure to comply with this provision will result in the Ukrainian company being liable to pay a penalty of 0.3% of the outstanding proceeds for each day of the delay.
- Goods must be imported into Ukraine within 120 days from the date 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 outstanding proceeds for each day of the delay.

Certain transactions in local and foreign currencies are subject to licensing by the NBU (e.g. settlements made in foreign currency in Ukraine). Ukrainian residents are required to obtain an individual license to make investments abroad. Investing abroad includes purchasing securities issued by foreign entities, deposits of foreign currency funds into a bank account opened with a foreign bank, and granting or raising loans in foreign currency. Licenses are issued for a limited term and for a specified amount of foreign currency. 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.

Individuals who are not registered as private entrepreneurs do not require a license provided that:

- The investment is made abroad using funds held outside Ukraine (e.g. investments made from foreign accounts, the reinvestment of funds outside Ukraine, trading in financial instruments on foreign stock exchanges, etc.); or
- A deposit of foreign currency is made into a foreign bank account only from funds derived from a source outside Ukraine (e.g. salaries, scholarships, pensions, alimony, dividends, etc.).

Since February 2015, the NBU has been setting the official exchange rate based on market factors. As at 1 May 2017, the official exchange rates for the major currencies were:

- UAH 26.5514: USD 1
- UAH 28.8906: EUR 1
- UAH 4.6605: RUB 10

In addition, the NBU periodically imposes temporary currency control restrictions that may affect the investment climate or business operations in Ukraine. For example, a ban on the sale and transfer of foreign currency for the purposes of paying dividends to foreign investors, other than dividends for the years 2014-2017, payment of which is allowed subject to particular terms and conditions) and the mandatory sale of 50% of a business' foreign currency earnings.

# 2.0 Setting up a business

## 2.1 Principal forms of business entity

The principal forms of doing business in Ukraine are: a limited liability company (LLC); a private or public joint stock company (PrJSC or PJSC); a joint venture (particularly in the oil and gas exploration sector); a representative office (RO) (not a legal entity but common for foreign companies that are only planning to perform marketing, promotional and other auxiliary activities, rather than active business operations); and a branch or permanent establishment (PE) of a foreign corporation.

If a foreign investor chooses to do business in Ukraine in a form other than a legal entity, it is important to determine whether such foreign company's presence in Ukraine will lead to the creation of a PE under Ukrainian tax legislation.

It is also possible to perform certain types of business activity in Ukraine without establishing any formal presence in the country, e.g. one-time contracts or joint production agreements with Ukrainian partners.

### Formalities for setting up a company

A Ukrainian business is established and operates on the basis of its constituent (foundation) document (charter). A constituent document should contain specific information required by law for each type of business. A Ukrainian LLC, PrJSC or PJSC may not have a sole founder, if the founder is wholly owned by a single corporate shareholder.

A legal entity can be registered within 24 hours after submission of all the required documents. However, the overall time to incorporate a company may differ depending on its type. For an LLC it typically takes about two to three weeks; to establish a PrJSC/PJSC may take two to four months.

- The following documents are required for state registration of a company:
- Application for the state registration to establish a legal entity;
- Application for the optional simplified taxation system (if required) and/or application for voluntary registration as VAT taxpayer, in the approved form;
- Original or notarized copy of the decision of the founders to incorporate;
- Incorporation document (either a charter or a foundation agreement if applicable, etc.);
- Document evidencing the state registration of nonresident shareholder(s) in their country of origin (e.g. an extract from the relevant commercial, banking or court register etc.).

Individual shareholders (beneficial owners) must be disclosed when a legal entity is registered with the state and on a merger or acquisition.

### Forms of entity

The most common forms of legal entity in Ukraine for conducting business activities are the LLC and the PrJSC/PJSC (joint-stock companies or JSCs). The main legislative acts regulating these types of legal entity are the Civil and Commercial Codes of Ukraine and the Laws of Ukraine "On Business Associations" and "On Joint-Stock Companies". A Ukraine-based company or partnership is considered as a legal entity upon state registration.

### Requirements for a limited liability company

An LLC (*Tovarystvo z Obmezenoyu Vidpovidalnistyu*) is one of the most popular forms of carrying out business activity in Ukraine. An LLC can consist of no more than 100 participants. Equities of an LLC cannot be transferred without the consent of other participants. The financial and reporting requirements for an LLC are less burdensome than for a JSC.

**Capital.** There are no legal requirements as to the amount of charter capital of an LLC. However, surplus funds amounting to 25% are required to be established within an LLC's charter capital. The full amount of charter capital must be paid up within the first year after the company's state registration.

Charter capital is divided into equity interests and may be increased or reduced according to a decision of the participants. Contributions to an LLC's charter capital may be made, *inter alia*, in the form of funds (including foreign currency), property, securities, proprietary and nonproprietary rights, and other items which have material value.

### **Founders, shareholders (participants).**

An LLC may not be incorporated by a sole founder which itself has a single shareholder. A parent company may not incorporate more than one entity in Ukraine. If the number of participants in an LLC exceeds 100, the LLC must be reincorporated as a JSC.

The liability of participants in an LLC is limited to their contribution to the company's charter capital. Individuals and legal entities, as well as the state or regional bodies owning equities, can be shareholders (participants) of the company.

**Management.** The supreme management body of an LLC is the general meeting of its participants (GMP), which takes place at least twice each year, unless otherwise specified in the LLC's charter. Shareholders owning in aggregate more than 20% of the equity in an LLC's charter capital may convene an extraordinary GMP at any time. For a meeting to be quorate, participants holding more than 50% of the equity interest in the charter capital must attend.

The executive body of an LLC is the general director or board of directors, headed by the general director. The executive body is responsible for the day-to-day operation of the LLC, is entitled to act on behalf of the LLC without power of attorney and reports directly to the GMP. The LLC's internal audit commission supervises the executive body.

An LLC's charter sets out the specific competences of the management bodies and may also specify requirements such as a particular management structure or the quorum for a GMP.

**Types of share.** Under Ukrainian legislation, an LLC has no right to issue shares (securities). Participants in an LLC hold an equity interest (part of the LLC's divided charter capital) of a nominal value equivalent to each participant's contribution to the charter capital.

A participant may only dispose of its equity to third parties if the other participants do not wish to acquire the interest. This preemptive right of LLC participants applies only to relations with the third parties (nonparticipants in the LLC).

A participant may request in writing to withdraw from an LLC and is then entitled to a share of the LLC's net assets in proportion to their equity interest.

**Taxes and fees.** No taxes are payable at the time of registration or on subsequent increases in charter capital. No fees are required on registration; however, a fee of 0.3 times the minimum living wage applies to increases/decreases in share capital, (UAH 505.20 from 1 May–30 November 2017; UAH 528.60 from 1–31 December 2017).

### **Requirements for a joint-stock company**

A JSC may be public (*Publichne Aktsionerne Tovarystvo* or PJSC) or private (*Pryvatne Aktsionerne Tovarystvo* or PrJSC). Along with the LLC, the PrJSC is one of the most common and popular corporate vehicle for foreign investors in Ukraine.

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

**Capital.** *Both:* The minimum amount of authorized share capital is set at 1,250 times the minimum monthly wage. As at 1 January 2017, the minimum monthly wage was fixed at UAH 3,200, however, it increases progressively throughout the year on a quarterly basis.

*PrJSC:* The founders must pay at least 50% of the amount of authorized share capital in order for the company to be allowed to perform activities other than those related to the purposes of its foundation. Each founder of the joint stock company must pay the full value of the purchased shares before the date of confirmation of the results of the placement of the initial share offering. Shareholders may use cash funds, property, proprietary and nonproprietary rights, and securities (other than promissory notes or any debt securities issued by the PrJSC) to pay for their shares in the authorized share capital of the PrJSC.

**Founders, shareholders.** *PJSC:* The shares of a PJSC are offered for public subscription or may be sold publicly on the stock market. A PJSC may have an unlimited number of shareholders. Subject to certain disclosure requirements, a PJSC is the only form of legal entity whose shares may be openly traded.

*PrJSC:* The shares are distributed exclusively among the founders. A shareholder in a PrJSC may transfer its shares to a third party, subject to the consent of the other shareholders. Shareholders are not liable for the obligations of the company and bear the risk of losses only to the extent of their shares (limited liability). The frequency of shareholders' meetings is specified in the charter; however, there should be at least one meeting per year.

*Both:* A JSC may be set up by one person or may have just one shareholder in the event that all a JSC's shares are purchased by a single shareholder. The number of shareholders in a JSC is unlimited. A JSC may not have a sole shareholder which is itself owned by a single entity. A JSC may not have only legal entities as its shareholders, where those entities are all owned by a single common company.

**Management.** *Both:* The highest management body of a JSC is the general meeting of its shareholders (GMS), which is legislatively empowered to deal with the ultimate issues of the JSC's activities. A GMS shall be held at least once per year. Shareholders owning in aggregate more than 10% of the JSC's ordinary share capital may convene an extraordinary GMS. Shareholders holding more than 50% of the JSC's share capital must attend for a GMS to be quorate.

If a JSC (either public or private) has more than 10 shareholders, a supervisory board (SB) must be established. The GMS appoints the SB, which oversees the activities of the JSC's executive body, and represents and protects the shareholders' interests.

The board of directors or a sole director entrusted to manage a JSC's day-to-day functions is the executive body of a JSC. There are no legislative limitations on the number of members of the board of directors. The executive body reports to the GMS and SB, and acts on behalf of the JSC without power of attorney.

An SB must have a number of independent directors/members of the SB who satisfy the following requirements:

- No employment/significant business relations with the JSC during the last three years and the last year respectively;
- No substantial additional remuneration from the JSC or its affiliates (other than in respect of the independent director's activity); and

- No family relationship with the representatives of the executive or management bodies of the JSC, etc.

An internal auditor/audit committee, separate from the external audit, controls and supervises the executive body's activities and conducts an audit of the financial/commercial activities of the JSC.

**Types of share.** *Both:* Under Ukrainian legislation, both a PJSC and a PrJSC may issue the following types of share:

- Ordinary shares – give their owners the right to obtain part of the income of the JSC via dividends, participate in the JSC's operation and obtain a share of the JSC's property in the event of its liquidation, as well as other rights with respect to the JSC's foundation, activities and the winding-up of the JSC.
- Preferred shares – give their owners priority rights over the holders of ordinary shares, and voting rights on a limited number of issues as specified by legislation and the company's charter (e.g. amendments to the company's charter intended to limit the rights of holders of preferred shares, etc.)

All ordinary shares issued by a JSC have equal rights to vote and to the distribution of profit. There are various classes of preferred share granting different rights to their owners. Unlike equity interests (participation) in an LLC, shares in a JSC may be effectively pledged as securities.

A JSC's shares may exist only in electronic form. Specific procedures apply to the issue of shares and their registration with the National Securities and Stock Market Commission. All the shares of a JSC must be placed for safekeeping with a certified depository institution.

**Taxes and fees.** No taxes are payable at the time of registration or on subsequent increases in share capital. No fees are required on registration; however, a fee of 0.3 times the minimum living wage applies to increases/decreases in share capital, (UAH 505.20 from 1 May–30 November 2017; UAH 528.60 from 1–31 December 2017).

### Branch of a foreign corporation

See 'Representative office' below for details. A branch is subject to tax at the same rates as a company.

### Representative office

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

All ROs are registered with the Ministry of Economic Development and Trade of Ukraine (the Ministry of Economy or Mineconomy). Commercial ROs also are registered with the local tax authorities and social security funds. In practice, noncommercial ROs typically also will register, although this is not a legal requirement.

Registration with the Mineconomy involves:

- Filing a package of registration documents as required by law and payment of the state registration fee (USD 2,500);
- Review of the documents by the Mineconomy (within 60 working days);
- Approval or rejection of the registration (a rejection may be appealed in court);
- After approval, the RO is included in the Unified Register of Representative Offices and receives the Registration Certificate;

- Registration of the RO with the tax authorities and the State Statistics Service of Ukraine (within 10 days after its registration with the Mineconomy); and
- Opening bank accounts for the RO.

Once the above procedures have been completed, the registered RO is entitled to apply to the relevant departments of the Ministry of Internal Affairs of Ukraine for visas and registration of passports for the RO's employees and to the traffic police offices for registration of vehicles owned by the RO.

Within 10 days of registration, the RO must file the required documents with the tax authorities in the region/district in which the RO is located. The tax officer must decide by the next business day after their submission whether to approve or reject the registration. When approved, the RO is registered as a corporate income taxpayer.

## **2.2 Regulation of business**

### **Mergers and acquisitions**

Under Ukrainian competition law, the acquisition of control over a company, including the purchase of more than 25% or 50% of the share capital, is a market concentration and requires prior approval from the Antimonopoly Committee (AMC).

This provision also applies when the acquisition falls within the following criteria:

1. The total value of assets or the aggregate worldwide turnover of the parties involved (taking account of the relationship of control including abroad), exceeded the equivalent of EUR 30 million in the previous financial year, and the total value of assets or the aggregate turnover from the sale of goods in Ukraine of at least two parties involved (taking account of the relationship of control), exceeds the equivalent of EUR 4 million;
- or
2. The total value of assets or the turnover from the sale of goods in Ukraine of at least one company being acquired or one of the founders of a newly created company (taking account of the relationship of control), exceeds the equivalent of EUR 8 million, and the turnover either within or outside Ukraine of at least one of the parties involved (taking account of the relationship of control), exceeded the equivalent of EUR 150 million in the previous financial year.

If one of the criterion is met, permission from the AMC must be obtained prior to closing the transaction.

Irrespective of the financial criteria mentioned above, the permission of the AMC also is required if one of more of the parties to the transaction (given the control relationship) has an overall market share greater than 35% of a certain commodity market and the merger or acquisition will be carried out in this or a related commodity market.

If permission from the AMC is required, the participants should consider the following issues in advance:

- The statutory term for obtaining permission from the AMC is 25-30 calendar days. In practice, obtaining the permit takes three to four months including the timeframe for collecting the required documents (approximately one to two months). In some cases, the AMC may initiate an investigation, which can extend the period to approximately six months.
- If the merger or acquisition is carried out without a permit, the AMC may impose a fine of 5% of the total group turnover for the year preceding the identification of the violation.
- Individual shareholders (beneficial owners) must be disclosed when a legal entity is registered in Ukraine and on a merger or acquisition.

## **Monopolies and restraint of trade**

Holding a dominant position in the market is not in itself a breach of Ukrainian law. However, abuse of that dominant position (e.g. setting prices that would be impossible to set in a competitive market; restrictions on production, markets or technical development that has harmed or could harm other entrepreneurs, purchasers or sellers) is illegal and subject to fines.

Coordinated actions (conclusion of agreements, anticompetitive coordinated actions, etc.) also require prior permission from the AMC. Anticompetitive coordinated actions (e.g. falsifications of tender results, significant impediments to competition etc.) are prohibited. Fines of up to 10% of the income of a legal entity or group (if individuals and legal entities in the group have a control relationship) may be imposed for anticompetitive coordinated actions.

## **2.3 Accounting, filing and auditing requirements**

### **Accounting standards**

Ukrainian entities must prepare financial statements based on either International Financial Reporting Standards (IFRS) or Ukrainian National Accounting Standards (Ukrainian GAAP or UAS, developed on the basis of IFRS in 1999).

PJSCs, banks, insurance companies and certain other companies are required to prepare their financial statements in accordance with IFRS; other companies may choose UAS or IFRS.

According to legislation, UAS should not contradict IFRS; however, there are some differences between the two sets of standards as UAS do not reflect the latest developments in IFRS and the disclosure requirements are less demanding.

### **Auditing requirements**

The Law of Ukraine "On Audit Activity" requires PJSCs and other legal entities obliged to make their financial reports public (excluding institutions and organizations entirely financed by the government) to have their entity and consolidated financial statements audited. The statutory audit requirement also applies to:

- Founders of banks, entities with foreign investment, public stock companies (excluding individuals), insurance and holding companies, collective investment funds, trust entities, and other financial intermediaries; and
- Issuers of securities engaged in public offerings and issuers of derivatives (upon obtaining a license for professional activities in the stock exchange market).

### **Filing requirements**

Financial statements must be prepared on a quarterly basis.

Both PJSCs and PrJSCs are required to report to the National Securities and Stock Market Commission on a regular basis, providing information on: the financial and business matters of the JSC, any actions that may influence the JSC's activities, significant shareholders (more than 10%), controlling shareholders (at least 50%), GMS, appointment of management etc. PrJSCs must submit annual reports; PJSCs report both on a quarterly and an annual basis.

# 3.0 Business taxation

## 3.1 Overview

The principal taxes applicable to companies in Ukraine are corporate income tax and VAT. Other taxes include property tax and customs duties. In addition, employers have to make unified social security contributions.

Business income of a branch or permanent establishment in Ukraine is taxed in the same way as income of a domestic corporate entity.

Ukraine Quick Tax Facts for Companies	
Corporate income tax rate	18%
Branch tax rate	18%
Capital gains tax rate	18%
Basis	Worldwide income
Participation exemption	No
Loss relief	
Carryforward	Indefinitely
Carryback	No
Double taxation relief	Yes
Tax consolidation	No
Transfer pricing rules	Yes
Thin capitalization rules	Yes
Controlled foreign company rules	No
Tax year	Calendar year
Advance payment of tax	Yes, in certain cases
Return due date	10 February
Withholding tax	
Dividends	15%
Interest	15%
Royalties/technical service fees	15%
Branch remittance tax	15%
Capital tax	No
Property tax	Various

Social security contributions	22%
VAT	20% (standard rate)/7% (reduced rate)

## 3.2 Residence

A legal entity incorporated in Ukraine and operating under Ukrainian law is generally considered to be a tax resident; a legal entity incorporated abroad and operating under the law of a foreign country is treated as a foreign resident (nonresident).

## 3.3 Taxable income and rates

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

The corporate income tax (CIT) rate is 18%. Certain types of business (e.g. insurance) are subject to special tax treatment, which may provide for lower tax rates. Reduced CIT rates also apply to income derived from gambling and similar activities.

Small companies with annual net operating income of less than UAH 3 million, an average income in excess of UAH 7,200 per employee and which meet certain other conditions provided by the tax legislation, are exempt from CIT until 1 January 2022.

### Taxable income

Profit/(loss) before tax is calculated as the difference between income and expenses for the reporting period in accordance with UAS or IFRS as appropriate. The taxable profit/(loss) is then determined by adjusting profit/(loss) before tax for certain tax differences (e.g. accounting depreciation/amortization, the effect of provisions, certain nondeductible expenses, etc.)

Taxpayers with income (net of indirect taxes) not exceeding UAH 20 million may calculate taxable income based only on the accounting data, without any adjustments for tax differences (other than tax loss carryforwards).

Taxpayers should maintain records 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 used for the calculation and payment of taxes and duties.

Dividends received by a domestic company from another domestic company that is a CIT payer are not subject to CIT.

Capital gains are treated as ordinary income and taxed at the standard CIT rate.

### Deductions

In general, all expenses are deductible if they constitute an expense under financial accounting standards. However, as mentioned above, certain expenses have limited deductibility. Adjustments may also be required in accordance with the Ukrainian transfer pricing legislation (see 3.6).

As an anti-avoidance measure, Ukraine has established restrictions on the deductibility of royalties incurred by resident taxpayers in favor of nonresident entities located in low-tax jurisdictions, and on purchases of goods and services from such nonresidents (see 3.6).

Interest paid generally is deductible for CIT purposes. However, the deduction of interest expense in favor of nonresident related parties is limited according to the thin capitalization rules.

The thin capitalization rules apply to taxpayers whose debts to nonresident related parties are more than 3.5 times greater than their equity (more than 10 times greater for financial institutions and leasing companies). The interest expense deduction for these taxpayers is limited to 50% of earnings before interest, taxes, depreciation and amortization (EBITDA). Interest not deducted in the current tax period may be carried forward and offset in future periods but the balance carried forward is reduced annually by 5% of the interest amount, until the interest is fully relieved.

If the debt:equity ratio is less than 3.5:1, the taxpayer is entitled to deduct the interest expense in full.

## Depreciation

Depreciation or amortization is available on all capital assets, including both fixed and intangible property, other than land, goodwill, fixed assets under conservation, and nonbusiness related capital assets.

## Fixed assets

Under the Tax Code, fixed assets (including mineral resources) are defined as tangible assets intended for use in a taxpayer's business activities for a period exceeding one year or operating cycle and with a value exceeding UAH 6,000. For tax depreciation purposes, fixed assets are divided into 16 groups according to their minimum useful life.

<b>Group</b>	<b>Fixed assets included in the group</b>	<b>Minimum useful life (years)</b>
1	Plots of land	-
2	Capital expenditure on land improvements unrelated to the construction	15
3	Buildings	20
	Facilities	15
	Transmission devices	10
4	Machinery and equipment	5
	Computers and other automatic data processing equipment; information and telecommunications systems and associated equipment, etc.	2
5	Motor vehicles	5
6	Instruments, devices, furniture	4
7	Animals	6
8	Perennial plants	10
9	Other fixed assets	12
10	Library funds	-
11	Low-cost noncurrent tangible assets	-
12	Temporary facilities	5
13	Natural resources	-

14	Reusable containers	6
15	Rented assets	5
16	Long-term biological assets	7

For tax purposes, fixed assets are depreciated over 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; or
- Cumulative method.

The tax depreciation method used should correspond to the taxpayer's UAS policy, although the units of production method is not permitted 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 Tax Code or, if longer, by the taxpayer's financial accounting policy.

### 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.

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

### Provisions

The taxable profit should be increased by additional accrued provisions for future expenses and payments in accordance with UAS or IFRS during the relevant period (except for provisions related to salary payments). Taxable profit is reduced once the provisions are actually utilized to cover costs incurred.

### Losses

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

### **3.4 Capital gains taxation**

Capital gains are treated as ordinary income and taxed at the standard CIT rate.

### **3.5 Double taxation relief**

#### **Unilateral relief**

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

#### **Tax treaties**

Ukraine has a broad tax treaty network with most treaties following the OECD model. Treaties generally provide relief from double taxation on all types of income, limit the taxation by one state of companies with residency in the other, and protect companies with residency in one country from discriminatory taxation in the other. Ukraine's treaties generally contain OECD-compliant exchange of information provisions.

In order to benefit from applicable treaty relief, a nonresident should provide the Ukrainian taxpayer with a tax residency certificate issued annually by the tax authorities of the recipient's country of residence. The Ukrainian payer should remit the tax withheld to the government at the time the income is paid.

Ukraine Tax Treaty Network			
Algeria	Georgia	Lebanon	Singapore
Armenia	Germany	Libya	Slovakia
Austria	Greece	Lithuania	Slovenia
Azerbaijan	Hungary	Macedonia	South Africa
Belarus	Iceland	Malaysia	Spain
Belgium	India	Mexico	Sweden
Brazil	Indonesia	Moldova	Switzerland
Bulgaria	Iran	Mongolia	Syria
Canada	Ireland	Morocco	Tajikistan
China	Israel	Netherlands	Thailand
Croatia	Italy	Norway	Turkey
Cyprus	Japan	Pakistan	Turkmenistan
Czech Republic	Jordan	Poland	United Arab Emirates
Denmark	Kazakhstan	Portugal	United Kingdom
Egypt	Korea (ROK)	Romania	United States
Estonia	Kuwait	Russia	Uzbekistan
Finland	Kyrgyzstan	Saudi Arabia	Vietnam

France	Latvia	Serbia*	
--------	--------	---------	--

\* The treaty with the former Yugoslavia continues to apply in connection with Ukraine's relations with Serbia.

## 3.6 Anti-avoidance rules

### Transfer pricing

Ukrainian transfer pricing rules apply to the following "controlled" transactions: (i) transactions with nonresident related parties; (ii) sales of goods through nonresident commission agents; (iii) transactions between related parties that involve independent intermediaries with no substantial functions; and (iv) transactions with nonresidents registered in low-tax jurisdictions included in the list published by the Cabinet of Ministers. Transactions with the same counterparty will be treated as controlled transactions where the volume of the transactions with one counterparty exceeds UAH 10 million and the revenue of the taxpayer exceeds UAH 150 million for the tax year.

Taxpayers may choose one of five transfer pricing methods: (i) comparable uncontrolled price (CUP) method, (ii) resale price method, (iii) cost-plus method, (iv) transactional net margin method (TNMM) and (v) profit-split method. Taxpayers may select the method that they deem to be the most suitable; however, if the CUP method can be applied along with any other method, preference should be given to the CUP method. Ukrainian transfer pricing regulations envisage also the formal preference of the resale price and cost plus methods over the TNMM and profit split methods.

Any significant changes to the Ukrainian transfer rules generally are based on OECD transfer pricing guidelines, although Ukraine is not an OECD member.

Special rules apply to cross-border transactions involving the sale of goods traded on commodity exchanges, under which the CUP method is required, with the focus being on comparison of prices with the recognized exchanges. Taxpayers are allowed to use other (i.e. margin-based) methods; however, in this case they are required to disclose information on all related parties in the supply chain and profit margins earned.

The reporting period for transfer pricing purposes is a calendar year. Taxpayers are required to submit transfer pricing documentation (within one month of the date of the documentation being requested by the tax authorities) and a report on controlled transactions (by 1 October of the year following the reporting period).

A penalty of up to 300 times the minimum living wage (approximately UAH 500,000) applies for failure to submit the controlled transaction report and for incomplete reports. A penalty of up to 200 times the minimum wage (approximately UAH 325,000) applies for failure to submit transfer pricing documentation for all undeclared transactions.

Major taxpayers may enter into advance pricing agreements with the tax authorities.

Where there is 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 requirement definitely applies to adjustments made by the tax authority, but there is lack of clarity as to whether it relates also to self-adjustments.

### Thin capitalization

The thin capitalization rules apply to loan transactions with nonresident related parties where the debt:equity ratio exceeds 3.5:1 (10:1 for financial institutions and companies engaged solely in leasing activity). The deduction for interest paid on loans exceeding this ratio is limited to 50% of profits before tax (plus the amount of interest expense and accounting depreciation) in a specific tax period.

Interest not deducted in the current tax period may be carried forward and deducted in future periods, but the balance carried forward is reduced annually by 5% of the interest amount, until the interest is fully deducted.

Interest includes liabilities on loans, deposits, REPO transactions, financial lease agreements and other borrowings, regardless of their legal form.

### **Controlled foreign companies**

Ukraine does not have CFC rules.

### **Other**

To prevent tax avoidance, certain restrictions are imposed on the deductibility of expenses relating to transactions with not-for-profit organizations (except government-financed organizations) and transactions with nonresidents registered in low-tax jurisdictions. The profit before tax is increased by 30% of the value of such transactions.

The deduction for royalties paid to nonresidents is limited to the amount of royalty income received, increased by 4% of the net profit of the previous period. No deduction is available for royalties paid to a legal entity either not subject to CIT or paying tax at a lower than standard rate and for royalties paid to a nonresident:

- Registered in a low-tax jurisdiction; or
- Which is not the beneficial owner of the royalties; or
- Where the intellectual property right to the royalty-bearing item first arose in Ukraine; or
- Not taxed on royalty income in its jurisdiction.

However, all such expenses are deductible if they satisfy the transfer pricing criteria and the transfer pricing documentation regarding the transaction is submitted.

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

- Where the CIT rate is five percentage points or more lower than that set in Ukraine;
- That do not provide public access to information on the ownership structure of legal entities; or
- That do not have a treaty or other agreement with Ukraine that includes a provision for the exchange of information.

The latest version of the list of low-tax jurisdictions was adopted on 16 September 2015 and comprises:

<b>Ukraine official list of low-tax jurisdictions</b>			
Anguilla	Curacao	Macedonia	Qatar
Andorra	Cyprus	Madeira	Saint Kitts and Nevis
Antigua and Barbuda	French Guyana	Maldives	Saint Lucia
Aruba	Gibraltar	Martinique	Saint Vincent and the Grenadines
Bahamas	Grenada	Marshall Islands	San Marino

Bahrain	Guernsey	Micronesia	Sao Tome and Principe
Barbados	Hong Kong	Moldova	Serbia (Kosovo and Metohija)
Belize	Ireland	Montenegro	Seychelles
Bermuda	Isle of Man	Montserrat	Sint Maarten (Dutch part)
Bosnia and Herzegovina	Jersey	Nauru	Sudan
British Virgin Islands	Kyrgyzstan	Niue	Timor-Leste
Brunei Darussalam	Labuan	Northern Mariana Islands	Turkmenistan
Bulgaria	Lesotho	Oman	Turks and Caicos Islands
Canary Islands	Liberia	Palau	US Virgin Islands
Cape Verde	Liechtenstein	Panama	Uzbekistan
Cayman Islands	Macau	Paraguay	Vanuatu
Cook Islands			

#### **General anti-avoidance rule**

Ukraine does not have a general anti-avoidance rule, but see 'Other' above for anti-avoidance related tax rules.

## **3.7 Administration**

#### **Tax year**

The tax year is the calendar year.

#### **Filing and payment**

From 1 January 2017, a quarterly tax return must be submitted by taxpayers whose annual turnover exceeds UAH 20 million. The quarterly tax returns are due within 40 calendar days following the last day of the tax reporting period.

Taxpayers with taxable income of less than UAH 20 million for the previous year are required to submit an annual corporate income tax (CIT) return only, which is due 60 calendar days following the last day of the tax reporting period.

Taxpayers that reported losses in their annual CIT return but become profitable in the first calendar quarter of the next year should submit quarterly CIT returns until the end of the year. Taxpayers that were profitable in the previous year but become loss-making during the following year have the right to submit quarterly CIT returns starting from the quarter of such losses. Each return should be submitted within 40 days after the quarter end.

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

Quarterly tax payments must be made within 50 days of the end of a reporting period.

Dividends paid by a Ukrainian company are subject to advance corporate income tax (ACT), at the statutory rate of corporate income tax which may be offset against the corporate income tax liability for the period. The ACT is calculated based on the difference between the amount of dividends to be paid and the profit before tax of the reporting period, if the relevant corporate income tax liability for the period has been paid. If the corporate income tax liability for the year has not been settled, the ACT will be calculated based on the full amount of dividends to be paid. The ACT is payable prior to or at the time of payment of the dividends. From 1 January 2017, unrelieved ACT may not be carried forward. It is not refundable and may not be offset against other taxes.

ACT does not apply to certain dividends such as dividends paid by a Ukrainian investment fund or by a holding company out of dividends received from subsidiaries, dividends paid by a company out of tax-exempt profits (e.g. by agricultural companies, unified tax payers) and dividends paid to individuals.

Penalties and/or fines apply for late payments (including interest at 120% of the national bank's discount rate) and failure to comply with filing requirements. Accuracy-related penalties also may apply (25% of the underpaid amount for the first violation, 50% for the second and subsequent violations). More severe penalties may apply if the understatement is significant or if the taxpayer is convicted of tax evasion. If the taxpayer voluntarily discloses the understatement and submits revised reports, the penalty will be 3% to 5% of the amount of the tax liability for the entire understatement period, irrespective of the number of tax periods that have elapsed. A penalty of up to 75% of the tax will be imposed for failure to pay withholding tax to the government.

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 to the courts.

In addition to tax and administrative fines and penalties, the Criminal Code provides for criminal responsibility in the event of tax evasion. The officials of legal entities accused of intentional tax evasion may be subject to a fine of UAH 17,000 to UAH 425,000, required to forfeit of property and prohibited from occupying some posts for up to three years.

Companies and tax agents are required to file quarterly reports of income accrued and paid to individuals, and of the associated tax withheld and paid to the government on behalf of such individuals.

### **Consolidated returns**

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

### **Statute of limitations**

Under current Ukrainian legislation, the statute of limitations in Ukraine is three years (1,095 days) for general tax purposes 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.

### **Tax authorities**

The State Fiscal Service of Ukraine is responsible for levying taxes and duties and has the right to perform tax audits. It may perform both scheduled and unscheduled tax audits of taxpayers. The State Fiscal Service also has the right to check the accuracy of the taxpayer's financial accounting.

Types of tax audit 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 prior notice); and
- Transfer pricing audits.

The frequency of scheduled regular audits depends on the tax risk level of the company's activities, ranging from annually for companies with high risk activities to once every three calendar years for companies whose activities are considered low risk for tax purposes.

The duration of the most common types of tax audit is outlined in the table below.

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 five 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	Five business days, with a possible extension of up to two business days	10 business days, with a possible extension of up to five business days
Factual	10 calendar days, with a possible extension of up to five calendar days		
Transfer pricing	Up to 18 months, with a possible extension for another 12 months		

### Rulings

A taxpayer may request an explanation of the tax treatment of a particular issue. No penalty may be applied to a taxpayer that acted on the basis of a ruling issued by the tax authorities, even if the ruling was subsequently revoked or changed.

Major taxpayers only may apply for advance pricing agreements.

## 3.8 Other taxes on business

Ukraine does not impose any other direct taxes on business.

# **4.0 Withholding taxes**

## **4.1 Dividends**

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

## **4.2 Interest**

A 15% withholding tax is levied on interest paid to nonresident companies and individuals, unless the rate is reduced under a tax treaty.

## **4.3 Royalties**

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

## **4.4 Branch remittance tax**

There is no specific provision for a branch profits tax in the Tax Code, and the Ukrainian tax authorities generally agree that no tax should be withheld if there is a tax treaty between Ukraine and the country of residence of the branch head office. In the absence of a treaty, the tax authorities may require payment of tax at 15% on the repatriation of branch after-tax profits.

## **4.5 Wage tax/social security contributions**

Employers are required to pay a unified social security contribution (USSC) equivalent to 22% (8.41% for disabled persons) of the salary or similar employment compensation paid to an employee. The salary base for USSC purposes is capped at 25 times the minimum living wage. For 2017, the cap is UAH 40,000 from 1 January-30 April, UAH 42,100 from 1 May-30 November and UAH 44,050 from 1-31 December. Where the base for calculating the USSC (other than for remuneration under civil contracts or secondary employment) does not exceed the monthly minimum wage, the monthly USSC is calculated based on the minimum wage level. For 2017, taxpayers may apply a 0.6 "degression" factor to the USSC rate if certain conditions are met.

USSCs are withheld from remuneration paid via a Ukrainian payroll. Ukrainian employers (companies, other legal entities, and representative offices of foreign companies) must remit the USSCs withheld to the State Fiscal Service of Ukraine on the date of the payroll payment to the employee (if paid in cash) or the day following that on which income is paid or provided (for benefits in kind).

## **4.6 Other**

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

A 6% withholding tax applies to income from international freight transportation.

# 5.0 Indirect taxes

## 5.1 Value added tax

VAT is levied on the supply of goods and services in Ukraine and on the import/export of goods and auxiliary services. Supplies to and from Crimea are treated as exports/imports for VAT purposes.

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

Certain supplies are not subject to VAT, including: issues of securities; insurance services; reorganizations of legal entities; transfers and returns of property under operating lease arrangements; currency exchange; and imports/exports with a customs value of less than EUR 150.

VAT-exempt supplies include: published periodicals; student notebooks, textbooks, books and certain educational services; certain public transport services; provision of software products (until 1 January 2023); and the provision of healthcare services by licensed institutions.

Registration is required (for residents and nonresidents) if the value of taxable supplies of goods or services exceeds UAH 1 million during any 12-month period. A legal entity may apply for voluntary registration if it has no VATable activities or if the volume of its VATable transactions is less than the registration threshold. Although not specifically provided for in the Tax Code, in practice a nonresident entity must register for Ukrainian VAT purposes via a representative office and/or PE in Ukraine.

### Place of supply

The place of supply of goods is the physical location of the goods at the moment of supply, other than for goods being transported (where the place of supply is the location of the goods at the beginning of transportation) or assembled or installed by a supplier (where the place of supply is where the assembly or installation takes place).

The general rule for services is that the place of supply is the place where the service provider is registered, with exceptions for:

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

The place of supply of the following services is the place where the recipient of the services is registered, so that provision of these services to a nonresident recipient does not give rise to Ukrainian VAT:

- Provision of intellectual property rights;
- Advertising services;
- Consulting, engineering, legal, accounting, audit or actuarial services, and services related to software development, delivery and testing;
- Provision of personnel;

- Telecommunications 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;
- Leases of movable property (except for motor vehicles and bank safes); and
- 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**

### **Filing and payment**

The tax period (and the period for filing and payment obligations) is either a calendar month or a calendar quarter, depending on the turnover. Monthly returns must be submitted within 20 days of the end of the month and quarterly returns within 40 days of the end of the quarter.

All VAT invoices must be registered in the electronic register maintained by the tax authorities and all VAT reporting must be done electronically.

Each VAT taxpayer has a special VAT account with the State Treasury of Ukraine. The purpose of these accounts is to guarantee payment of VAT liabilities by taxpayers. VAT liabilities are paid to the government out of funds in the account. The taxable entity must assess the amount of VAT to be remitted to the government by reducing output VAT (VAT charged/collected on taxable supplies) by eligible input VAT (VAT paid/incurred on purchased goods and services, including import VAT).

To be eligible for offset, input VAT must be related to the purchase or production of goods/services or the purchase/construction of fixed assets, for the purpose of subsequent use in VATable transactions as part of the taxpayer's business activities.

Where goods/services/fixed assets are purchased for VAT exempt transactions or for nonbusiness related activities, input VAT is first recognized by the taxpayer in full, followed by recognition of output VAT to the extent that such goods/services/noncurrent assets are used in VAT exempt transactions or nonbusiness related activities.

Where input VAT is incurred in connection with goods, services or noncurrent assets that are only partially used in VATable transactions, only the proportion of VAT attributable to VATable transactions may be treated as input VAT. The amount of input VAT creditable in a given year is calculated based on the ratio of prior year VATable sales to prior year total sales. The resulting coefficient is applied throughout a calendar year. At the end of the year, the coefficient is recalculated based on the actual volume of VATable and non-VATable supplies.

A purchaser only may recognize input VAT based on an electronic VAT invoice, which must be properly issued and registered by a 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 then registered within 15 days of issue. Any discrepancy between a VAT return and the Unified Register of VAT Invoices gives legal grounds for an unscheduled tax audit of both the seller and the purchaser.

If the seller fails to register a VAT invoice, the purchaser may not recognize input VAT with respect to the corresponding transaction but the seller still is obliged 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 the seller within 365 days after the deadline for submission of a VAT return for the period in which the refusal occurred. If a claim is filed, 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 still is allowed to recognize input VAT based on that VAT invoice in the reporting period in which it is registered, provided, however, that registration takes place within 365 days of the date of issue of the VAT invoice. The same 365 calendar day period applies to the taxpayer's entitlement to input VAT based on the duly registered VAT invoice. For imports, a customs declaration is regarded as sufficient documentary evidence for input VAT purposes.

#### **Reverse-charge VAT on services provided by nonresidents**

Services rendered by a nonresident to a resident taxpayer with a place of supply in Ukraine are subject to 20% VAT. Unless the nonresident has a PE in Ukraine, the Ukrainian taxpayer must account for 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 nonresident. 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.

#### **VAT refunds**

Under the general rule, the amount of VAT payable to, or refundable by, 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 debts (if any) accumulated in previous VAT periods. Where there are no such debts, the taxpayer may claim a VAT refund or, alternatively, offset the "excess" input VAT against future VAT liabilities. The refund is limited to the amount of VAT actually paid to suppliers and the government in the previous and current tax periods.

To obtain a VAT refund, the amount claimed must be confirmed by the tax authorities by means of a VAT refund audit. Any refund will be subject to review within the framework of a scheduled full scope tax audit.

Certain categories of taxpayer are not entitled to claim a VAT refund from the government, including entities which were registered as VAT payers less than 12 months prior to the month for which a VAT refund is claimed (other than where the refund relates to fixed assets) and have revenue from VATable transactions for the preceding 12-month period less than the reported VAT refund (this rule does not apply to input VAT related to the purchase/construction of fixed assets).

## **5.2 Capital tax**

Ukraine does not impose capital duty.

## **5.3 Real estate tax**

Property tax is payable by both legal entities and individuals and has three components: land fee, immovable property tax and transport tax.

#### **Land fee**

The land fee is paid as either land tax or land rent, depending on the legal title to the land plot.

Land tax is imposed on entities and individuals who own or use land, at a rate determined by the local tax authorities. The rate varies from 1% to 5%, depending on whether the plot is agricultural land and whether it has a normative monetary value.

Land rent is imposed on those who rent land plots owned by the state or communities. The amount of rent is set by the parties to the lease agreement, within a specified range at a rate of up to 12% of the normative monetary value of such land.

The tax authorities calculate the amount payable by individuals, whilst legal entities calculate the land rent themselves and submit the relevant tax returns. The tax is payable annually by individuals and monthly by legal entities.

#### **Immovable property tax**

Immovable property tax is imposed on owners (including nonresident owners) of residential or commercial real estate (excluding land). There are a number of exceptions, including industrial buildings, agricultural buildings designated for use directly in agricultural production, certain social services buildings, etc.

The annual tax rate is set by local authorities but cannot exceed 1.5% of the minimum wage effective as of 1 January of the reporting year (UAH 54 per square meter for 2017).

The tax authorities calculate the amount payable by individuals, whilst legal entities calculate their own liability and submit the relevant tax returns. The tax is payable annually by individuals and quarterly by legal entities.

#### **Transport tax**

Transport tax is imposed on owners of cars with a market value exceeding UAH 1.2 million which are used for less than five years. The annual tax charge is UAH 25,000 per car. The tax authorities calculate the amount payable by individuals, whilst legal entities calculate their own liability and submit the relevant tax returns. The tax is payable annually by individuals and quarterly by legal entities.

### **5.4 Transfer tax**

Ukraine does not impose any transfer tax.

### **5.5 Stamp duty**

Ukraine does not impose any stamp duty.

### **5.6 Customs and excise duties**

Customs duties are imposed on the majority of goods imported into Ukraine and on certain limited categories of exported goods. For customs clearance purposes, goods are classified into 97 groups according to the Ukrainian Harmonized System (UHS). The UHS is based on the 2012 version of the Harmonized System developed by the World Customs Organization (WCO). The applicable customs duty rates are based on the 10-digit classification codes assigned to goods under the UHS depending on the specific nature of the goods being imported. The rate of customs duty is normally expressed as a percentage of value of the goods being imported ("ad valorem duty"). However, in rare cases, goods are subject to a specific duty, which is expressed as a fixed amount of money per unit, kilogram, liter, etc. 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. Duty rates generally range between 0% and 10%. Approximately 64% of rates in the Ukrainian Customs Tariff do not exceed 5%; however, in some cases, duties are levied at rates of 25% or more.

Since Ukraine has 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 duty) has increased. In addition, import duty rates applicable to goods originating from WTO member states are lower than the general rates applied to 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 and Uzbekistan.

### **Free trade agreements**

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

Ukraine has signed an 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. Ukraine will also progressively reduce import customs duties for goods originating from EU member states and abolish export customs duties during a 10-year transitional period. Implementation of the DCFTA began on 1 January 2017.

### **Special customs procedures**

A contribution by a foreign investor to the share capital of a Ukrainian foreign investment company in the form of goods may be exempt from customs duties provided that the goods will not be alienated within three years of contribution.

Inward processing relief provides a full exemption from customs duties and import taxes for goods being imported into Ukraine for processing and then subject to subsequent exportation from Ukraine.

Outward processing relief provides a partial exemption from import duties and taxes upon the importation into Ukraine of goods that have been previously exported for processing. Import duties and taxes are calculated based only on the value that has been added to the goods outside Ukraine.

Goods that have been previously exported from Ukraine for warranty repairs and subsequently reimported 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. Once the temporary import period has expired, the goods must be exported from Ukraine, or a different customs procedure must be applied.

### **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, taken from Article VII of the General Agreement on Tariffs & Trade (GATT). 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, subject to any adjustments required. When the transaction value method cannot be used, other methods should be considered in the following sequence:

- 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 total amount 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**

Customs fees are charged, at various hourly rates, for customs clearance of goods outside regular office hours and at locations other than the customs house premises.

### **Excise tax**

Generally, excise tax is imposed on taxable items produced in, or imported into, Ukraine. It also applies to excisable goods, which have been contributed to the share capital, sold by retail or transferred within the company for consumption or processing purposes as well as sold or transferred to the company's employees. Excisable goods comprise ethyl spirit and other distillates, alcoholic drinks (including beer), tobacco products, oil products, gas and electrical energy, motor vehicles and motor fuel and its components, at varying rates.

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

## **5.7 Environmental taxes**

### **Rental duty**

Use of natural resources is subject to rental duty. This includes:

- Extraction of mineral resources;
- Nonextraction of mineral resources;
- Use of radiofrequencies;
- Special use of water;
- Use of forest resources; and
- Transportation of oil and oil products through oil trunk pipelines and oil product pipelines, natural gas and ammonia transit through the territory of Ukraine (applicable only to few entities, including Naftogaz of Ukraine).

The basic reporting period is a calendar quarter. Quarterly rental duty returns must be submitted to the tax authorities within 40 calendar days following the end of each quarter.

Taxpayers must pay rental duty within 10 calendar days following the deadline for submission of a rental duty return.

### **Extraction of mineral resources**

Rental duty on extraction of mineral resources applies to mineral resources extracted in Ukraine (including Ukraine's continental shelf and exclusive economic zone) and mineral resources extracted from mining waste.

The duty base is the value of each type of mineral resource extracted, calculated as the higher of the selling price of mineral resources and the estimated cost of the resources, except for crude hydrocarbons.

The amount of the duty payable is calculated according to a prescribed formula and depends on the volume of the mineral resource, its value, the applicable duty rate and the adjusting coefficient.

### **Nonextraction of mineral resources**

Rental duty on nonextraction of mineral resources is imposed on the active volume of gas (for storage of natural gas and gaseous products) or the volume of a mining area (for storage of oil and other liquid oil products).

Duty rates vary from UAH 0.3 (USD 0.01) to UAH 1.19 (USD 0.05) per annum per unit of volume.

### **Use of radiofrequencies**

Rental duty on the use of radiofrequencies is imposed on the radiofrequency bandwidth.

Depending on the type of radiofrequency and bandwidth, the duty rates vary from UAH 0.84 (USD 0.04) to UAH 41,499 (USD 1,566) per month per 1 MHz band.

### **Special use of water**

The rental duty on special use of water is imposed on:

- The actual volume of water pumped through pipelines to generate electric power – for hydroelectric power producers;
- The time taken by cargo/passenger fleets to transport cargo/passengers – for water transportation purposes; and
- The actual water volume required to replenish water resources for fish-farming purposes – for fisheries.

The duty rates vary from UAH 22.41 (USD 0.85) to UAH 119.57 (USD 4.60) per 100 m<sup>3</sup> (for surface water), depending on the water basin, and from UAH 52.3 (USD 2.04) to UAH 124.5 (USD 4.61) per 100 m<sup>3</sup> (for underground water), depending on the region.

Preferential rates apply to specific business activities.

The amount of duty payable is calculated based on the actual use of water, water use limits, applicable duty rates and coefficients. Electric power generating enterprises and fisheries must self-assess the duty on a cumulative basis quarterly, starting from the beginning of the year, whereas for water transportation enterprises, the self-assessment period starts from the first half of the year in which such enterprises began to use water resources.

### **Use of forest resources**

Duty is imposed on use of timber and other wood materials stored up for a wide range of purposes by users of forest resources. The rates of the duty vary, depending on the forest resources, region and transportation distance.

#### **Environmental tax**

Environmental tax is imposed on the volume and type of pollutants emitted into the atmosphere and into water, waste disposals and radioactive waste. It also applies to the volume of electric power generated by nuclear power plants. The tax rates applicable vary, depending on the type of pollutant, pollution hazard type, maximum permissible concentration of pollutants, location of waste disposal areas and adjusting coefficients (where applicable).

The basic reporting period is the calendar quarter and environmental tax returns must be submitted to the tax authorities within 40 calendar days following the end of each quarter. Environmental tax liabilities must be paid within 10 calendar days following the deadline for submission of the return.

#### **5.8 Other taxes**

A surtax is levied on payments for insurance and advertising services performed outside Ukraine by nonresident providers. The rate is 20% for income from advertising services and may be 0%, 4% or 12% for insurance income.

# 6.0 Taxes on individuals

Individuals are subject to personal income tax (PIT) and a temporary military contribution on income received both in cash and in kind, capital gains, inheritances and gifts; social security contributions; and property tax.

Ukraine Quick Tax Facts for Individuals	
General income (employment income, rental income)	18%
Gifts	0%/5%/18%
Heritage	0%/5%/18%
Dividends, interests, royalties	0%/5%/9%/18%
Real estate and personal chattel sale	0%/5%
Temporary military contribution	1.5%
Basis	Worldwide income
Double taxation relief	Yes
Tax year	Calendar year
Return due date	1 May
Net wealth tax	No
Social security	22% (paid by the employer)
VAT	20% (standard rate)/7% (reduced rate)

## 6.1 Residence

An individual will be considered resident in Ukraine for tax purposes if he/she has a permanent home in Ukraine, or if he/she has a permanent home in more than one country and has close personal and economic ties (his/her center of vital interests) in Ukraine. If it is impossible to determine the residence by either of these criteria, an individual will be deemed to be a Ukrainian tax resident if he/she is present in Ukraine for at least 183 days cumulatively during a calendar year (days of arrival and departure are each counted as separate days). If the tax residence still cannot be determined, the individual will be deemed to be a tax resident if he/she has Ukrainian citizenship. If the individual has a family in Ukraine, this is also taken into account for the purpose of determining tax residence. In addition, the Tax Code provides for a self-recognition procedure according to which an individual can voluntarily elect to be a Ukrainian tax resident. Tax residency is different from nationality, citizenship or residency for currency control purposes.

Domestic tax residency rules may be overruled by the relevant provisions of double tax treaties. Although the domestic rules used to define residence are similar in many ways to those suggested by the OECD Model Tax Convention, Ukraine is not a member of the OECD and the Ukrainian tax authorities may ignore the Commentary to the convention.

## 6.2 Taxable income and rates

Ukrainian tax residents are subject to PIT on their worldwide income, whereas nonresidents are subject to tax only on their Ukrainian-source income, namely:

- Employment income received for work on behalf of a Ukrainian entity/business regardless of whether a Ukrainian or foreign entity pays the income; and
- Personal income arising in Ukraine (e.g. interest income from deposits with Ukrainian banks, dividends received from Ukrainian companies, gains from the sale of property registered in Ukraine, etc.).

### **Taxable income**

Income is taxable whether obtained in cash or in kind. Taxable income includes employment income (including benefits in kind); proceeds from trading or professional activities (including proceeds from intellectual property); proceeds from alienation of property; gifts and prizes; insurance payments; dividends and interest; investment income and contributions to unqualified pension plans made on behalf of a taxpayer by another person/employer. The taxable income equivalent of benefits in kind is determined based on the fair market value of the property, services or other benefits received. Certain types of income and a number of benefits received by an individual are specifically exempted from inclusion in the tax base. These include interest from certain state securities 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; compensation in the form of apartment and car rental costs for employees, where such benefits are provided under an employment agreement or collective agreement; amounts received from employers for certain types of medical treatment and services; and insurance payments under agreements other than life insurance or nonstate retirement insurance agreements in accordance with the conditions prescribed by law.

The taxation of capital gains depends on the source of such gains (see 'Rates' below).

### **Deductions and reliefs**

Ukrainian tax residents with remuneration from employment in Ukraine are entitled to relief for mortgage interest paid in respect of loans secured on real estate located in Ukraine, contributions to listed charities, educational expenses of the taxpayer and his/her immediate relatives, medical expenses (subject to limits) and contributions to voluntary life/pension insurance.

### **Rates**

The general PIT rate on employment income is 18%. There also is a temporary military contribution of 1.5% of taxable personal income.

Dividends accrued in the form of scrip shares issued by a resident legal entity-are not subject to tax, provided that the share issue does not alter the proportionate holding of all shareholders (owners) in the charter capital of the issuer and increases the issuer's charter capital by the aggregate nominal value of accrued dividends. Dividends on shares and corporate rights accrued by resident payers of CIT (except dividends on shares, investment certificates, payable from the collective investment institutions), are taxed at 5%. Dividends accrued by legal entities which are not payers of CIT, by collective investment institutions and nonresidents are taxed at 9%. Other passive income is taxed at 18%.

Gains derived from the first sale during the year of qualifying residential property and plots of land not exceeding the limit for free land transfers are tax-exempt, provided that the property has been owned for at least three years (other than for inherited property).

A 5% rate applies for residents (18% for nonresidents) on gains arising from the:

- Sale of commercial property;
- Second and any subsequent sales of residential property within one reporting year;
- Sale of land plots over the maximum area for free land transfers; and

- Sale of movable property (other than the first sale of a motor vehicle during the reporting year, which is tax-exempt).

## **6.3 Inheritance and gift tax**

Inheritances of real estate, chattels, securities, corporate rights, etc. and gifts are taxable at the following rates:

- 0% if the recipient is a resident classified as a close relative (parent, spouse, parent of spouse, child/adopted child);
- 5% if the recipient is resident but not classified as a close relative; and
- 18% if the recipient is an unrelated nonresident but the testator was a resident (or vice versa).

## **6.4 Net wealth tax**

Ukraine does not impose a net wealth tax.

## **6.5 Real property tax**

The property tax is payable by both legal entities and individuals and has three components: land fee, immovable property tax and transport tax.

### **Land fee**

The land fee is paid as either land tax or land rent, depending on the legal title to the land plot.

Land tax is imposed on the owners or users of land at a rate determined by the local tax authorities. The rate varies from 0.3% to 5%, depending on whether the land plot is agricultural land and whether it has a normative monetary value.

Land rent is imposed on those who rent land plots owned by the state or communities. The amount of rent is set by the parties to the lease agreement, within a specified range at a rate of up to 12% of the normative monetary value of such land.

The tax authorities calculate the amount payable annually by individuals.

### **Immovable property tax**

Immovable property tax is imposed on owners (including nonresident owners) of residential or commercial real estate (excluding land). There are a number of exceptions, including industrial buildings, agricultural buildings designated for use directly in agricultural production, certain social services buildings, etc.

The yearly annual tax rate is set by local authorities but cannot exceed 1.5% of the minimum wage effective amount as of 1 January of the reporting year (UAH 48 per square meter for 2017).

The tax authorities calculate the amount payable annually by individuals.

### **Transport tax**

Transport tax is imposed on owners of cars, which are used for less than five years and which average market value is 375 minimum wage effective amount as of 1 January of the reporting year (UAH 1.2 million for 2017). The yearly annual tax rate is UAH 25,000 per car. The tax authority calculates the amount payable annually by individuals.

## **6.6 Social security contributions**

Employers pay monthly unified social security contributions (USSC) equivalent to 22% of the gross salary of each employee, subject to an earnings cap. See 4.5 Wage tax/social security contributions and 7.2 Wages and benefits for more details.

## **6.7 Other taxes**

See 'Transport tax' in 6.5 'Real property tax' above.

## **6.8 Compliance**

Employers and other taxable entities are considered to be tax agents of individuals and are responsible for withholding personal income tax, the military contribution from salaries and other types of remuneration. USSCs are paid by the employers on top of employees' remuneration. These taxes must be remitted before or at the time the income is paid. If income is paid in kind, the tax agent must remit the tax on the banking day following the date of payment. It is the tax agent's responsibility to make timely payments of withholding taxes on salaries and file personal income tax reports on a quarterly basis.

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

Joint filing is not allowed in Ukraine; each individual must file his/her own return. There is no filing obligation if: (i) all income is received from Ukrainian tax agents; (ii) income is derived from the sale/exchange of real property or gifts, and PIT has been paid at the time of notarization of such transactions; or (iii) income is derived by way of an inheritance that is taxed at a 0% rate.

Penalties are imposed for late payments and understatements.

# 7.0 Labor environment

## 7.1 Employee rights and remuneration

In Ukraine, relations between employees and employers are primarily governed by the Labor Code of Ukraine and a number of labor by-laws.

Every legal entity has to disclose its internal regulations specifying the rights and obligations of the employer and employees.

In general, under the employment agreement, the employer undertakes to ensure timely payment of salary to and provide a safe workplace for the employee. In turn, the employee is obliged to perform the job functions envisaged by the employment contract and job description, as well as to respect the internal regulations of the employer. The employment agreement may be concluded in writing for an indefinite period, for a fixed term (applicable to limited cases) or for the period of performance of a specifically defined project.

The legislation provides for a special form of employment agreement (an employment contract) which may regulate conditions in addition to those prescribed by legislation (e.g. contract term, rights, obligations and responsibility of the parties, financial support and notice period). An employment contract may be used only as prescribed by the legislation and in respect of limited categories of employee (i.e., head of state legal entities, scientific and pedagogical employees, etc.).

Where an employment agreement is concluded between a Ukrainian national and a foreign legal entity, or a Ukrainian legal entity and a foreign national, the parties are entitled to choose the law that will apply to the agreement. However, according to the conflict rules of the private international law of Ukraine, as the work is to be performed in Ukraine, Ukrainian labor law provisions will prevail if called upon by either of the parties.

Employers are obliged to report to the tax authorities on each newly hired employee in advance of the date on which they start work (in practice, on the date on which the order is issued).

### Working hours

Normal working hours are 40 hours per week (eight hours per day). Part-time working hours may be established for certain categories of employee or upon agreement of the parties. Sometimes, the parties may agree on a nonfixed working day given the nature and/or the character of work performed. All work performed in excess of normal working hours is subject to remuneration at double the employee's usual hourly rate and/or a day off in lieu (depending on the case). Overtime hours cannot exceed four hours over two consecutive days and 120 hours per year.

The minimum annual vacation period is 24 calendar days for full-time employees. Additional vacation of up to seven days may be provided to employees who work irregular (nonfixed) working hours, at the discretion of the employer. Other types of additional vacation may be provided to the employee in certain cases.

Disabled people must by law constitute 4% of a legal entity's workforce. Where there are eight to 25 employees, at least one must be disabled.

## **7.2 Wages and benefits**

Ukrainian companies pay wages to their employees in accordance mainly with the Labor Code of Ukraine and the Law of Ukraine "On Labor Payment".

The wage may include the following elements:

- Basic wage – calculated according to the established labor standards (tariff rates for workers and salaries for employees).
- Additional wage – paid for work performed over established expectations, for ingenuity and success in special working conditions.
- Other compensation payments – may include bonuses (based on annual results), compensation, and other nonmonetary and material benefits that are not prescribed by effective legislation and subject to internal regulations.

In Ukraine, the minimum wage is established by the government for each calendar year. For 2017, the minimum wage is UAH 3,200 (approximately EUR 110). The minimum wage is the basis for the calculation of social benefits, taxable minimum income and other limits set by the government. There also is a minimum living wage, which amounts to UAH 1,684 (approximately EUR 58) and is the basis for the calculation of social benefits and social insurance contributions.

### **Pensions**

The USSCs payable by employers, (see 4.5 Wage tax/social security contributions), fund payment of unemployment benefits, payments for temporary disability, burial expenses, industrial accidents and occupational diseases; and pensions.

The administration and management of USSC is vested in the State Fiscal Service of Ukraine, Pension Fund of Ukraine, Unemployment Obligatory State Social Insurance Fund and the Social Insurance Fund of Ukraine (the latter is responsible for management of two types of social insurance, social insurance for temporary disability and social insurance for industrial accidents and occupational diseases).

USSC are paid to the State Fiscal Service of Ukraine, which subsequently distributes and directs the payments to the funds, as prescribed by law.

Voluntary participation in the unified state social security system is possible. To do so, individuals must enter into a separate agreement with the Pension Fund of Ukraine. Both compulsory and individual voluntary USSC are paid to the State Fiscal Service of Ukraine.

Individuals may be entitled to the following types of state pension:

- Age pension;
- Disability pension owing to general illness (including injuries not related to childhood disabilities);
- Survivor's pension (as a result of loss of the income earner); and/or
- Length-of-service pension.

Individuals generally receive the age pension once they reach 60 years old, although those in certain professions may receive the pension earlier.

## **Other benefits**

Additional benefits may be provided to an employee in cash or in nonmonetary form (benefits in kind). If a Ukrainian company provides any benefit to an individual, it is obliged to report the benefit to the state authorities and withhold USSC and personal income tax (if required).

## **7.3 Termination of employment**

Ukrainian legislation sets out an exhaustive list of grounds for the termination of an employment, among which the following are the most common:

- Mutual agreement of the parties;
- At the initiative of the employee;
- At the initiative of the employer; or
- The end of the term of a fixed-term employment contract.

If the employment contract is terminated at the initiative of the employee, two weeks' prior written notice must be provided to the employer.

The employer may initiate termination of the employment based on a number of grounds, including but not limited to:

- Changes in organization and labor, including liquidation, reorganization, bankruptcy, and/or change of industry sector of the legal entity;
- The discovery that the employee is not sufficiently qualified to hold the position;
- Systematic failure of the employee to perform the duties of the role without a justifiable reason and to comply with the internal regulations of the employer where other disciplinary sanctions have already been applied to the employee;
- Absence from work for more than three hours without due reason;
- Absence from work for more than four consecutive months due to temporary disability excluding maternity leave;
- Return of the employee who has previously performed this work;
- The appearance of the employee at the work place under the influence of alcohol, drugs, or other intoxicants;
- Theft in the workplace confirmed by a decision of the court;
- Conscription or mobilization of an employer who is an individual entrepreneur during a specific period;
- Failure to successfully pass the probation period; and
- Decision of the managing body of the company on the appointment/dismissal of the executive body (e.g. chief executive and financial officers, etc.)

The employer is not allowed to dismiss an employee who is on vacation or temporarily unable to work.

In some cases, the employer is obliged to pay a severance payment to the employee, the amount of which can vary from one to six times the employee's average monthly wage.

## **7.4 Labor-management relations**

In Ukraine, trade unions are organized by industry and may have a primary, local, regional or national status in order to represent employees and protect their labor, social and economic rights and interests.

The Trade Unions Federation of Ukraine is the biggest Ukrainian trade union association cooperating with other foreign trade unions and the International Labor Organization. In practice, trade unions are not typically found in private commercial legal entities but are more common in state-owned enterprises.

According to the Law of Ukraine "On the Procedure for Settling Collective Labor Disputes", employees and trade unions are entitled to gather at the local, regional, territorial or national levels in order to protect their interests. Trade unions are entitled to protect employees' interests in the event of a labor dispute.

The Ukrainian constitution gives all working individuals the right to strike to protect their economic and social interests. A strike may take place if collective labor disputes cannot be settled by conciliation and negotiation. In order to validate the strike, employees have to arrange a conference meeting and hold a vote. The strike is considered valid if the majority of the employees/participants or two-thirds of the delegates present at the conference agree to hold the strike.

## **7.5 Employment of foreigners**

A Ukrainian entity wishing to engage a foreign national to perform work in Ukraine must obtain a work permit for the individual in advance.

The type of permit required depends on whether the host party is a Ukrainian legal entity or a RO. Working for several local employers simultaneously for foreigners was allowed, i.e. there is a possibility to obtain several permits for foreign nationals by the same or different employer.

### **Ukrainian legal entity**

Work permits (WP) for foreign nationals are issued upon the application of a company in Ukraine based on the employment agreement between the host company and a foreign national or the service agreement between the foreign legal entity and the host company (most commonly, personal lease (secondment) agreement). A WP is valid for up to one year and is subject to annual renewal.

There are no statutory limitations to and/or quotas on the number of foreign nationals that may be directly employed by Ukrainian legal entities.

### **RO**

Engagement of foreign nationals by ROs is subject to the prior obtaining of a service card (a kind of WP) for the foreign national. The card is issued for three years and must be extended when it expires.

The number of foreign nationals engaged by an RO is limited by what is stated in the registration certificate of the RO. The typical maximum is three, but this can be increased upon application of the RO.

Engagement of foreign nationals by a Ukrainian host party for the implementation of projects in Ukraine may be formalized through either direct employment with a Ukrainian company or provision of personnel based on a service agreement (secondment). The number of qualified foreign nationals engaged under such agreements cannot exceed one-half of the total number of individuals engaged in this way.

In the case of direct employment by a Ukrainian legal entity, the remuneration of the foreigner cannot be less than the minimum wage of UAH 3,200 (approximately EUR 110).

Based on the WP or service card, a foreign national will be able to apply for a long-term D-type visa and temporary residence permit (TRP) to enter and stay in Ukraine without limitations. The TRP is issued for one year. If a TRP is issued based on the WP, it is valid for the same period as the WP. If a WP is subject to

annual renewal, the TRP is also renewed every year. If a TRP is issued based on the service card, it is valid for one calendar year from the date of submission of the TRP and is subject to annual renewal.

# **8.0 Deloitte International Tax Source**

The Deloitte International Tax Source (DITS) is a free online database that places up-to-date worldwide tax rates and other crucial tax information within easy reach. DITS is accessible through mobile devices (phones and tablets), as well as through a computer.

## **Connect to the source and discover:**

**A database that allows users to view and compare tax information for 65 jurisdictions that includes –**

- Corporate income tax rates;
- Historical corporate rates;
- Domestic withholding tax rates;
- In-force and pending tax treaty withholding rates on dividends, interest and royalties;
- Indirect tax rates (VAT/GST/sales tax); and
- Information on holding company and transfer pricing regimes.

**Guides and Highlights** – Deloitte's Taxation and Investment Guides analyze the investment climate, operating conditions and tax systems of most major trading jurisdictions, while the companion Highlights series concisely summarizes the tax regimes of over 130 jurisdictions.

**Jurisdiction-specific pages** – These pages link to relevant DITS content for a particular jurisdiction (including domestic rates, tax treaty rates, holding company and transfer pricing information, Taxation and Investment Guides and Highlights).

**Tax publications** – Global tax alerts and newsletters provide regular and timely updates and analysis on significant cross-border tax legislative, regulatory and judicial issues.

**Tax resources** – Our suite of tax resources includes annotated, ready-to-print versions of holding company and transfer pricing matrices; a summary of controlled foreign company regimes for the DITS countries; an R&D incentive matrix; monthly treaty updates; and expanded coverage of VAT/GST/sales tax rates.

**Webcasts** – Live interactive webcasts and Dbriefs by Deloitte professionals provide valuable insights into important tax developments affecting your business.

**Recent additions and updates** – Links from the DITS home page to new and updated content.

**DITS is free, easy to use and readily available!**

**<http://www.dits.deloitte.com>**

## 9.0 Contact us

To find out how Deloitte professionals can help you in your part of the world, please visit the global office directory at <http://www2.deloitte.com/global/en/get-connected/global-office-directory.html>, or select the “contact us” button at <http://www.deloitte.com/tax>.

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee, and its network of member firms, each of which is a legally separate and independent entity. Please see [www.deloitte.com/about](http://www.deloitte.com/about) for a detailed description of the legal structure of Deloitte Touche Tohmatsu Limited and its member firms.

Deloitte provides audit, consulting, financial advisory, risk management, tax, and related services to public and private clients spanning multiple industries. With a globally connected network of member firms in more than 150 countries and territories, Deloitte brings world-class capabilities and high-quality service to clients, delivering the insights they need to address their most complex business challenges. Deloitte's more than 225,000 professionals are committed to making an impact that matters.

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively, the “Deloitte network”) is, by means of this communication, rendering professional advice or services. No entity in the Deloitte network shall be responsible for any loss whatsoever sustained by any person who relies on this communication.

© 2017. For information, contact Deloitte Touche Tohmatsu Limited.