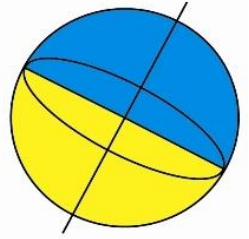


UKRAINE CONSULTING

Accounting • Tax • HR • Office • IT



ACCOUNTING & TAXES IN UKRAINE

Simple Structures

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Ukrainian Accounting

While working in Ukraine, all local subsidiaries of foreign companies, representative offices (regardless with or without commercial activities) and joint ventures are obliged to maintain accounting records based on either National Accounting Standards or IFRS. For this purpose, to be in line with the Ukrainian law requirements, local companies are forced to complete a significant number of different accounting and reporting forms (e.g. an “Act of acceptance” is obligatory for all services; a specific “tax certificate” is required for VAT refunds, etc.). Even if no particular forms are directly required by the Ukrainian law, local companies are often forced to prepare their own forms (e.g. business trip certificate, car travel certificate, etc.) to provide them to the Ukrainian financial authorities and confirm the legitimacy of the relevant transactions for both accounting and tax purposes.

The introduction above may seem to be formal, but it gives a clear picture regarding the Ukrainian approach to accounting. In general, formal requirements prevail over substance (visible economic facts). Thus, a chart of accounts of a company cannot be designed in accordance with the economic needs of a company, but it is subject to governmental regulations. As a result, the number of accounting entries to be done by the local companies is about twice as much as in comparison with those required for entities from Western Europe under comparable circumstances. Correspondingly, the amount of supporting documents to be provided or produced by a local company exceeds Western standards by several times.

There are a few peculiarities of Ukrainian accounting:

- Balance sheet (SOFP), P&L, Statement of Comprehensive Income, Personal income tax declaration and several other obligatory reports/declarations are to be filed with the relevant authorities quarterly. VAT and Pension reports are filed monthly; Profit tax declaration is filed once per year.
- Neither contracts nor invoices are sufficient to confirm relevant income and expense for tax and accounting purposes in Ukraine. In fact, both contracts and invoices are only the basis for authorization of the related bank payments. The main documents for tax and accounting purposes are: the “customs declaration” (for import/export of the goods) and the “act of acceptance” (for other cases);
- Without acts of acceptance, some of the incurred cost cannot be recorded as expense in the period when it actually occurred. For instance, in the balance sheet, Account 23, “Goods in process” accumulates production cost that is later transferred to Account 26, “Finished goods” based on the related acts of acceptance. If the acts are not signed, but work is completed, the expense will remain in Account 23, “Goods in process”.

- To transfer a payment from Ukraine to abroad, a company-payer is required to provide the bank with the relevant contract, invoice and act of acceptance. To pay for imported goods, the customs declarations must be provided as well. Sometimes the bank may require additional documents (and each particular case can be subject to discussion with the bank);
- Given the requirement to report to the Social Security Funds, Statistic and Tax authorities, the number of reports to be filed by a local company may exceed 15 per quarter;
- There are certain principles, applicable to the accounting in Ukraine, which have to be stated in the “*accounting policy*” which is applied by each local company. Ukrainian law assumes that the “*accounting policy*” is the document that establishes the foundations, methods and procedures to be used by a company to prepare its financial and tax reports. Once decided, a company should keep the same accounting principles. The Ukrainian government adopted a list of items to be regulated by the accounting policy. This is another example showing that the governmental regulations prevail over economic needs of the local companies;
- Since 1 January 2012, all companies in Ukraine are allowed to use IFRS for financial reporting. However, the official templates of the financial statements do not correspond to all IFRS principles. Moreover, IFRS statements are not obligatory for small and medium sized entities (SMEs). Therefore, these companies, as a rule, apply local GAAP (NAS). At the same time, corporations, banks, insurance and several other companies must prepare their financial statements in compliance with IFRS.
- Basic Ukrainian accounting principles:
 - ✓ Accounting is based on historical cost which is subject to inflation adjustments;
 - ✓ Accounting directives are aimed at uniformity and continuity across businesses;
 - ✓ Accounting forms are designed by the National Accounting Standards;
 - ✓ The form of a transaction, rather than its substance, dictates its accounting;
 - ✓ Accounting rules are developed by National Accounting Standards.

The Ukrainian accounting system is under pressure by governmental regulations which are a carry-over from the Soviet period when the financial statements were solely used and controlled by governmental organizations.

Taxes as of January 2014

Main Tax Rates in 2014

- **Corporate Profit Tax (CPT)** -18% as of January 1, 2014;
- **Value Added Tax (VAT)** - 20% (Export VAT 0%);
- **NEW as from April 1st 2014**
 - ✓ Imported medical and pharmaceutical products (according to the approved list by the Cabinet of Ministers of Ukraine) will be subject to 7% VAT;
 - ✓ Cereal crops supply and export will be VAT exempt. The rule will be applied till October 1st 2014. The rule is not applicable for first supply and the export by the producer;
 - ✓ 0.5% contribution to the pension fund is applied to the purchase of cash and non-cash foreign currency by businesses and individuals;
- **Personal Income Tax (PIT)** – 15% / 17%;
 - ✓ The 15% PIT rate applies to monthly income up to an amount equal to 10 times the minimum monthly wage (as from December 1, 2013 - UAH 12,180 (equivalent to approx. €1,125)). The excess is subject to a 17% tax rate;
- **NEW as from July 1st 2014**
 - ✓ As from July 1st 2014 passive income of individuals (e.g. interest, dividends, royalties, investment income etc.) will be subject to taxation at increased tax rates of 15%, 17%, 20% and 25% depending on the amount of income:
 - 15% for taxable income which exceeds 204 minimum living wages (currently – UAH 248,472);
 - 20% for taxable income which exceeds 204 minimum living wages but does not exceed 396 minimum living wages (currently – UAH 482,328);
 - 5% for taxable income which exceeds 396 minimum living wages;
 - interests should be taxed if exceed 17 minimum living wage (currently – UAH 20,706);
- **NEW as from August 3rd 2014**
 - ✓ 1.5% temporary military tax (to expire on January 1, 2015), applied to income in the form of salaries, wages, incentive and compensatory payments and any other forms of consideration paid to the payer in connection with employment or under civil law contracts.



- **Unified Social Security Contribution (USSC);**
 - ✓ Employer 36.76% – 49.70% vs. Employee 3.6%;
 - ✓ USSC that paid by an employee is deductible for PIT purposes;
 - ✓ Taxable base for the USSC is capped in Ukraine (till June 30, 2014 the cap is UAH 20,706 (equivalent to app. €1, 915));
- **Withholding Tax** – 15% (depending on the Double Tax Treaty, this could be reduced to 5% - 15% or even to 0%).

Fixed Agriculture Tax¹

Fixed Agricultural Tax is, in fact, corporate profit tax for an agricultural manufacturer. The tax was implemented to stimulate investments in the agricultural sector of the Ukrainian economy. The tax is to be paid for each hectare of agricultural lands and/or water resources that are used for agricultural manufacturing, and depends on the category (type) of the lands and their locations. The taxable base for the calculation is the normative state evaluation of the cost of one hectare. The tax is calculated as a percentage of the cost of one hectare.

- For tilled land, hayfields and pastures (except for those located in mountain areas and woodlands, or owned by agricultural manufacturers who specialize in production (cultivation) and processing crops in greenhouses, or provided to them in usage, including lease contracts) – 0.15%;
- For tilled lands, hayfields and pastures located in mountain areas and woodlands – 0.09%;
- For perennial plants (except for perennial plants grown in mountain areas and woodlands) – 0.09%;
- For perennial plants grown in mountain areas and woodlands – 0.03%;
- For lands containing water resources – 0.45%;
- For tilled lands, hayfields and pastures owned by agricultural manufacturers, who specialize in production (cultivation) and processing crops in greenhouses, or provided to them in usage, including lease contracts) – 1.0%.

No additional taxes, except for some specific taxes (e.g. land tax and tax for environmental pollution) are applied to the fixed agriculture tax-payers.

¹ The Fixed Agriculture Tax is based on proposed legislation and could be subject to change.

Corporate Profit Tax (CPT)

- Profit from business activities of Ukrainian companies, including subsidiaries and representative offices of foreign companies, is subject to CPT, which is levied on the gross, worldwide income of tax residents of Ukraine and on Ukraine-sourced income of non-residents.
- The taxable base for CPT is calculated as an adjusted, gross, worldwide income less deductible expenses, which accounts for tax depreciation allowances. The gross, worldwide income includes any income from the sale of goods, works or services, capital gains, foreign exchange gains, free-of-charge transfers and other taxable receipts in cash, in-kind, or in form of intangible assets accrued within the reporting period. The flat tax rate for 2013 is fixed at 19% and for 2014 at 18%.
- As of 1 January 2013 the requirement of making CPT advance payments was introduced to taxpayers (subject to certain limitations) whose income for the last reporting tax period (year) exceeded UAH 10 million (approx. €944k). The advance payments are to be paid monthly, within 20 calendar days following each month in the amount of not less than 1/12 of the annual CPT that was paid for the last reporting tax period (year). The CPT declaration is submitted within 60 calendar day period following the reporting period²;
- The taxpayers, whose income does not exceed UAH 10 million, must declare CPT once, based on cumulative results, during the 60 calendar days, following the reporting year.
- In general, the new Tax Code (which came into force in 2011) requires that for CPT purposes, recognition of the income and expense is based on accounting principles (standards). This approach minimizes the difference between financial and tax accounting of the same operations and harmonizes the tax treatment of the transaction with its economic substances; however, some differences still exists. For instance:
 - ✓ Business trip daily allowances are deductible up to a pre-defined amount for CPT purposes. In the territory of Ukraine, the maximum of UAH 229 per day (equivalent to €22 per day) is allowed to be deducted. Maximum business trip daily allowances, presumed for the business trips outside Ukraine are limited to UAH 860 per day (equivalent to €85 per day) to be deducted for CPT purposes. Any amounts paid over the maximums, stated above, are not deductible for CPT purposes and are subject to personal income tax for the related employee. Travel (train, airplane, bus) and hotel expenses are tax deductible if properly documented.

² For exceptional cases, stated in the Tax code other reporting periods are available.



- ✓ Refundable financial aid obtained from the founder/shareholder (including a non-resident) will not trigger any tax implications for its recipient within 365 days following the date of receipt. Then, it should be declared as income for CPT purposes. Then this refundable financial aid can be deducted for CPT purposes in the period when it is paid back;
- ✓ When paid or payable to non-resident shareholders that own or manage at least 50% of the borrower's share capital, the interests on a loan are tax deductible for the recipient in the amount that does not exceed 50% of its taxable income for the reporting period, plus any interest income received by the recipient (i.e. in general no income means no deductible expenses);
- Limited deductible operating expenses
 - ✓ Engineering services from foreigners – 5% from costs of the customs value of the imported equipment;
 - ✓ Consulting services from foreigners – 4% of income from operating activities declared for the previous year (excluding VAT).
- Non-deductible operating expenses
 - ✓ Personal receipts;
 - ✓ Receptions, company parties, gifts;
 - ✓ Office rent costs related to a residential property.
- The restriction on tax deductibility applies to fees paid to non-residents in deemed tax havens. Such payments, provided that they are in principle allowed for tax deduction, may only be deducted at 85% of the total amount. Certain payments (for consulting, marketing, advertising services) made to non-residents located in tax havens may not be deducted at all. The list of tax havens is adopted by the Cabinet of Ministers of Ukraine. Currently, it includes, but not limited to, Jersey, the British Virgin Islands, the Cayman Islands, the Bermuda Islands and the Isle of Man;
- Agricultural businesses may qualify for a reduced CPT rate and are subject to a favorable tax regime. Special tax treatment also applies to insurance companies, which are taxable on the rates 0% or 3%;

Value-Added Tax (VAT)

- VAT is levied at the rate of 20% on the value of goods and services, supplied to the customs territory of Ukraine, and on their customs value when goods/services are imported into Ukraine; Export of goods and services is 0%;
- VAT registration is obligatory (including for the PE of a non-resident) if the volume of VAT-able transactions exceeds 300k UAH (approx. €28,800) during the preceding 12 months; As from 1 January 2014 voluntary registration will be also possible and may be done by any local company (prospective VAT payer) without VAT-able operations limits;
- Registration of a non-resident company as a VAT payer is not possible. Not being registered as VAT payer, a non-resident cannot claim a VAT refund on input VAT (if any) sourced from Ukraine. However, the refund is possible if a non-resident operates in Ukraine via its PE (e.g. commercial representative office) registered as VAT payer;
- The excess of the input VAT over VAT liabilities may offset VAT liabilities in subsequent tax periods or may be requested by a VAT payer for refund in cash; In order to claim a VAT refund, the so-called “VAT certificate” issued by a supplier is required;
- The reverse-charge mechanism applies to VAT on the import of services, VAT is paid by an importer in the period when the service is received and may be credited in the following reporting period (month). The reverse-charge mechanism does not apply if a non-resident service provider operates in Ukraine via its PE which is registered as a VAT payer. In this case, the resident entity will be liable to accrue and pay VAT on the service provided by the non-resident;
- VAT on the import of goods is paid prior to or during the customs clearance procedure. The VAT that was paid can be claimed for a refund after the goods are actually received by the importer;
- The “first event” rule applies to input and output VAT. Under the “first event” rule, the liability to pay output VAT as well as the right to credit input VAT arises either at the moment of receiving services/goods (signing of the acts of acceptance) or when paying money for the services/goods, depending on which event happens first;
- The “arm length regulations” are applied to VAT-able transactions which are performed on the territory of Ukraine and to the import/export VAT-able transactions;
- A VAT declaration is to be filed with the local tax authorities by a VAT payer monthly, by the 20th day of the following month. Relevant tax liabilities (if any) are to be paid within 10 days following this reporting deadline.

Unified Social Security Contribution (USSC)

- Remunerations, allowances and other similar payments made to employees (both to Ukrainian and/or foreign nationals) through payroll of an Ukrainian entity or a local representative office are subject to the Unified Social Security Contribution (the “USSC”), which is paid by both the employer and the employee. Only foreign individuals working in a foreign company’s representative office are not subject to the USSC;
- The USSC covers the payments to the:
 - ✓ Pension Fund;
 - ✓ Social Security Fund;
 - ✓ Unemployment Benefit Fund;
- Taxable base for the USSC is capped in Ukraine (till June 30, 2014 the cap is UAH 20,706 (equivalent to app. €1, 915)).
- The USSC due from the employee is withheld at the income source. The employee’s contribution is 3.6% of gross remuneration subject to the cap. USSC due from the employee is payable at the time when remuneration is paid;
- Employer’s contribution ranges from 36.76% - 49.7% of the gross income subject to the cap, depending on the level of the classification of industrial risk applied to an employer. USSC due from the employer is payable at the time when the remuneration is paid;
- The USSC is paid together with the salary, but not later than the 20th calendar day of the month following salary payment;
- The USSC report is to be filed with the Pension Fund by the 20th day of the following month. If an employer applies any social benefits, it should be reported quarterly by the 20th calendar day of the following month.

Personal Income Tax (PIT)

- In Ukraine, individuals are subject to PIT, regardless of whether they are tax residents or not. Individuals who are tax residents of Ukraine are taxed on their worldwide income. Individuals who are tax non-residents are taxed on their Ukrainian-sourced income only;
- Both tax residents and tax non-residents are taxable at the same tax rates - 15% and 17%:
 - ✓ The 15% rate applies to monthly income up to an amount equal to 10 minimum monthly wages (as from December 1, 2013 - UAH 12,180 (approx. €1,125)).
 - ✓ The 17% rate is applicable to monthly income in excess of the amount equal to 10 minimum monthly wages.
 - ✓ As from July 1st 2014, passive income of individuals (e.g. interest, dividends, royalties, investment income etc.) will be subject to taxation at increased tax rates of 15%, 17%, 20% and 25% depending on the amount of income.
- If the remuneration to an individual (either tax resident or non-resident) is paid through the payroll of an Ukrainian entity, the tax is withheld at the payment source and is to be paid out by the employer prior to or simultaneously with the related salary;
- The income from foreign sources or income from Ukrainian sources which was not taxed at source, is subject to taxation in Ukraine using an annual tax return;
- The annual tax return is to be filed with the local tax authorities by May, 1st of the following reporting (calendar) year. The self-assessed tax is to be paid by August, 1st of the following reporting (calendar) year. The tax can be paid in UAH only;
- Effective international treaties of Ukraine (i.e. double taxation treaties) prevail over domestic legislation. Therefore, the lower tax rates can be used when paying certain non-resident's incomes from Ukraine to countries which have relevant international treaties signed with Ukraine;
- Reports on personal income tax are to be filed by an employer on a quarterly basis and should include relevant information on each of the employees.

Simplified Taxation System (ST)

The Simplified Taxation System (further - the ST) is regulated by the Tax Code of Ukraine. In general, the following tax payers are allowed to apply the ST:

Individuals (private entrepreneurs)				
	Group 1	Group 2	Group 3	Group 5
Number of employees	None	No more than 10	No more than 20	From none to unlimited
Tax reporting period	Annually	Annually	Quarterly	Quarterly
Terms of reporting	Within 60 days following reporting period	Within 40 days following reporting period	Within 40 days following reporting period	Within 40 days following reporting period
Annual turnover limits	150k UAH	1m UAH	3m UAH	20m UAH
ST rates	1-10% of minimum salary	2-20% of minimum salary	VAT payers – 3% of revenue, non VAT payers – 5% of revenue	VAT payers – 5% of revenue, non VAT payers – 7% of revenue
Terms of tax payments	Monthly advance payments by 20 th of each month	Monthly advance payments by 20 th of each month	Within 10 days after the reporting date	Within 10 days after the reporting date
Payer of standard VAT at the 20% rate	N/A	N/A	May apply 3% ST	May apply 5% ST
Kinds of activity	Retail goods, providing household services	Services provided by private entrepreneurs and/or individuals, production and/or sale of goods, restaurant activity	Any kind except those that are excluded from Simplified taxation system (Tax Code clause 291.5)	Any kind except those that are excluded from Simplified taxation system (Tax Code clause 291.5)
Gross expense	Deductible	Deductible	Deductible	Deductible
Cash register	Not used	Not used	Not used	Not used
Taxable Revenue determined by:	Income accounting book	Income accounting book	Non VAT payers - Income accounting book, VAT payers – book of accounting income and costs	Non VAT payers - Income accounting book, VAT payers – book of accounting income and costs

Legal Entities		
	Group 4	Group 6
Number of employees	Limited to 50 employees	Not limited
Taxation period	Quarterly	Quarterly
Terms of reporting	Within 40 days after end of taxation period	Within 40 days after end of taxation period
Annual turnover limits	5m UAH	20m UAH
ST rates	VAT payers – 3% of revenue, non VAT payers – 5% of revenue	VAT payers – 5% of revenue, non VAT payers – 7% of revenue
Terms of tax payments	Within 10 days following the tax reporting deadline	Within 10 days following the tax reporting deadline
Payer of standard VAT at the rate 20%	May apply 3% ST	May apply 5% ST
Activities	Any kind except those that are excluded from the Simplified taxation system (Tax Code clause 291.5)	Any kind except those that are excluded from the Simplified taxation system (Tax Code clause 291.5)
Gross expense	Deductible	Deductible
Cash register	Used	Used
Accounting	Simplified	Simplified

Tax payers who adopt the ST regime must maintain their accounting records in line with the specific procedures adopted for ST tax payers (Order of the Ministry of Finance No. 422 dated 25 June 2003).

Penalties and Fines

There are financial, administrative and criminal liabilities in Ukraine for violations of the accounting and tax procedures required by Ukrainian laws, including but not limited to:

- Violating accounting standards (e.g. absence of supporting documents or improper recording of specific transactions) will incur administrative penalties for the management (i.e. chief accountant and/or director) of a company. Penalties are calculated based on the non-taxable minimum wage (17 UAH) and vary between 136 UAH (8 minimum wages) and 255 UAH (15 minimum wages);
- Non-registration or improper registration with the tax authorities related to the statutory or registration documents of a company will result in fines in the amount of 510 UAH for the first violation and 1,020 UAH for each violation thereafter in the same calendar year;
- Delays in filing the tax declaration with the local tax authorities will result in fines in the amount of 170 UAH for the first violation and 1,020 UAH for each violation thereafter in the same calendar year;
- Fines for understating tax liabilities or overstating VAT refunds are calculated as 25% of the underpayment/overstatement. Further underpayments and overstatements that occur in the next three years (statute of limitations for tax purposes) are subject to fines in the amount of 50% of the underpayment / overstatement;
- Overdue tax payments are subject to:
 - ✓ Fines in the amount of 10% of the unpaid amount for a delay of up to 30 days;
 - ✓ Fines in the amount of 20% of the unpaid amount for the delay of up to 30 or more days.
 - ✓ In addition, penalties in the amount of 120% of the National Bank of Ukraine's (NBU) discount rate 7.0% (since June 10, 2013) may be applied for each day of delay;
- Filing an amended tax return due to a self-identified error which results in an increased tax liability is subject to a fine in the amount of 3% of the unpaid liability. If the self-identified error is corrected by amending the tax return for a current reporting period, the fines are 5% of the unpaid liability;

- Financial sanctions shall be applied at the rates specified by law which are effective on the date of the decision of the tax authorities regarding the financial sanctions;
- The following criminal responsibilities are presumed for intentional tax evasion in 2013:
 - ✓ Fine in amount of 17k UAH – 34k UAH or suspension of certain business activities or other restrictions for a term of up to 3 years if the tax underpayments exceed 573,500 UAH;
 - ✓ Fine in amount of 34k UAH – 51k UAH and suspension of certain business activities or other restrictions for a term of up to 3 years if the tax underpayments exceed 1,720,500 UAH;
 - ✓ Fine in amount of 255k UAH – 425k UAH and suspension of certain business activities or other restrictions for a term of up to 3 years and property confiscation if the tax underpayments exceed 2,865,500 UAH.
- Criminal responsibilities mentioned above will not be applied if a taxpayer voluntary settles underpayments and relevant fines and penalties before related court proceedings are initiated.



Cash Payments

- Payments in cash (salary, compensations, etc.) require special supporting documentation (cash receipts, cash disbursement vouchers, etc.) and must be recorded in a standardized cashbook. To compensate any expenses incurred by an employee for a company's business, a so-called "advance report", using a standardized forms, must be completed;
- To keep cash in office (petty cash), a company has to set a "cash limit". For this purpose, a company has to use a specific algorithm required by the National Bank of Ukraine. The "cash limit", in general, depends on the average number of cash transactions per month and on the nature of the company's business. In that case of a start-up business, the "cash limit" is set based on the presumed number of cash transactions and may be revised after three months based on actual number of the cash transactions;
- Cash exceeding the "cash limit" that is withdrawn by a company from the bank for specific payments (e.g. advance for business trips) has to be returned to the bank if not paid to a recipient within 3 days;
- Any excess cash, if identified by the tax authorities in a company's office, will result in significant fines for the company, namely in the amount that is:
 - ✓ Double the amount of excess cash for each day of existence;
 - ✓ Quintuple the amount of excess cash for not accounting or untimely accounting of the cash;
 - ✓ Paid if a company has tax underpayments on the date of the cash payment(s); a company does not have supporting documents; the company pays cash for a purpose which is different from the purpose declared to the bank;
- If a company does not set the "cash limit", it should be limited to 170 UAH (equivalent €17);
- The maximum amount of cash transactions between two companies is 10k UAH (equivalent €1,000) per day.

Tax Issues

Tax Audits

There are different types of tax audits in Ukraine, such as desk audits, documentary audits (scheduled and unscheduled; field and non-field), and ad hoc audits. During the desk audit, only the data stated in taxpayer's tax returns is inspected;

- While a scheduled audit is conducted according to the approved schedule of audits, an unscheduled audit may be held at any time in case at least one of the circumstances prescribed in the Tax Code occurs. Field audits are carried out at the premises of the taxpayer. Ad hoc audits take place according to the procedure set out in the Tax Code and other relevant laws of Ukraine;
- The duration of a scheduled field documentary audit ranges from 30 (large taxpayers) to 10 (small taxpayers) business days, subject to a maximum prolongation of 15 and 5 business days respectively;
- The duration of an unscheduled field or documentary audit ranges may be 15 business day (large taxpayers), 5 business days (small taxpayers) or 3 business days (for individuals – entrepreneurs who have employees, subject to certain limitations), subject to a maximum prolongation of 10, 5 and 2 business days respectively;
- The duration of an ad hoc audit may not exceed 10 business days and the audit may be prolonged for 5 business days.

Loss Carry Forward

- In Ukraine, tax losses may be carried forward for an indefinite period, but may not be carried backwards. However, once in a while the parliament adopts restrictions on the amount of tax losses allowed for tax deduction in a particular tax period.
- A new set of tax amendments have been introduced in respect of tax losses to be carried forward which occurred before 1 January 2012 (tax losses in 2010 incl.). These changes affect companies with income that is equal to or exceeds 1 million UAH in 2011. Thus, the amount of all pre-2012 tax losses is divided into 4 equal parts (25% each) to be utilized from 2012 through 2015 pursuant to a special procedure.

- There are no restrictions in respect of the carry-forward and deductibility of tax losses arising in 2012 or subsequent taxation years.
- The local tax authorities have a rather aggressive approach to the losses declared by a taxpayer in a tax return.

Start-Up Cost

The Ukrainian tax authorities insist on that the operating costs which are deductible for profit tax purposes can only be deducted after the start of business activity which is often interpreted by tax authorities as the “first operating revenues”. This approach is not strictly based on the Tax Code. However, the tax authorities follow this procedure based on internal rules. Some methods of taxation allow avoiding these problems smoothly. Our practice substantiates the possibility to incrementally consider start-up costs in the future periods.

VAT Payer’s Registration

According to current Ukrainian legislation, it is not possible for a company to be registered as a VAT payer prior to commencement of the business activities in Ukraine.

Quite often, a company having a lot of expense during the preparatory stage (e.g. construction activity) needs such registration before starting business activities to deduct / refund paid incoming VAT. Voluntary VAT registration is possible, but after at least one VAT-able transaction.

VAT Refund Claims

- Under Ukrainian VAT law, if the input VAT paid for goods and services is higher than the VAT liabilities for a reporting period, a taxpayer is allowed to claim a refund of the difference. As a rule, local tax authorities are reluctant to refund in cash. But the practice has started to improve after implementation of a “fine” to the authorities for the failure to refund, (i.e. 120% of the discount rate set by the National Bank of Ukraine for each day of delay);
- Additionally, the procedures for an automated VAT refund were introduced (based on the findings of a desk tax audit), provided that the tax payers meet the criteria envisaged by the Tax Code for this purpose;
- A part of refundable VAT amount may be used to off-set future tax liabilities upon request by the taxpayer.

Foreign Exchange Control

- Ukraine has strict and somewhat administratively burdensome currency control rules. Recently, attempts have been made to lift excessive state regulation in this area. For instance, settlements between residents and non-residents of Ukraine in trade transactions are now allowed in both foreign and local currencies (UAH);
- However, there is still a broad range of administrative instruments which are called upon to govern the Ukrainian currency market. On 16 November 2012, the NBU adopted several regulations which obliged companies to sell foreign currency earnings and decreased the terms of payment under cross-border transactions by establishing the following rules:
 - ✓ Settlement under export/import of goods, works or services contracts must be made within a period not exceeding 90 calendar days. Otherwise a penalty for each day of delay will apply;
 - ✓ 50% of foreign currency proceeds received by residents under cross-border agreements must be sold on the Ukrainian inter-bank foreign exchange market. The foreign currency must be sold not later than the next business day after the related proceeds have been credited to the bank account;
 - ✓ Any payment in foreign currency in an amount equal to or exceeding the equivalent of 150k UAH per month (approximately €15k) received by individuals (both residents and non-residents) must be sold on the Ukrainian inter-bank foreign exchange market not later than the next business day after the related payment has been credited to the individual's bank account.



Banks and transactions of foreign currencies

- For advance payments to non-Ukrainian entities, the following documents are to be provided to a bank:
 - ✓ A contract, signed and stamped by both parties;
 - ✓ Invoice, if the contract implicates one;
 - ✓ Translation of the contract verified by a notary (to avoid verification, a contract could be in two languages). Applicable to exports of goods and services as well.
- In case of payment after delivery of the service/goods, the act of acceptance or customs declaration should be accessible as well;
- Pursuant to effective currency regulations, if a local company intends to pay its foreign counterpart for services or intellectual property rights in excess of €100k (or its equivalent in another currency); such Ukrainian entity must obtain a price evaluation statement from the State Information and Analytical Centre for Monitoring of External Commodity Markets. Otherwise, the bank will disallow the transfer.



Personnel Administration & Documentation as Part of Payroll Accounting

- The main legislative act regulating employment relations in Ukraine is the Labour Code of Ukraine (“Labour Code”). The Labour Code is inherited from the Soviet era and has not undergone any major revisions since its adoption in 1971. Consequently, it appears that it does not meet the demands of the market economy. A new Labour Code has been drafted and is now under the parliament’s consideration;
- The Labour Code applies to all companies, institutions, and organizations in Ukraine, irrespective of their legal form, type, or area of activity, and to individual entrepreneurs who hire employees. Employment of foreign nationals in Ukraine is generally subject to the Ukrainian labour and immigration laws, unless otherwise provided in the effective international treaties which Ukraine is a part of;
- Employment can be formalized through a labour agreement or an employment contract, whether in written form (obligatory for an employment contract, or in certain other instances) or verbally. Employment can also be formalized with a standard “order”, signed by a company’s director regardless when an employee is hired or fired.
- Ukrainian labour legislation requires that a labour book is kept for each employee working for more than five days with the company. This is a basic document containing records on the employee’s employment history.
- Vacation allowances are calculated separately based on the average salary during the previous twelve months. Each employee must be granted vacation of 24 calendar days. The main part of the annual vacation should be not less than 14 days. Unused vacation days can be carried forward; however, with certain limitations.



Ukraine, January 2014

This publication aims to give a short and, at times, simplified overview of specific rules and regulations in Ukraine. It does not constitute any legal advice with respect to any matter or set of facts and may not be relied upon for such purposes. Readers are advised to seek additional professional advice before entering into any transaction, making any determination or taking any action related to matters discussed herein. Duplication or other disposition and use of contents of this publication are permitted only with prior consent of the authors.

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