

Tax Guide for Ukraine 2021



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Dear Readers,

Our Tax Guide offers brief overview of the tax system in Ukraine for the year 2021 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 significant effort to incorporate BEPS Action Plan into its domestic legislation to harmonize it with the international best practices. Signing the MLI Convention in July 2018 and its further ratification by the Ukrainian Parliament confirms Ukraine's commitment to get involved in the international tax cooperation network. In 2020, Ukraine took the next steps in this direction, in particular, the rules for taxation of controlled foreign companies were introduced, changes were made to taxation of permanent establishments of non-residents in Ukraine, tax amnesty is also expected to follow shortly.

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

A stylized handwritten signature in blue ink, likely belonging to Olena Voznyuk.



TAXATION

Overview of main taxes rates

| Corporate Income Tax (CIT) | Tax rate |
|---|-------------|
| General tax rate | 18% |
| Small enterprises (certain criteria should be 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% |
| Profit of a Controlled foreign company (from 2022) | 18% |
| Lottery | 30% |
| Value Added Tax (VAT) | |
| Standard tax rate (supply of goods / services with the place of supply within the territory of Ukraine) | 20% |
| Supply of certain types of agricultural products | 14% |
| Supply of medicines and medical products | 7% |
| Supply of services in relation with a show of performances, cinematic premieres, films, cultural and artistic events, conducting excursions | 7% |

| | |
|--|---|
| Supply of hotel services | 7% |
| Export of goods and services, certain other services | 0% |
| Personal Income Tax (PIT) | |
| 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 issuers | 9% |
| on shares / corporate rights paid by resident issuers (non-payers of CIT) | 9% |
| Prizes / awards (including winnings in a lottery) payable to residents and non-residents | 18% |
| Profit of a Controlled foreign company (from 2022) | 18%, 9% |
| Real estate transactions – individuals | |
| Sale of house, apartment, or their parts, etc (one item per year) if owned by a taxpayer for longer than 3 years before disposal | 0% |
| Sale of more than 1 real estate item per year | 5% |
| Sale of real estate objects by non-resident individual | 18% |
| Military fee (MF) | |
| Income subject to Personal Income Tax | 1.5% |
| State Social Insurance Contribution | |
| Employment-related income and remuneration under civil law agreements payable to individuals | 22% |
| For people with disabilities | 8.41% |
| Simplified (unified) tax regime | |
| I group | up to 10% of the minimum amount of cost of living (approx. USD 8 in 2021) |
| II group | up to 20% of minimum salary (approx. USD 42 in 2021) |
| III group | 3% of gross income (for VAT payers) 5% of gross income (for VAT non-payers) |
| IV group | 0.19-6.33% of the normative monetary value of the area of agricultural lands and/or water resources |

BUSINESS TAXATION

Corporate income tax (CIT)

CIT payers – residents

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

- I. legal entities using the simplified tax regime;
- II. organizations financed by the State and local authorities;
- 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 CIT-exempt only if they are included in the State Register of Non-Profit Organizations.

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

CIT payers – non-residents

The list of non-residents that are subject 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);

Non-residents who carry out economic activity on the territory of Ukraine through a permanent establishment. A non-resident shall be registered with the controlling body at the location of its permanent establishment before the beginning of its economic activity through such a PE. A non-resident who commenced its economic activity through its permanent establishment before registration with the controlling body is considered to be tax-evading and the income received by it is considered to be hidden from taxation.

Tax base

Tax base is Net Profit Before Tax (NPBT) as per accounting records according to either Ukrainian accounting standards or International Financial Reporting Standards (IFRS), adjusted for tax differences defined in the Tax Code of Ukraine (TCU) as shown in Table 1.

Table 1

Calculation of CIT base



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

- depreciation of non-current assets;
- provisions for incurred and probable expenses (excluding provision for unused vacations and payroll related payments);
- differences related to financing transactions (thin capitalisation rules);
- transfer pricing adjustments;
- deductibility restriction for certain payments to non-residents;
- transactions with not-for-profit organizations;
- other differences.

Deduction of depreciation expenses associated with non-production fixed assets and non-production intangible assets has been disallowed. Non-production assets are defined as assets which are not used in the taxpayer's business activity. Depreciation is also not accrued at the time of modernization, reconstruction, completion, retrofitting and conservation of fixed assets.

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

Temporarily until December 31, 2030, accelerated tax depreciation for machinery, equipment, vehicles, transmission devices may be applied is subject to certain conditions.

Thin Capitalisation Rule

The "thin capitalization" rule applies if the taxpayer's debt to all non-residents exceeds its equity by 3.5 times.

Interest accrued in accounting for all debt obligations to non-residents may be included in the tax accounting of the reporting period in the amount not exceeding 30% of the amount of the calculated object of taxation of the reporting period, increased by the amount of financial expenses and depreciation according to tax reporting. Interest that has been capitalized as part of the value of non-current assets is taken into account only in the share of depreciation for the relevant period.

If the amount of interest expense on controlled transactions exceeds the level determined in accordance with the "arm's length" principle, the "thin capitalization" rules apply only to the amount of interest that corresponds to the "arm's length" principle.

The "thin capitalization" rule does not apply to financial institutions and companies engaged exclusively in leasing activities, and does not apply to interest accrued on loans from international financial institutions or foreign banks, loans guaranteed by the state.

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 prior tax periods.

CIT return filing

Generally, the reporting period for 2021 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 40 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, and by annually payers - within 60 calendar days after the end of the reporting year.

Tax rate

As of January 1, 2021, the basic CIT rate is 18%. The reduced rates of 0% or 3% apply to qualified insurance activities.

Till December 31, 2021, 0% CIT rate applies to the taxpayers whose annual income does not exceed UAH 3 million, 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 ranges 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 state budget when the payment to non-resident is made.

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 has effective DTT.

Profit from transactions with investment assets

Income originating in Ukraine includes profit from the sale or other alienation of investment assets:

- of a foreign legal entity, if 365 days before the sale the value of such legal entity by 50 or more percent is formed by shares in a Ukrainian legal entity, and the value of a Ukrainian legal entity by 50 or more percent is formed by Ukrainian real estate owned by such Ukrainian legal entity or used on the basis of an operating or financial lease agreement;
- of a Ukrainian legal entity, provided that 365 days before the sale the value of the legal entity was formed by Ukrainian real estate owned by such legal entity or used by it on the basis of an operating or financial lease agreement.

A non-resident - buyer is obliged to withhold an income tax from the alienation of the investment asset at a rate of 15%, declare and pay it to the budget.

Prior to the date of the first payment for the acquired investment asset, such a non-resident must register with a controlling body at the location of the Ukrainian legal entity, shares / corporate rights of which form the value of the investment asset being the subject of such transaction.

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 under general rules.

Taxation of dividends

Dividends received by a local company from another local corporate income taxpayer are not subject to CIT. Dividends received by a local 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 has close personal or economic relations (centre of vital interests) 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 until May 1 of the year following the reporting one and PIT shall be settled by August 1 of the same year.

PIT on salaries

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 state 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 individual's 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 as a percentage of overall payroll amount for the period. USC rate is 22%; for disabled workers the rate is 8.41%. 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 in 2021 to UAH:

from January, 1 till November, 30 – UAH 90 000 (UAH 6 000 x 15); USD 3 199
– from December, 1 till December, 31 – UAH 97 500 (UAH 6 500 x 15); USD 3 466.

Minimum obligatory amount of USC in 2021 per month is UAH:

from January, 1 till November, 30 – UAH 1 320 (UAH 6 000 x 22%);
– from December, 1 till December, 31 – UAH 1 430 (UAH 6 500 x 22%).

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

If an individual entrepreneur receives income other than from business activities within the types of activities chosen by him/her (registered in the unified register), those types of income 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 state budget by the 20th of the month following the reporting quarter.

Individual entrepreneurs under 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 monthly fee amount (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.

Individual entrepreneurs, who are simultaneously being employed by a tax agent, have the right not to pay USC for themselves, provided that the employer has paid USC for them in the amount of not less than the minimum insurance contribution.

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



OTHER TAXES

Environmental tax

Environmental tax is accrued on the amount of actual emissions into the atmosphere from stationary sources, pollutants dumped into water, waste disposal, generation and storage of radioactive waste.

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

The taxpayers shall calculate the tax amount by themselves for each type of pollution (pollutant, waste) and pay it to the state 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 properties 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 2021 is UAH 90 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 until 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.

The amount of 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 until 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 80 000 in 2021) 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

| | I group | II group | III group |
|-----------------------------|---|--|--|
| Maximum annual income | UAH 1,002 million | UAH 5,004 million | UAH 7,002 million |
| Maximum number of employees | 0 | from 0 to 10 | without limits |
| Permitted activities | retail sale of goods on markets; domestic services | services rendered to single tax payers and/or to individuals; production and/or sale of goods; restaurant industry | without limits |
| VAT | does not apply | does not apply | may register as a VAT payer |
| Rates | up to 10% of monthly cost of living (UAH 227 in 2021) | up to 20% of minimum monthly salary (UAH 1 200 in 2021) | 3% of income + VAT or 5% of income (excl. VAT) |
| Payment | 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.

Individual entrepreneurs - single tax payers, who are at the same time in an employment relationship, have the right not to pay USC for themselves, provided that the employer has paid USC for them in the amount of not less than the minimum insurance contribution.

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 unified tax.

Other taxes

Other types of taxes / duties in Ukraine include:

- rent payment (which is charged for mineral resources usage, usage of radio frequency resource, 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).

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



TRANSFER PRICING

Transfer pricing (TP) 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 a specific 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 / is a tax resident of a low tax jurisdiction and Crimea or with special types of legal entities (regardless of relation with the Ukrainian company) (there are two lists effective as of January 1, 2019: 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 several unrelated persons are interposed that do not perform significant functions / assume significant risks;
- between non-resident and its permanent establishments 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 2020:

- shall submit a Report on Controlled Transactions (until October 1, 2021), and
- shall prepare and maintain TP documentation.

The following fines apply for violation of the TP rules:

- 300 subsistence minimums (equivalent to approx. Euro 22 thousand for FY 2020) 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 14 thousand for FY 2020);
- 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 transactions (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 a 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 or sold to a resident from low-tax jurisdiction or substantiate that the cost is at arms' length.

From 01.01.2022 the financial result before tax will be increased by the full amount of the value of goods, including non-current assets (except for assets under the right of use according to lease agreements), works and services purchased from non-residents or sold to non-residents from low-tax jurisdictions, if such transactions do not have a business purpose.

As of January 1, 2021, the list includes 79 countries. Cyprus, Hong Kong, Dominican Republic, Islamic Republic of Iran, Republic of Cuba, Lebanese Republic, Republic of Mauritius, Kingdom of Morocco, Principality of Monaco, United Arab Emirates, Puerto Rico, Republic of Singapore, and some others 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 transactions (provided that the thresholds mentioned above are met, regardless of relationship 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 or sold to non-residents from the List of Special Types of Legal Entities or substantiate that the cost is at arms' length.

From 01.01.2022 the financial result before tax will be increased by the full amount of the value of goods, including non-current assets (except for assets under the right of use under lease agreements), works and services purchased from non-residents or sold to non-residents from the List of Special Types of Legal Entities, if such transactions do not have a business purpose.

As of January 1, 2021 the list includes, inter alia, Australia (GP, LP), Austria (OHG, OEG, KG, KEG, GesnbR, GmbH & Co.KG), the United Kingdom (LP, LLP), Israel (GP, LP), Canada (GP, LP, EPC), Malta (Partnership en commandite, Partnership en nom collectif), Germany (GbR, Stille Gesellschaft, KGaA, KG, OHG, GmbH & Co.KG, AG & Co.KG, UG & Co.KG, GmbH & Co. KGaA, AG & Co. KGaA, GmbH & Co. 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).

Controlled foreign companies

From January 1, 2022, a new concept of "controlled foreign company" will be introduced in the TCU.

A controlled foreign company is any foreign legal entity under the control of a natural person - resident of Ukraine or a legal entity - resident of Ukraine. In some cases, a controlled entity without the status of a legal entity, in particular, partnerships, trusts, funds, may be equated to a controlled foreign company.

A foreign company is recognized as controlled if the controller:

- a) owns a share in a foreign legal entity of more than 50%, or
- b) owns a share in a foreign legal entity in the amount of 25% and more in 2022-2023, in the future - more than 10%, provided that several persons - residents of Ukraine own shares in a foreign legal entity, the total amount of which is 50% and more, or
- c) separately or together with other residents of Ukraine - related parties exercise actual control over a foreign legal entity.

A person **is not recognized** as a controlling person if his possession is realized through direct or indirect possession in another legal entity - a resident of Ukraine, provided that the latter is recognized as a controlling person.

The payer of the income tax of a controlled foreign company is the controlling person.

The taxable base for personal income tax or corporate income tax of the controlling person is the part of the adjusted profit of the controlled foreign company, proportional to the share owned or controlled by such person. The specified part of the profit of the controlled foreign company:

- is included in the total annual taxable income of the controlling person, or
- increases the object of taxation by corporate income tax of the controlling person.

Adjusted income of a controlled foreign company is recognized as the profit of a controlled foreign company before taxation in accordance with its unconsolidated financial statements, in accordance with the accounting standards applied by the controlled foreign company.

Adjusted profit of a controlled foreign company **is not included in the income** if there is an agreement between Ukraine and the jurisdiction of the controlling company on the avoidance of double taxation or on exchange of tax information and:

- a CFC pays income tax at **an effective rate of at least 13%**. It is calculated by dividing the amount of expenses for the payment of corporate income tax by the amount of profit before tax; or
- **the share of passive income** of the CFC is not more than 50%; or
- if such a CFC has a substance.

Also, adjusted income is not included into income of a controlling person if:

- the total aggregate income of all CFCs does not exceed **EUR 2 000 000**; or
- a CFC is a **public company** whose shares are traded on the stock exchange; or
- a CFC is a **charitable organization**.

Tax-free liquidation

The total monthly (annual) taxable income of a payer of a personal income tax does not include income received as a result of liquidation (termination) of a foreign legal entity by a shareholder of a foreign legal entity, provided that:

- a) the liquidation procedure was initiated **not earlier than January 1, 2020**, and completed **not later than December 31, 2021**;
- b) the taxpayer has submitted to the controlling body an application for exemption of such income from taxation, as well as documents containing information about the value of the property received;
- c) a foreign legal entity **was established not later than May 23, 2020**.

Such exemption applies not only to the nominal holder, but also to the ultimate beneficial owner, however, in addition to the information and documents provided, he/she must provide documents confirming receipt of such income from the nominal holder in connection with the liquidation of a foreign legal entity.

It follows from the wording of these provisions that the exemption for 2020-2021 applies only to personal income tax and does not apply to military fee.

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

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 state budget by the 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 1st and the 2nd 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 (14%, 7%) and zero (0%).

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

14% VAT rate applies to supply or import to the customs territory of Ukraine of certain types of agricultural products, including: cattle, milk, wheat, malt, corn, sugar-beet, linseed, rape, sunflower seeds, etc.

7% tax rate applies to:

- supply of medicines and medical equipment and their import into the customs territory of Ukraine;
- supply of services related to demonstration of performances, cinematic premieres, films, cultural and artistic events, conducting excursions;
- supply of hotel services.

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

The 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 customs 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.

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.

VAT refund

Taxpayers are entitled to claim the amount of excessive VAT paid to be refunded from the state 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. VAT returns are submitted to the tax authorities within 20 calendar days following the end of each reporting month.

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

Electronic system of VAT administration

The system provides that the payable VAT amounts are accumulated at the respective 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.

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. It applies to electricity;
- specific (absolute) rate – is fixed amount per unit in kg, litre, cm³, items, etc. It is 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). It 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 prices of industrial products producers.

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 the company's premises which produce such products.

System of electronic administration of fuel was introduced in 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 365 calendar days. This term does not apply to payments in USD for the amount up to USD 14 300;
- Residents are prohibited to provide loans (financial aids) in UAH to non-residents or their representative offices in Ukraine;
- Banks are prohibited to make transfers outside of Ukraine upon Client's instructions in UAH for current non-trading transactions;
- Payments in cross-border transactions shall be made through bank accounts only;
- Residents are allowed to make payments in foreign currency to non-residents' accounts outside of Ukraine / to non-residents' accounts opened in Ukraine (except for investment accounts) during a calendar year for the total amount that does not exceed Euro 2 million. This restriction does not apply to the following transactions: payments to non-residents under the loan (refundable financial aid) agreements



CUSTOMS DUTIES

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 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 the 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 Tax 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 duty 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 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 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 delivery or which are transported to Ukraine not in the accompanied baggage.

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

FINANCIAL STATEMENTS

The following companies are required to prepare financial statements and consolidated financial statements under IFRS:

- Public joint stock companies, banks and insurance companies
- Large enterprises
- Other financial institutions which are larger than “small enterprises”
- Enterprises whose shares are listed on stock exchange (except for public joint stock companies, banks and insurance companies)
- Enterprises performing extraction of nationwide raw materials (gas, oil, main ores, coal, etc).

Large enterprises are required to prepare financial statements and maintain accounting records under IFRS, as well as display on their web-site complete package of financial statements and audit report.

Large enterprise shall meet simultaneously two of the following criteria:

- Book value of assets shall exceed Euro 20 million
- Annual turnover shall exceed Euro 40 million
- Average number of employees shall exceed 250 persons

Large enterprises qualify as Public Interest Entities (PIE). PIE and enterprises whose shares are listed on a stock exchange shall display the financial statements before April 30 of the year following the reporting one.

For large enterprises whose shares are not listed and for medium enterprises the final deadline for public disclosure of financial statements is June 1 of the year following the reporting one.

Nexia International is a leading global network of independent accounting and consulting firms.

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