

NEWSLETTER

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AGRICULTURE

Clarification of special VAT regime taxation

On 11 February 2016, the State Fiscal Service of Ukraine published its letter No. 4698/7/99-99-19-03-02-17 “On refusal to apply the special VAT regime”.

Due to a number of enquiries in relation to voluntary refusal of agricultural entities to apply the special VAT regime, the State Fiscal Service of Ukraine clarified that the agricultural entity is entitled, but not obliged to choose whether to apply the special VAT regime. Thus, transfer of the agricultural entity from the special to general VAT regime is carried out on the basis of its voluntary decision.

Following the date of its voluntary refusal to apply the special VAT regime and exclusion from the respective register of entities under special VAT regime, such entity should submit its tax declaration to the State Fiscal Service of Ukraine (with a mark “0110”).

ANTITRUST LAW

Updated recommendations on calculation of fines for violation of competition law

On 16 February 2016, the Antimonopoly Committee of Ukraine (the AMCU) published the restated official version of the Recommendations on approaches for calculation of fines for competition law infringements, provisions of which will be later taken as a basis for significant legislative changes aimed at detailed regulation of calculation of fines.

The updated version of the Recommendations includes proposals made by lawyers and economic experts during last six months following adoption of the initial version of the Recommendations.

New provisions include, *inter alia*, the following:

1. New mechanism on determining fines for violations of fair competition and concerted actions;
2. Establishment of the upper-limit amount of fines, which might be imposed by the territorial departments of the AMCU;
3. Clarification of the mechanism of calculation of fines for economic concentration (M&A transactions) without obtaining the AMCU’s approval. Thus, the amount of respective fines for repeated infringement of competition law was doubled;
4. The basic principles of decision-making procedure by the AMCU under the Recommendations (i.e., the principles of proportionality, reasonableness and non-discrimination towards commercial entities) remained in place. Thus, despite being broadly interpreted, such definition obliges the AMCU not to

apply the formalistic approach in its decision-making process, as it often used to be done;

5. Separation of all infringements into several groups depending on the level of their seriousness with fixed limits of liability was broadened. Thus, as each group has its own 'percentage limits', it is possible to see the upper limit of a fine in each case. For the most serious infringements, such as abuse of a monopoly position, the base amount of fine is 45% from the proceeds acquired as the result of infringement;
6. The list of mitigating and aggravating circumstances, which will respectively lower or increase liability during decision-making of the AMCU, was specified in more detail. The mentioned novelties, though not new for the law generally, for the first time allow commercial entities to refer to certain materials of the case and will encourage them to cooperate with the AMCU.

In light of the above, the next awaited step would be parliamentary adoption of the draft law, prepared by the AMCU, which regulates such mechanism of calculation of fines for breach of competition law.

AMCU sanctioned a butter manufacturer for provision of misleading information

Pursuant to the decision of the Antimonopoly Committee of Ukraine dated 16 February 2016, a fine in the amount of UAH 790,311 (approx. USD 29,270) was imposed on «Starokonstantynivska Milk Factory» for breach of economic competition legislation due to provision of misleading information in relation to classification of butter as sweet cream.

The Antimonopoly Committee of Ukraine noted that due to addition of vegetable fat during manufacturing of butter, the final product was cheaper and belonged to different type of non-milk products, which led to unlawful advantages in economic competition and resulted in illegal profits from distribution of the product.

The entity was distributing sweet cream butter, which contained vegetable fat. Thus, throughout 2012-2014 several state authorities on standardization, metrology and certification conducted their inspections of "Starokonstantynivska Milk Factory" and revealed that vegetable fat was used for production of sweet cream butter.

Such actions of the entity were misleading towards the customers as for a number of years vegetable fat was added to the final product, while it was distributed as sweet cream butter.

DOING BUSINESS

Verkhovna Rada ratified several important loan agreements

On 3 February 2016, the Verkhovna Rada of Ukraine adopted a number of laws ratifying several loan agreements.

Thus, the agreement with the European Investment Bank, pursuant to which Ukraine will get EUR 400 million for development of municipal infrastructure, in particular for projects on centralized heating, centralized and decentralized water supply, drainage, energy efficiency of administrative buildings, exterior lighting settlements and household waste management. It is expected that the European Investment Bank will provide half of the investment programme value, while the remaining half will be covered through attraction of financing from other international financial institutions, investment grants and own funds of final beneficiaries.

In addition, the Parliament also ratified the intergovernmental Ukrainian-Polish agreement on provision of a loan to Ukraine in the amount of EUR 100 million. The funds will be used for financing road infrastructure projects and installation of checkpoints on the Ukrainian-Polish border and implementation of other projects agreed between Ukraine and Poland.

Also, the agreement on provision of approximately USD 300 million to Ukraine from the government of Japan was ratified. It is planned that the funds will be spent on economic reforms in Ukraine.

Subtle liberalization of currency restrictions

On 3 March 2016 the National Bank of Ukraine (the NBU) published its Resolution No. 140 «On stabilization of credit and currency control markets of Ukraine». It was expected that this Resolution would cancel at least part of currency restrictions imposed by the NBU, which are very burdensome for business operation in Ukraine. However, unfortunately, no significant relief took place.

The most important change was increase in the upper limit of cash, which might be issued from the current accounts in foreign currency and bank metals from UAH 20 000 (approx. USD 740) to UAH 50 000 (approx. USD 1,850) per one day, and in national currency from UAH 300 000 (approx. USD 11,110) to UAH 500 000 (approx. USD 18,520) per one day.

In addition, the amount of sale of cash in foreign currency to one person in a bank office during one business day was increased from UAH 3 000 (approx. USD 110) to UAH 6 000 (approx. USD 220). This initiative aims at combating shadow currency market.

The important mandatory requirements in relation to sale of 75% of the foreign currency proceeds received by legal entities from abroad, settlements under export and import of goods transactions within 90 days, prohibition of early repayment of loans in foreign currency under loan agreements with non-residents remain in force.

The NBU also decided to leave the discount rate unchanged (22%). This might be viewed as the effort of the NBU to further decrease negative effects of the internal processes and instability of the world economy on the Ukrainian economy.

Simplification of currency transaction check

On 3 December 2016, the National Bank of Ukraine published its letter No. 25-0005/8349, which amended the terms of banking check of information on financial transactions for purchase of foreign currency for the purpose of transfer abroad.

Overall, the position of the National Bank of Ukraine remained unchanged. The banks shall conduct financial monitoring in the first place and track suspicious transactions.

The changes relate to the requirements for analysis of financial transactions. Thus, such requirements will not be applied to financial transactions that are concluded:

- for performance of agreements executed by the residents with international corporations listed in ForbesGlobal 2000;
- for the purposes of settlement between business entities of Ukraine and international business entities within the framework of international agreements of Ukraine;
- for payment of obligations in the amount that does not exceed the equivalent of UAH 150,000 (approx. USD 5,500) per one transaction.

LABOUR LAW

Fines for breach of labour law

On 3 February 2016, the Cabinet of Ministers of Ukraine amended the Procedure for imposition of fines for breach of labour legislation and employment of citizens, approved by the Resolution of the Cabinet of Ministers of Ukraine No. 509 dated 17 July 2013.

Thus, the amendments to the Procedure provide that fines can only be imposed on the following basis of:

- the ruling of a court on registration of labour relations with the employee who has been performing work without execution of a labour agreement with specification of the period of work or doing part-time work while the actual work was performed full-time as established within the entity, institution, organization
- the act by the State Inspection of Ukraine in Labour Matters on breach of labour legislation and employment of citizens issued following inspection of the employer.

Also, the Resolution specifies that failure to voluntarily pay fines are subject to enforcement:

- by regional employment centres through courts on the basis of case materials submitted by the territorial authorities of the State Inspection of Ukraine in

Labour Matters (in relation to fines specified in paragraphs two, five and six of Article 53 of the Law of Ukraine «On employment of citizens»);

- by the territorial authorities of the State Inspection of Ukraine in Labour Matters through courts (in relation to fines specified in paragraphs three, four and seven of Article 53 of the Law of Ukraine «On employment of citizens»);
- by the authorities of the State Enforcement Service (in relation to fines specified in paragraph two of Article 265 of the Labour Code of Ukraine).

RENEWABLE ENERGY

Procedure on feed-in tariff premium approved

On 26 February 2016, the Procedure on determining the level of use of Ukrainian-made equipment on electricity objects that produce electricity from alternative sources of energy and establishment of the relevant premium to feed-in tariffs became effective.

We note that premium to the feed-in tariff (throughout its term of validity) is applied in case of use of equipment of Ukrainian origin at the electricity objects that produce electricity from alternative sources of energy, if such objects are commissioned between 1 July 2015 and 31 December 2024. However, such premium to the feed-in tariff is not applicable to electricity objects of private households.

The certificate issued by the authorized body, which certifies compliance of the constructed object with the project documentation and its operational readiness, or the registered declaration on operational readiness of the constructed object serves as confirmation of the fact and date of commission.

If equipment of Ukrainian origin is used at least on the level of 30%, the premium to the feed-in tariff will be 5%. If equipment of Ukrainian origin is used at least on the level of 50%, the premium to the feed-in tariff will be 10%.

The Procedure stipulates that Ukrainian origin of equipment shall be confirmed by the certificate on Ukrainian origin issued by the Ukrainian Chamber of Commerce.

In order to apply premium to the feed-in tariff on the basis of the requirement of Ukrainian origin, the applicant shall submit its application along with the following documents to the National Commission for State Energy and Public Utilities Regulation:

- explanatory note on any equipment of Ukrainian origin along with the relevant origin certificates and documents that certify ownership (possession) to such equipment;
- calculation of the level of use of Ukrainian origin equipment;
- information on contractors (general contractors), which performed well drilling works at the electricity objects that produce electricity from geothermal energy.

The application and supporting documents are considered within 30 business days.
[Further information on feed-in tariff reform](#)

TAX LAW

Establishment of open registers on reimbursement of VAT

On 22 February 2016, the Cabinet of Ministers of Ukraine adopted the Resolution No. 68, which approved the procedure and application forms for reimbursement of VAT. We note that establishment of two open registers with the same chronological system of VAT reimbursement was provided under the relevant amendments to the Tax Code of Ukraine at the end of 2015.

Applications on VAT reimbursement shall be submitted to the registers by the companies, which are not subject to insolvency procedures under the Law of Ukraine “On restoring debtor’s solvency or declaring it bankrupt”, and also by those legal entities and individual entrepreneurs, which are listed in the Unified State Register of Legal Entities and Individual Entrepreneurs with their profile containing no data on:

- failure to provide confirmation of provided data;
- failure to establish presence at the registered office location;
- adoption of resolution in relation to separation or termination of a legal entity;
- declaring constitutional documents or changes to constitutional documents of a legal entity as fully or partially null and void;
- termination of state registration of a legal entity or individual entrepreneur.

In particular, the Resolution on reimbursement of VAT includes the following:

- data on the basis of which the registers are formed;
- automatic acceptance of applications to the respective register, which is carried out within one operational day following submission of an application;
- publishing such registers on the official website of the State Fiscal Service of Ukraine;
- reimbursement of VAT in the chronological order in accordance with the priority of submission of applications to each relevant register.

Adoption of the Resolution will ensure online functioning of the open registers on chronological reimbursement of VAT.

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This newsletter is intended to provide a brief overview of current changes to the Ukrainian legislation and should not be viewed as legal advice. For more details or if you would like a specific advice, please, e-mail the named contact persons or use our contact form.

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