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DK

# **Tax Guide for Ukraine 2018**

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Dear Readers,

Our Tax Guide offers brief overview of the tax system in Ukraine for the year 2018 both for individuals and legal entities which is based on the Ukrainian tax legislation effective as of the date of this Guide.

During the last few years Ukraine has made a success in improving its tax system. In the World Bank's tax payment index (part of Doing Business Ranking 2018) Ukraine holds 43-rd position among 190 countries. The main improvements include introduction of the automated on-line system of VAT administration and automatic VAT refund, significant decrease of the obligatory social insurance payments, introduction of the efficient tax anti-avoidance rules, moving more tax payments online which makes transactions more transparent. Ukraine has one of the lowest numbers of tax payments, however, it still takes significant time to pay taxes in Ukraine (according to the Doing Business Ranking 2018).

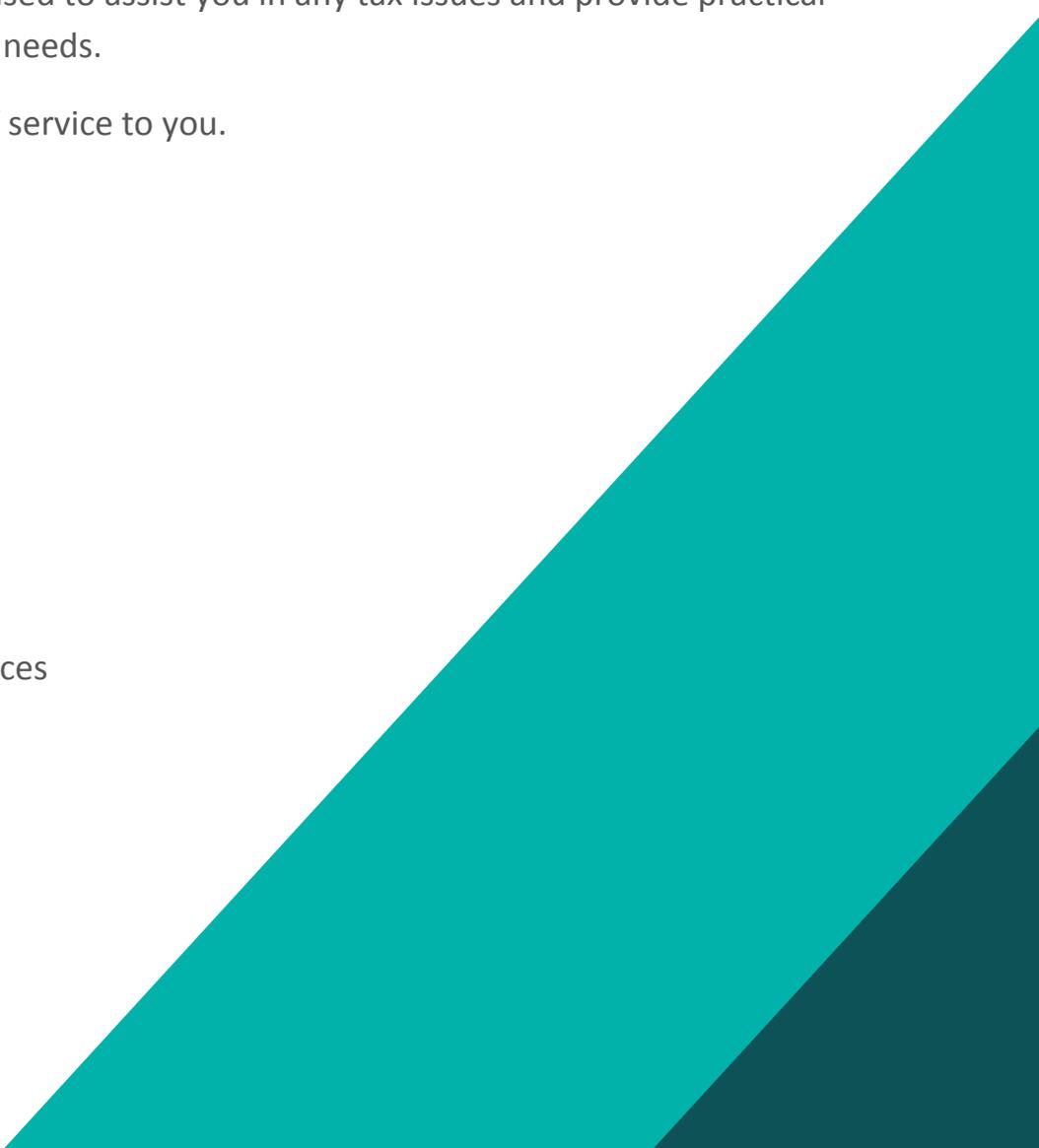
Our Tax Team will be pleased to assist you in any tax issues and provide practical solutions tailored to your needs.

We will be happy to be of service to you.



**Olena Voznyuk**

Partner, Tax & Legal Services



# Taxation

## Overview of main taxes rates

<b>Corporate Income Tax (CIT)</b>	<b>Tax rate</b>
General tax rate	18%
Small enterprises (if certain criteria are met)	0%
Insurance companies	0%, 3%
Non-residents' income:	
Insurance payments	0%, 4%, 12%
Freight	6%
Interest, dividends, royalty, engineering income, rent, sale of property etc.	15%
Production and/or distribution of advertising	20%
Bookmaking activity	10%, 18%
Lottery issue and conducting	30%
<b>Value Added Tax (VAT)</b>	
Standard tax rate (supply of goods / services with the place of supply within the territory if Ukraine)	20%
Supply of medicines and medical products	7%
Export of goods, export-related services, certain other services	0%
<b>Personal Income Tax (PIT)</b>	
Standard tax rate (both for residents and non-residents)	18%
Royalty income	18%
Interest income	
Dividends:	
✓ on shares / corporate rights of the resident issuers (CIT payers)	5%
✓ on preferred shares, equivalent to salary payments	18%
✓ on shares / investment certificates paid by joint investment institutions	9%
✓ on shares / corporate rights paid by non-resident issuer	9%
✓ on shares / corporate rights paid by resident issuer (non-payer of CIT)	9%
Prizes / awards (including winnings in a lottery) payable to resident and non-residents	18%
<b>Real estate transactions - PIT</b>	
Sale of house, apartment, or their parts, etc (one object per year) if owned by a taxpayer for longer than 3 years before disposal	0%
Sale of more than 1 real estate objects per year	5%
Sale of real estate objects by non-resident individual	18%
<b>Military fee (MF)</b>	
Income subject to Personal Income Tax	1.5%
<b>State Social Insurance Contribution</b>	
Employment-related income and remuneration under civil law agreements payable to individuals	22%
<b>Simplified (unified) tax regime</b>	
<b>I group</b>	up to 10% of the minimum amount of cost of living (approx. USD 10 in 2018)
<b>II group</b>	up to 20% of minimum wage (approx. USD 30 in 2018)
<b>III group</b>	3% of gross income (for VAT registered persons) 5% of gross income (for not VAT registered persons)
<b>IV group</b>	0.19-6.33% of the normative monetary value of the area of agricultural lands and/or water fund resources

## Company taxation

Corporate income tax (CIT)

### **CIT payers** – residents

CIT payers are legal entities that operate in Ukraine and abroad, except for:

- I. legal entities applying the simplified tax regime;
- II. organizations financed by the state and local budgets;
- III. charity funds, non-governmental organizations, political parties, pension funds and other non-profit organizations.

However, the organizations of the second and third groups are not liable to CIT only if they are included in the state Register of non-profit organizations.

Branches and separated units of a company do not qualify as independent taxpayers. CIT for all branches is calculated and paid by the parent company itself.

### **CIT payers** – non-residents

The list of non-residents that are liable to CIT includes the following:

- legal entities – non-residents that receive income from Ukrainian sources (except for institutions and organizations with diplomatic privilege or immunity under international treaties);
- permanent representative offices of non-residents that receive income from Ukrainian sources or perform agent functions (as representatives) and other functions on behalf of these non-residents and their founders. The permanent representative office of a non-resident shall be registered with the local fiscal authorities.

### **Tax base**

From 1 January 2015 reporting tax base is Net Profit Before Tax (NPBT) as per accounting records according to either Ukrainian accounting standards or IFRS, adjusted for tax differences as shown in Table 1.

Table 1

Calculation of CIT base

$$\text{NPBT} - \text{Tax losses of previous periods} + \text{Differences, determined by TCU} = \text{CIT base}$$

NPBT is adjusted for the tax differences. Major differences affecting financial profit (loss) before tax include:

- depreciation of non-current assets;
- reserves (provision) for future expenses and payments (excluding vacation provision and payroll related payments);
- differences related to financial transactions (thin capitalisation rules);
- transfer pricing adjustments;
- deductibility restriction for certain payments to non-residents;
- transactions with not-for-profit organizations;
- other differences.

## **Tax depreciation and amortization**

Since January 1, 2017 minimum statutory period of use for machinery and vehicles can be reduced from 5 years to 2 years under the following circumstances:

- Straight-line method is chosen to depreciate an asset;
- Capital expenditures of this asset are accrued after January 1, 2017;
- Fixed assets were put into operation within the period from January 1, 2017 to December 31, 2018;
- Assets are used in business activity of taxpayer;
- Assets shall not be leased or sold (unless when leasing is the taxpayer's main business activity).

Since January 1, 2017 deduction of depreciation costs associated with nonproduction fixed assets and nonproduction intangible assets have been disallowed. Nonproduction assets are defined as assets which are not used in the taxpayer's business activity.

Revaluation of fixed assets and intangible assets is non-deductible for CIT purposes.

## **Thin Capitalisation Rule**

Thin capitalization rule applies to all loans received by resident borrowers from nonresident related lenders where the amount of debt is more than 3,5 times higher than the borrower's equity. Interest paid on such loans is limited to 50% of the borrower's profit before tax plus the amount of financing expenses and depreciation in the relevant tax period. Nondeductible interest may be carried forward to future period, but subject to an annual limit of 5% of such interest per year.

## **Tax losses**

Tax losses may be carried forward for an indefinite period but may not be carried backwards. Restrictions on the amount of tax losses allowed for tax deduction were imposed in particular tax periods.

## **CIT return filing**

Generally the reporting period for 2018 is a calendar quarter. Agricultural producers can choose an annual reporting period that begins from July 1 of current year and finishes on June 30 next year.

Annual tax (reporting) period is set for the following taxpayers:

- newly established companies;
- agricultural producers;
- taxpayers, whose annual revenue for the previous year does not exceed UAH 20 million.

Income tax is calculated in the CIT return that is submitted by quarterly payers within 40 calendar days after the end of the reporting quarter, the annually payers - within 60 calendar days after the end of the reporting year.

## **Tax rate**

As of January 1, 2018, the basic CIT rate is 18%. The reduced rates of 0% or 3% apply to qualified insurance activities.

In 2017-2021 0% CIT rate applies to the following taxpayer: whose annual income does not exceed UAH 3 mln., salary of its each employee is not lower than two minimum wages. Such rate applies to: companies registered after January 1, 2017, the average number of employees of which ranged from 5 to 20 people.

## **Non-residents' income**

The Ukrainian-sourced income payable to non-resident recipients is subject to Ukrainian withholding tax (WHT). WHT at 15% rate applies to the majority of income payments to non-residents unless a reduced rate / exemption is provided by the relevant double taxation treaty signed by Ukraine (DTT). WHT is payable to the budget when making the payment to non-resident.

Tax exemption (reduction) under the relevant DTT is applied based on a tax residency certificate (or its legalized copy) to be provided by a non-resident that proves that non-resident is a tax resident of the relevant country with which Ukraine signed the DTT.

The amount of freight paid by resident to non-resident as per freight contracts is taxed at the rate of 6%. Payments to non-residents for the advertising production and/or distribution are taxed at the rate of 20%. Income of non-residents who carry out their activities in Ukraine through a permanent representative office is taxed in the general order.

## **Taxation of dividends**

Dividends received by a domestic company from another domestic corporate income taxpayer are not subject to CIT. Dividends received by a domestic company from non-resident shareholder qualify as taxable income at a standard rate of 18%.

Dividends payable by a Ukrainian subsidiary are subject to an advance CIT (ACT) at the general 18% CIT rate. The tax base for ACT is the excess amount of dividends over the amount of taxable income for the year in which such dividends are payable. ACT must be paid at the time the dividends are paid. If CIT liability for the relevant year has not been settled, ACT is calculated based on the entire amount of dividends payable.

A Ukrainian subsidiary may use ACT paid to reduce its current CIT liability. The amount of ACT paid on dividends is not refundable to the taxpayer and may not be offset against other taxes. ACT does not apply to certain dividends (i.e. dividends paid by a holding company that pays dividends out of dividends received from subsidiaries, dividends paid by company out of tax-exempt profits, dividends paid to individuals).

## **Tax payment**

Taxpayers shall settle their CIT liability within 10 calendar days after the deadline for filing CIT return.

## Taxation of individuals

Personal Income Tax (PIT) base for Ukrainian and foreign individuals depends on their tax residency status. Tax residency status is determined based on the criteria established by the TCU and/or DTT.

**Resident** - individual person, that:

- has a place of residence in Ukraine;
- has a place of residence in a foreign country, but the place of permanent residence is in Ukraine;
- has a permanent place of residence in a foreign country, but close personal or economic relations (centre of vital interests) is in Ukraine;
- resides in Ukraine at least 183 days (including the day of arrival and departure) during the period (periods) of the tax year, provided the country which is his/her centre of vital interests cannot be determined, or if he/she has no permanent place of residence in any of the countries;
- independently identified the main place of residence on the territory of Ukraine in order specified in the TCU;
- is registered in Ukraine as a self-employed person.

Residents are subject to PIT based on their income from Ukrainian source as well as based on their world-wide income.

**Non-residents** - individuals who do not qualify as residents of Ukraine and pay PIT only based on income from Ukrainian sources.

Foreign citizens can immigrate to Ukraine for permanent residence, for employment on a fixed term or for temporary stay. Accordingly, they shall receive permanent or temporary residence permit.

### **Income tax, personal tax rates, other taxes**

If an individual receives income from person who is not a tax agent (see below), such individual is obliged to declare such income and pay PIT on self-assessment basis.

The reporting period is a calendar year. The annual PIT return shall be submitted till May 1 of the year following the reporting one and PIT shall be settled by August 1 of the same year.

### **PIT from wages**

Employers paying employment-related income to their employees, as well as legal entities paying compensation to individuals based on the civil law contracts qualify as tax agents in respect of such income.

Tax agents are obliged to withhold and pay PIT to the budget on behalf of the individuals, to maintain tax records, to submit income reports and are responsible for the violation of these obligations. PIT rate on salary and other employment-related income both for residents and non-residents is 18%.

## **Military fee (MF)**

Nationwide MF payment for strengthening the defence capability of Ukraine applies to:

- individuals - residents who receive income from Ukrainian sources as well as foreign income;
- individuals – non-residents who receive income from Ukrainian sources;
- tax agents (in particular employers of individuals-employees).

The MF has been extended indefinitely, until its abolishment by the respective legislative act.

The tax base of MF is the same amount of income that is subject to PIT.

The tax rate of MF is 1.5% of individuals taxable income.

If MF payer is a tax agent, he/she maintains and pays MF in order and within the time frames provided for PIT.

## **Unified social contribution (USC)**

USC is a consolidated insurance fee and is paid to the system of compulsory state social insurance.

The employer calculates the USC on the basis of payroll fund. USC rate is 22%; for disabled workers the rate is 8.41%. The USC accrued by the employer is deductible for CIT purposes. Employees are relieved from paying this contribution. The base for the USC is capped at fifteen minimum monthly salaries and equals to UAH 55,845 (approx. USD 2 000) from January 1, 2018 to December 31, 2018.

Minimum obligatory amount of USC per month is UAH 819.

USC is not payable on the wages of foreign citizens who work in the representative offices of foreign companies located in Ukraine.

## **Taxation of individual entrepreneur's income**

Individual entrepreneurs may be taxed either under the general or simplified tax regime.

### **General taxation system for individual entrepreneur**

The taxable base is a net income, which is the difference between overall taxable income (revenues in monetary and non-monetary form) and business related expenses, supported with relevant documentation. The tax rate is 18%.

If an individual entrepreneur receives incomes other than from business activities within the types of activities chosen by him/her (registered in the unified register), those types of incomes shall be taxed according to the general rules of Taxation of Individuals.

Individual entrepreneurs shall pay advance tax payments that are calculated on a self-assessment basis per each calendar quarter and shall be paid to the budget by the 20<sup>th</sup> of the month following the reporting quarter.

Individual entrepreneurs on the general taxation system and those performing works / rendering services under civil law contracts pay USC themselves at the rate of 22% based on the remuneration amount, but not less than the minimum insurance fee amount per month (see above).

Individual entrepreneurs calculate *military fee* themselves on the basis of results of the reporting tax year at the rate of 1.5% based on the net taxable income, record this amount into the annual tax return and pay the fee within the same time frames as stipulated for PIT.

Taxation of individual entrepreneurs under the simplified tax regime is described in the following sections.





## Other taxes

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### Environmental tax

Accrued on the amount of actual emissions into the atmosphere from stationary sources, pollutants dumped into the water, waste disposal, creation and storage of radioactive waste.

The taxpayers are legal entities and non-residents' establishments.

The taxpayers shall calculate the tax amount by themselves for each type of pollution (pollutant, waste) and pay it to the budget on a quarterly basis.

### Property tax

The property tax includes the following components:

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

### Immovable property tax

Immovable property tax is a Tax on real estate (except for land plot) paid by owners of residential and non-residential property located on the territory of Ukraine, both by residents and non-residents, both by individuals and legal entities.

The tax base is the size of the residential and non-residential property, including their parts. Tax rates and additional privileges, established in the TCU in respect of tax payments are set by local authorities at the location of the property. The maximum tax rate for the year 2018 is UAH 55.86 per square meter.

Individuals do not pay tax, if the size of real estate does not exceed:

- 60 square meters for apartment/apartments regardless of their quantity;
- 120 square meters for house/houses regardless of their quantity;
- 180 square meters for various types of residential properties, including their parts.

If an individual / legal entity owns a property which size exceeds 300 square meters (for an apartment) and/or 500 square meters (for a house) the tax liability increases by UAH 25'000 per year for each mentioned above object of residential property (its parts).

Individuals pay tax on the basis of the tax notification letter that is issued by tax authority till July 1 of the year following the reporting one and tax shall be paid within 60 days from the date of receipt of the notification letter. Legal entities calculate the tax amount by themselves and pay immovable property tax in advance on a quarterly basis.

## **Land tax**

Land tax applies to land owners and users of state or municipal land plots in the form of land tax and lease fee.

The tax base is a normative monetary value of land plots (adjusted for the annual indexation) or the area of land plots for which the normative monetary valuation is not set.

Maximum tax rates on land with effective normative monetary valuation are stipulated in the TCU as follows:

- As a general rule not more than 3% of the normative monetary value of a land plot.
- Not more than 1% of the normative monetary value of the land plots of common usage;
- From 0,3% to 1% of the normative monetary value of agricultural land plots.

Lease fee of state or municipal land plots shall be established in the relevant lease agreement at the rate not less than land tax rate determined for such kind of land plots but not more than 12% of the normative monetary value of land plots.

Individuals pay land tax on the basis of tax notification letter that is issued by tax authority till July 1 of the current reporting year during 60 days after the date of receipt of the notification letter.

Legal entities calculate land tax amount themselves and pay it in advance on a monthly basis.

## **Transport tax**

Transport tax is levied in respect of cars with the market value exceeding 375 minimum monthly salaries established on January 1 of the reporting year (approx. USD 52 000 in 2018) which are less than 5 years old held by individuals (both residents and non-residents of Ukraine). The amount of tax is UAH 25,000 per each car.

Transport tax is paid by individuals annually on the basis of notification letter issued by tax authority by July 1 of the reporting year and tax amount shall be settled during 60 days after receipt of the notification letter.

Legal entities pay the tax by making advance payments on a quarterly basis.

## Simplified (unified) tax regime

Individual or legal entity that meets certain legal requirements can choose the simplified tax regime.

Simplified tax regime provides for a simplified accounting and reporting.

There are four groups of simplified tax payers:

- private entrepreneurs only – I and II group;
- legal entities and private entrepreneurs – III group;
- agricultural producers – IV group.

Table: I – III groups of simplified tax payers

	<b>I group</b>	<b>II group</b>	<b>III group</b>
<b>Maximum annual income</b>	UAH 300 thousand	UAH 1.5 million	UAH 5million
<b>Maximum number of employees</b>	0	from 0 to 10	without limits
<b>Permitted activities</b>	<ul style="list-style-type: none"> <li>▪ retail sale of goods on markets;</li> <li>▪ domestic public services</li> </ul>	<ul style="list-style-type: none"> <li>▪ services rendered to single tax payers and/or to public;</li> <li>▪ production and/or sale of goods;</li> <li>▪ activity in the restaurant industry</li> </ul>	without limits
<b>VAT</b>	does not apply	does not apply	may register as a VAT payer
<b>Rates</b>	up to 10% of monthly cost of living for able to work individuals (UAH 176.2 in 2018)	up to 20% of minimum monthly salary (UAH 744.6 in 2018)	3% of income+ VAT or 5% of income (excl. VAT)
<b>Payment</b>	Monthly advanced contributions		Quarterly

Private entrepreneurs – single tax payers pay USC at the rate of 22% of the amount determined themselves, but not less than the minimum USC rate per month. They are obliged to pay USC every month regardless of the amount of profit.

Military fee is not paid by private entrepreneurs – single tax payers.

There are limitations on usage of the simplified tax regime for certain types of activities and for certain types of legal entities. For example, legal entities with the shareholder who is not

registered as a single tax payer and has minimum 25% share in its charter capital cannot use simplified tax regime. Non-residents also cannot be payers of a single tax.

### **Other taxes**

Other types of taxes / duties in Ukraine include:

- rent payment (which is charged for mineral resources usage, radio frequency resource of Ukraine usage, for the special usage of water and forest resources, as well as for the transportation of oil, petroleum products, natural gas and ammonia on the territory of Ukraine);
- pension fund fee for some types of transactions (acquisition of property, sale of foreign currency).

Local councils can also establish fee for parking the vehicles and tourist tax on their territories.





## Transfer pricing

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Transfer pricing regulations were first introduced in Ukraine on September 1, 2013. The legal basis of the TP regulations is Article 39 of the TCU which is generally in line with OECD TP Guidelines.

If a Ukrainian company meets the following criteria (starting from January 1, 2017):

- has annual income from all activities (on the basis of financial accounting) that exceeds UAH 150 million for the reporting tax year; and
- has annual volume of business transactions with identified counterparty in the amount exceeding UAH 10 million

it is required to comply with TP regulations.

Besides, since January 1, 2018 the following transactions qualify as controlled transactions for TP purposes:

- with related non-residents;
- with a non-resident, who is registered / a tax resident of a low tax jurisdiction and Crimea / special types of legal entities (regardless of relation with the Ukrainian company) (there are two lists effective as of January 1, 2018: list of low-tax jurisdictions and list of special types of legal entities);
- with non-resident commissioner, regardless of relation with the Ukrainian company;
- with related non-resident if between them a / several unrelated persons are interposed that do not perform significant functions/assume significant risks;
- between non-resident and its permanent establishment registered in Ukraine.

Transactions between non-resident and its permanent establishment in Ukraine qualify as controlled transactions if their volume exceeds UAH 10 million per year.

TP regulations apply to corporate income tax only.

There are 5 transfer pricing (TP) methods which are applied in order to substantiate the price/profit margin in the controlled transaction:

- comparable uncontrolled price;
- resale price;
- cost-plus;
- net income;
- profits distribution.

The priority of TP methods' application is as follows:

- comparable uncontrolled price method prevails over any other TP method,
- "resale price" and "cost plus" methods prevail over "net income" or "profits distribution" TP methods.

If the price in the controlled transaction falls beyond the range of prices/profit margins, the median value of the price range shall be used for tax purposes.

Taxpayers who performed controlled transactions in 2017:

- shall submit a Report on controlled transactions (till October 1, 2018), and
- shall prepare and maintain TP documentation.

The following fines apply for violation of the TP rules:

- 300 subsistence minimums (equivalent to approx. Euro 14 thousand for FY 2017) for failure to file a TP Report;
- 1% of undeclared in the Report transactions, but not more than 300 subsistence minimums for all undeclared transactions for failure to declare all transactions in a TP Report;
- 3% of the value of non-documented transactions for failure to submit TP Documentation, but not more than 200 subsistence minimums (approx. Euro 9 thousand for FY 2017);
- 25% / 50% of the assessed CIT liabilities.

There are also prescribed fines for failure to timely submit Report on controlled transactions or transfer pricing Documentation.

Fines, as a result of transfer pricing audits, shall be applied in the amount stipulated by the law applicable as of the date when decision on application of fine is made.

The statute of limitations for transfer pricing audits is seven years from the last date of filing the Report on Controlled Transactions, or from the actual date of filing the Report on Controlled Transactions, in case it is filed later.

#### *The List of Low Tax Jurisdictions*

As of the beginning of 2018 the Cabinet of Ministers of Ukraine significantly extended the List of Low Tax Jurisdictions. If a non-resident company – counterparty of a Ukrainian company – is registered in the country/territory that is included in the list – the transactions with such non-resident shall qualify as controlled transaction (provided that the thresholds mentioned above are met, regardless of relation between a non-resident and Ukrainian company). If a transaction does not qualify as controlled transaction (when thresholds are not exceeded) a Ukrainian company shall adjust its financial result by 30% of the value of goods / works/ services purchased from such a supplier from low-tax jurisdiction or substantiate that the cost is at arms' length.

As of January 1, 2018 the list includes 85 countries (22 jurisdictions were added as compared with 2017). Georgia, Dominican Republic, Republic of Estonia, Islamic Republic of Iran, Republic of Cuba, Republic of Latvia, Lebanese Republic, Republic of Mauritius, Republic of Malta, Kingdom of Morocco, Principality of Monaco, United Arab Emirates, Puerto Rico, Republic of Singapore, Hungary and some others are in the list. However, on January 31, 2018 the Cabinet of Ministers of Ukraine excluded Estonia, Georgia, Hungary, Latvia and Malta are in the list.

### *The List of Special Types of Legal Entities*

In July 2017 the Cabinet of Ministers of Ukraine approved the List of Special Types of Legal Entities that do not pay CIT or are fiscally transparent entities. If a non-resident company – counterparty of a Ukrainian company – was established in a special legal form that is mentioned in the list – the transactions with such non-resident could qualify as controlled transaction (provided that the thresholds mentioned above are met, regardless of relation between a non-resident and Ukrainian company). If a transaction does not qualify as controlled transaction (when thresholds are not exceeded) a Ukrainian company shall adjust its financial result by 30% of the value of goods / works / services purchased from such a supplier from the List of Special Types of Legal Entities or substantiate that the cost is at arms' length.

As of January 1, 2018 the list includes, inter alia, Australia (GP, LP), Austria (OHG, OEG, KG, KEG, GesnbR), the United Kingdom (LP, LLP), Israel (GP, LP), Canada (GP, LP, EPC), Malta (Partnership en commandite, Partnership en nom collectif), Germany (GbR, KGaA, KG, OHG), USA (States of Delaware, California, Nevada, New Jersey, New York, Texas, Florida – GP, LLP, LLC), France (S.N.C., S.C.S., G.I.E., Societe civile, Societe en Participation, Fonds Commun de Placement a Risques).





## Indirect taxes

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### Value Added Tax (VAT)

VAT is an indirect tax that is included in the price of goods (services) and is paid by the buyer, but transferred to the budget by supplier (tax agent).

**Taxpayers** are residents, both individual persons and legal entities, which operate in Ukraine (including a permanent establishment of non-resident) and persons that import goods into the customs territory of Ukraine.

VAT is also paid by the persons that are receiving consulting, engineering, legal, advertising and other services from non-resident with place of supply within the customs territory of Ukraine.

"Threshold" for mandatory **registration** as a VAT payer is set at the amount of UAH 1 million of taxable supplies during the last 12 calendar months. Other entities (except for simplified tax payers of the 1<sup>st</sup> and the 2<sup>nd</sup> groups) may also opt for a voluntary registration, irrespective of the volume of taxable supplies.

Transaction on supply of goods (services) within the customs territory of Ukraine (carried out by both residents and non-residents) and import of goods into the customs territory of Ukraine (including in the form of rent or leasing) and export of goods from the customs territory of Ukraine qualify as VAT-able transactions.

There are some transactions that are not subject to VAT. There are also temporary benefits for supply and import of scrap metal, etc.

**VAT base** is determined as contractual value of goods or services, but not lower than the purchase price (or lower than market prices) of such goods/services or book value of fixed assets. The taxable amount shall include all state taxes, with some exceptions.

For imported goods, the tax base is contractual value, but not lower than customs value of the goods (that includes import duties and excise tax).

There are three **VAT rates** – standard (20%), reduced (7%) and zero (0%).

Zero tax rate applies to export of goods and export-related services, etc.

7% tax rate applies to supply of medicines and medical equipment and their import into the customs territory of Ukraine.

From January 1, 2013 till January 1, 2023 supply of software products is VAT exempt.

Taxpayer reduces the amount of "output" VAT accrued during the reporting period by the amount of "input" VAT paid to its suppliers supported by VAT invoices received from them or by the import custom declaration.

VAT invoice is electronically formed by the supplier (counterparty) for each supply and shall be registered in the tax authority database.

Reverse-charge mechanism applies to services received from non-residents (if the place of supply is the customs territory of Ukraine). This mechanism implies self-assessment of 20% VAT by the Ukrainian recipient of services in the tax period (month) of their receipt. In the same tax period the recipient is entitled to credit input VAT which effectively results in no VAT payment in the relevant tax period. The reverse-charge mechanism does not apply if a non-resident service provider has a permanent establishment registered as a VAT payer in Ukraine. In this case, the representative office is in charge of assessing VAT liabilities, offsetting them against the input VAT, and transferring the positive difference to the state budget.

Since July 1, 2017 the Ukrainian tax authorities are entitled to suspend a taxpayer's right to register VAT invoices and adjustments to the registered VAT invoices if a transaction meets the criteria for suspicious transactions. From January 1, 2018 registration of VAT invoices and adjustments to the registered invoices is temporarily suspended until the Cabinet of Ministers of Ukraine establishes the relevant Regulation on Suspension of VAT Invoices and Adjustments to VAT Invoices.

### **VAT refund**

Taxpayers are entitled to claim the amount of excessive VAT paid to be refunded from the budget.

**VAT return** should be submitted only in electronic form.

The tax is paid on the basis of the result for the reporting period, which is a calendar month or calendar quarter (for small taxpayers). In case of monthly reporting, VAT returns are submitted to the tax authorities within 20 calendar days following the end of the each reporting month.

Negative difference between the amount of output VAT (charged on taxable supplies) and input VAT (paid on taxable purchases) makes the amount of VAT refund.

### **Electronic system of VAT administration**

This system provides that the payable VAT amounts shall be accumulated at the relevant taxpayers' accounts at the State Fiscal Service of Ukraine. The system also provides a special order of funds spending from this account. All taxpayers' transactions that have an impact on VAT records shall be registered in the electronic database of the State Fiscal Service of Ukraine.

## **Agriculture**

As of January 1, 2017 special VAT regime for agricultural producers is abolished.

### Excise tax (ET)

ET is an indirect tax on consumption of excisable goods (products) that is included in the price of such goods (products).

Excisable goods include:

- spirit and alcohol;
- tobacco and tobacco products;
- cars, car-trailers, motorbikes and other vehicles for freight;
- electricity;
- fuel.

ET payers are mainly manufacturers and importers of excisable goods, retailers selling the above products, as well as those that sell fuel.

**The object** of excise tax is the sale of excisable goods (products), as well as their import into the customs territory of Ukraine. The object of taxation is also volume and value of lost excise goods due to the taxpayer's fault.

There is a wide range of transactions that are not subject to ET or are exempt from ET, e.g., transactions on export of excisable goods (products) by the taxpayer from the customs territory of Ukraine.

**Tax base** differs depending on the applicable rates:

- ad valorem (relative) rate – a percentage of the value of goods. Applies to electricity;
- specific (absolute) rate – in fixed amount per unit in kg, litre, cm<sup>3</sup>, items, etc. Applicable to ethyl spirit, alcoholic beverages, petroleum products, vehicles and fuel;
- combined rate – both percentage of the value of goods and fixed amount per sold unit of goods (products). Applies to tobacco and tobacco products.

Absolute excise tax rates are reviewed annually taking into account consumer price index, producer of industrial production price index and producer of industrial products prices.

Tax liability on excisable goods (products) produced in the customs territory of Ukraine arise on the date when the product is sold by producer, and in case of import of excisable goods (products) to the customs territory of Ukraine – on the date of their customs clearance.

The tax is paid by ET payers on a monthly basis based on the volume of taxable sales. For alcoholic beverages containing ethyl ET is payable upon acquisition of the ET stamps.

For imported excisable goods (except for ET stamped products) tax is paid before or on the day of submission of customs declaration. Importers of excisable stamped goods pay excise tax when buying ET stamps (with additional payment as of the date of tax return submission, if necessary).

There are certain ET peculiarities set forth for alcoholic beverages and tobacco products. Obligatory condition for the sale of such excisable goods is that they should contain ET stamp

thereon. In order to ensure completeness of the excise tax liabilities payment, there are excise warehouses created within company's premises which produce such products.

System of electronic administration of fuel was introduced starting from March 2016.



## Currency control

The National Bank of Ukraine, the Cabinet of Ministers of Ukraine and the Verkhovna Rada of Ukraine apply a number of measures in the field of currency regulation and control in order to stabilize the financial and economic situation in the country.

The major measures include the following:

- payments in export / import cross-border transactions shall be done within a period that does not exceed 180 calendar days. Such requirement does not apply to payments for export of services (other than transport and insurance), intellectual property rights, copyright and related rights.
- only 50% (65% / 75% in previous periods) of the foreign currency earnings from abroad received by legal entities and individual persons - entrepreneurs (with few exceptions) shall be sold on compulsory basis on the interbank currency market of Ukraine. The foreign currency earnings that are subject to mandatory sale include: income from export contracts, loans, borrowings, etc. in the following currencies: AUD, GBP, DKK, USD, CAD, NOK, SEK, CHF, JPY, EUR and RUB;
- export cross-border transactions are controlled by Ukrainian banks and cannot be cleared for currency control purposes on the basis of termination of liabilities through offset of counter claims:
  - denominated in foreign currency included in the 1<sup>st</sup> group of the Classifier of foreign currencies and bank metals, and Russian rubles (regardless of the amount of transaction);
  - denominated in other foreign currency if the total amount of liabilities that are terminated through offset within one contract on export of goods exceeds the equivalent of USD 500 000;
- as a general rule early repayment of the loans granted by non-resident lender to resident borrower is prohibited; In certain cases early repayment is permitted, e.g., if at least one of the following conditions is met:
  - the borrower is a Ukrainian bank;
  - the lender is a foreign bank;
  - a foreign state or a foreign bank is a shareholder of a non-resident lender;
  - an international financial institution is a shareholder of a non-resident lender or a resident borrower;
  - the principal amount of the loan is set-off against additional contribution of a non-resident lender to the charter capital of a resident borrower;
  - loan is paid from funds borrowed by a resident borrower under another loan agreement with a non-resident lender, if the new agreement provides for a later term for repayment in comparison with the terms of the first loan agreement and such funds are not used by the borrower for any other purposes, except for payment under the previous contract and purchase of foreign currency for this purpose.
- it is permitted under certain conditions to purchase and/or transfer foreign currency with the aim to:
  - return dividends to a foreign investor abroad for the period up to FY2016, inclusive;
  - return the funds to foreign investors within the following transactions: a) reduction of the charter capital of a Ukrainian subsidiary, b) exit from the Ukrainian business partnerships, c) sale of a Ukrainian subsidiary's shares;

- certain currency transactions (with some exceptions) require prior obtaining of individual license from the National Bank of Ukraine, in particular:
  - transfer of foreign / Ukrainian currency outside of Ukraine;
  - transfer of Ukrainian currency to Ukraine;
  - use of foreign currency in Ukraine as a means of payment or as a lien, except for payment in foreign currency for goods, works, services, and payment of wages on the temporarily occupied territory of Ukraine;
  - placing currency assets (including foreign currency or currency of Ukraine) into bank accounts outside of Ukraine;
  - investing abroad, including through acquisition of securities;
- agreements to obtain loans/borrowings by resident borrowers from non-resident lenders shall be registered by the National Bank of Ukraine with obligatory conformance of the maximum interest rate set forth by the National Bank of Ukraine; foreign currency exchange rates determined by the National Bank of Ukraine are used for currency transactions as of current transaction date and are valid till the next rates' revision.



## Customs duties

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Movement of goods across the customs border of Ukraine are taxed by the following customs charges:

- duty;
- excise tax;
- Value Added Tax (VAT).

Besides, state duty may be applied.

The customs value of goods that is determined on the basis of the main (as per contractual value) and secondary methods (5 methods) is a basis for customs charges accrual.

Ukrainian Harmonized System (hereinafter UHS) was adopted for customs charges accrual. UHS is based on the Harmonized Commodity Description and Coding System and the Combined Nomenclature of the European Union.

UHS consists of 97 commodity groups. For each group a ten-digit code is assigned. The Law of Ukraine on "Customs Tariff of Ukraine" determines three types of import duties: preferential, privileged and full for each type of goods.

Export duties apply only to certain limited categories of goods and raw materials, in particular to:

- waste and scrap of ferrous and non-ferrous metals,
- some oil seed crops,
- livestock and leather materials.

Excise tax and VAT are paid only based on the value of goods imported into the customs territory of Ukraine.

An entity that imports goods into the customs territory of Ukraine determines the amount of payable import duties depending on the type, base and rates stipulated by the Customs Code of Ukraine (CCU) and the Tax Code of Ukraine (TCU). With the aim to determine, accrue and pay VAT and customs duty the importer is required to define a customs regime for goods' import into the customs territory of Ukraine. Under the CCU there are 14 customs regimes for this purpose.

The self-assessed customs duties are payable by taxpayers directly to the state budget, i.e. to the state treasury single account, before or on the date of submitting the customs declaration; in some cases, customs duties are paid in cash to the payment office of the State Fiscal Service of Ukraine.

## Import/Export Regulations

Movement of goods across the customs border of Ukraine is carried out at the checkpoints across the state border of Ukraine, listed by the Cabinet of Ministers of Ukraine.

The CCU stipulates that movement of goods across the customs border of Ukraine may be carried out by means of:

- air transport,
- water transport,
- automobiles,
- railways,
- pipelines,
- power lines,
- multimodal transport.

In case of import of goods into the customs territory of Ukraine an import applicant or a person authorized by the applicant shall inform the state fiscal authorities about its intention to import the goods in advance.

### *Taxes on goods that are transported by individuals across the customs border of Ukraine*

There is a two-channel system for individuals to cross the customs border of Ukraine:

- green corridor - with no customs duties liabilities,
- red corridor - in all other cases.

Citizens passing through the "green corridor" are exempt from filing a written declaration. Exported goods with the total invoiced value more than EUR 10'000 are subject to filing the written declaration and are subject to customs duty (if applicable).

The following goods are exempt from customs duties:

- goods imported by citizens not more than once during the day across opened for air transport checkpoints on the state border of Ukraine in the accompanied baggage and/or hand baggage, and with the total invoiced value that does not exceed EUR 1'000;
- goods imported by citizens not more than once during the day across other than opened for air transport checkpoints on the state border of Ukraine in the accompanied baggage and/or hand baggage, and with the total invoiced value that does not exceed EUR 500 or total weight of goods does not exceed 50 kg;
- goods (excluding those that are subject to excise duty) with the total invoiced value that does not exceed EUR 150 which are sent to the address of one recipient through international shipments or which are transported to Ukraine not in the accompanied baggage.

Certain products have restrictions on import into the customs territory of Ukraine.



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