

NEWSLETTER

MONTHLY EDITION | UKRAINE

8 FEBRUARY 2017

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DOING BUSINESS

Current exchange regulation rules

Exchange regulations

According to the Resolution No. 410 “On settlement of the situation in the monetary and currency markets of Ukraine” of December 2016, which came into force on 16 December 2016, the National Bank of Ukraine prolonged temporary restrictions on monetary and currency markets.

Thus, the following restrictions shall be in force:

- mandatory sale of foreign currency proceeds received by legal entities at 65%;
- restriction on purchase of cash in foreign currency by individuals in the amount of UAH 12,000 per day;

- prohibition to transfer foreign currency abroad equivalent to over UAH 15,000 per day and over UAH 150,000 per month;
- prohibition to settle payments with individuals in the amount of UAH 50,000 per day;
- restriction on cash withdrawal in foreign currency from bank accounts equivalent to UAH 250,000 per day;
- restriction on settlement period for export-import transactions up to 120 days;
- prohibition of early loan repayment for non-residents;
- term of UAH reservation for foreign currency purchase on the interbank currency market up to one day;
- restriction on mutual settlement of claims under export contracts.

It should be noted that the National Bank of Ukraine made the Resolution permanent. Thus, the effective period shall not be set for the requirement on mandatory sale of foreign currency proceeds, which will be valid until 15 June 2017, as well as the restrictions set by the Law of Ukraine "On the procedure for settlement of payments in foreign currency".

Regarding the repatriation of dividends, the conditions and restrictions on the amounts remain unchanged. Thus, dividends can be paid only for 2014 and 2015. The maximum amount of dividends that can be refunded to the foreign issuer of corporate rights and shares shall not exceed USD 1,000,000 or 10% of total dividends per calendar month. If the 10% exceed USD 5,000,000, the maximum amount for repatriation of dividends shall not exceed USD 5,000,000 per calendar month.

According to the Decision of the National Bank of Ukraine of 8 December 2016, the discount rate is set at 14%.

Operations related to export of services

The National Bank of Ukraine made the decision to lift administrative restrictions on export of services. Thus, the following changes were introduced to the Instruction On Procedures for Exercising Control over Export and Import Transactions:

- residents engaged in export of services (excluding transport and insurance), intellectual property rights, copyright and associated intellectual property rights shall not comply with the term of payments for these transactions of 120 days;
- exporters shall not translate into Ukrainian the documents, including an invoice, drawn up in English or another foreign language with additional translation into English;
- banks shall use copies of the documents, including an invoice, in electronic form for currency control of export-import operations of residents.

The relevant amendments to the Instruction came into force on 3 January 2017.

Simplification of procedures for drugs registration

On 5 January 2017, the Order of Ministry of Health of Ukraine came into force, approving the procedure for examining drugs registration materials, submitted for state registration (re-registration), and the material on changes to registration materials

during the registration of drugs certificate registered with the competent authorities of the United States, Switzerland, Japan, Australia, Canada, and the European Union member states.

Now an applicant shall submit for inspection to the State Expert Centre of Ministry of Health of Ukraine state enterprise materials for drugs, submitted for state registration, a registration dossier, on the basis of which the drug registration is conducted by the competent authority of aforementioned countries. This shall include data on drugs registration in the countries, including the name of the country of registration, name of the registration authority and the registration date, as confirmed by the applicant with all the changes made after the drugs registration.

In addition, the Ministry of Health of Ukraine shall also inspect:

- materials about methods of the drug quality control;
- samples of drug packaging and labelling in primary and secondary (if any) packages;
- instruction for medical use and a brief description of a drug;
- the document confirming payment of the registration fee;
- a duly certified copy of the document issued by the State Service of Ukraine on drugs and drug control, confirming the compliance of production conditions of the drug, submitted for registration to the GMP applicable in Ukraine, or the manufacturer's written commitment to produce products suitable for drug delivery to Ukraine on the same production facilities used in the production of drugs intended for use in the United states, Switzerland, Japan, Australia, Canada or the European Union member states.

Having received the materials for inspection, the Ministry of Health of Ukraine, if necessary, shall conclude a contract with the applicant and conduct a review of the registration documents, including verification of the drug registration fact according to the web site of the competent authorities, which have registered this drug.

The review term of registration materials shall not exceed 10 days. Re-registration of the medicines shall be conducted 5 years after the registration certificate is issued.

LABOUR LAW

Increased fines for labour law violations

On 6 December 2016, the Parliament of Ukraine adopted the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine", which came into force on 1 January 2017.

The Law includes amendments to Article 265 of the Labour Code of Ukraine, providing liability for violation of labour legislation.

Thus, according to this Law, legal entities and individual entrepreneurs using hired labour shall be liable to the fine of:

- 100 minimum wages (USD 11,500) – in case of preventing a state labour inspector from conducting an audit in order to identify employees working without an employment agreement having been concluded; payroll without payment of the unified social tax (shadow wages);
- 10 minimum wages (USD 1,150) – for each employee in case of non-compliance with minimum state guarantees of labour compensation (e.g., failure to pay for work at the weekend or on holiday, etc.);
- 3 minimum wages (USD 350) – for violating terms of wage payment and other payments stipulated by labour legislation, for more than a month; if wages are not paid in full; for preventing inspectors from conducting inspections for compliance with labour legislation and for hindering the conduction of such audit;
- 30 minimum wages (USD 3,500) – in case of an employee being admitted to work without an employment agreement (contract) having been concluded; for hiring an employee as a part-time worker when he/she actually works full-time, according to hours, established by the company; and paying wages (remuneration) without calculation and payment of the unified social tax and other taxes;
- 10 minimum wages (USD 1,150) – for each employee in the event of non-compliance with statutory guarantees and benefits to employees who are involved in the execution of duties under the laws of Ukraine On Military Duty and Military Service, On Alternative (Non-Military) Service, On Mobilization Preparation and Mobilization;
- 1 minimum wage (USD 115) – for other violations of labour legislation, in addition to the violations mentioned above. This type of fine is also imposed in case of non-notification or late notification on hiring of an employee.

The Labour Inspection, local governments and the State Fiscal Service of Ukraine (in relation to taxes) are authorized to conduct audits for compliance with labour legislation and impose financial penalties on employers.

TAX LAW

Changes to tax legislation

On 1 January 2017, the Law of Ukraine “On Amending the Tax Code of Ukraine and Certain Legislative Acts of Ukraine with Regard to Ensuring the Balance of Budgetary Revenues in 2017” and the Law of Ukraine “On Amending the Tax Code of Ukraine to Improve Investment Climate in Ukraine” came into force.

Income Tax

In 2017, standard income tax in the amount of 18% remained unchanged. The main change regarding income tax is the establishment of tax holidays until 31 December

2021. The tax holidays stipulate zero rate of income tax. These conditions are applied to businesses with a turnover of not more than UAH 3,000,000 per year employing workers with wages not less than two minimum wages.

The tax holidays can be applied to both new businesses, registered after 1 January 2017, and existing businesses with the average number of employees during the past three consecutive years ranging from 5 to 20 persons. However, if at least one of these criteria is not met, the company will pay income tax at the basic rate.

Value Added Tax

From 1 January 2017 the list of transactions, that are exempt from VAT, has been changed. Thus, according to clause 196.1.5 of the Tax Code, transactions not subject to VAT include transfer of ownership on a financial leasing item to the lessor (new creditor) from the lessor (primary creditor) preserving the rights and responsibilities of the parties under financial leasing contract should the lessor (primary creditor) during the transfer to the lessee of such a financial lease item accrue and reflect tax liabilities in the tax reports for the relevant reporting (tax) period.

In addition, according to clause 196.1.5 of the Tax Code, transactions not subject to VAT are those involving deviation from the right to claim, transfer of debt, trade of liabilities (claims) for cash and securities.

Since 1 January 2017, Article 209 of the Tax Code, which provided for a special regime of VAT refunds for agricultural enterprises, has become ineffective. Instead of the special regime for agricultural enterprises, the budget provides for a system of subsidy payments for the period from 2017 to 2021.

The amendments to the Tax Code provide envisage abolition of two registers for VAT refunds and introduction of the single public registry subordinate to the Ministry of Finance from 1 January 2017.

Single Tax

For single taxpayers from Group I, II and III, the tax rates remain unchanged. At the same time, the single tax basis has been changed. The single tax rates for taxpayers from Group I are set in per cent (fixed rates) to the subsistence minimum as of 1 January of the reporting year, for taxpayers from Group II in per cent (fixed rates) to the minimum wage as of 1 January of the reporting year and for taxpayers from Group III in per cent to revenue. Taking into account that as of 1 January 2017 the subsistence minimum is set at UAH 1600, and the minimum wage is set at UAH 3200, the maximum single tax rate for taxpayers from Group I shall be UAH 160 per month, and for taxpayers from group II – UAH 640.

The single tax rate for taxpayers from Group IV has been changed. The tax rate per one hectare of agricultural land or land fund is now as follows:

- for arable lands, hayfields and pastures (except for arable lands, hayfields and pastures located in mountain areas and woodlands, as well as for protected agricultural lands) – 0.95;

- for arable lands, hayfields and pastures located in mountain areas and woodlands – 0.57;
- for perennial plantations (except for perennial plantations located in mountain areas and woodlands) – 0.57;
- perennial plantations located in mountain areas and woodlands – 0.19;
- for water fund lands – 2.43;
- for protected agricultural lands – 6.33.

In addition, it should be noted that according to the amendments to the Law of Ukraine "On Collection and Accounting of the Unified Social Tax", which came into force on 1 January 2017, private entrepreneurs shall pay the unified social tax regardless of their income.

Property Tax

As of 2016, the tax base for residential immovable property in the ownership of individuals decreases for apartments (irrespective of their number) to 60 square meters, and for residential houses (irrespective of their number) to 120 square meters. However, starting from 2017, clause 266.4.3 of the Tax Code of Ukraine introduces certain restrictions, such as: incentives to reduce the tax base shall not apply to real estate, if the area of such items exceeds five times the size of the tax-free area (60 sq. m), and if the items of immovable property are used by their owners to obtain income (rented, leased, loaned, used for business activity).

The tax rate for residential and non-residential immovable property owned by individuals and legal entities may not exceed 1.5% of the minimum wage (currently UAH 3,200) established on 1 January of the reporting year for 1 square meter of the tax base. The decision to establish the tax rate is adopted by local authorities. Thus, in 2017 the maximum tax rate for 1 square meter shall be UAH 48.

Rent Payment

The amendments to the Tax Code also addressed rent payments. Therefore, rent payment rates for use of radiofrequency resource of Ukraine have increased.

In addition, the rates of rent payments for special use of forest resources have risen. The rent payment for special use of forest resources shall be paid by forest users in equal quarterly instalments of the amount of rent payment specified in the special permits.

The rent rates for use of subsoil for purposes not related to mining and for transporting one ton of ammonia per 100 km of corresponding transportation enroute distance have increased.

However, the rent rate for use of subsoil for extraction of oil has decreased.

Excise Duty

The excise duty rates for most excise goods, including tobacco products and alcohol drinks, have increased. Thus, since 1 January 2017 the amount of excise duty on beer has increased by 12% up to UAH 2.78 per litre, on liqueurs and spirits – by 20%, up to UAH 126.96 per litre of 100% alcohol. The excise duty on cigarettes has increased by

40% – up to UAH 445.56 per one thousand cigarettes. The excise duty on strong wines and vermouth has increased by 12% up to UAH 8.02 per litre, and on sparkling wines by 12%, up to UAH 11.65 per litre.

Transfer Pricing

The main change of transfer pricing rules in 2017 is an increase in the recognition threshold for controlled transactions. Since 1 January 2017, this figure has increased to UAH 150,000,000, and the threshold for the volume of business transactions, conducted with each counterparty, has increased from UAH 5,000,000 to UAH 10,000,000.

The list of counterparties, transactions with which are subject to control, has also widened. Thus, in addition to related persons registered in low-tax jurisdictions, transactions with companies, legal structure of which allows to minimize corporate tax, shall be subject to control.

The deadline for reporting on controlled transactions in 2017 has been extended to October.

Currency Purchase Fee

Since 1 January 2017, the contribution to the Pension Fund in the amount of 2% paid in transactions on foreign currency purchase has been cancelled for individuals.

Contact Persons:

Igor Dykunskyy, LL.M.,
Partner
igor.dykunskyy@DLF.ua

Dmitriy Sykaliuk,
Associate
dmitriy.sykaluk@DLF.ua

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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DLF attorneys-at-law

Torus Business Centre | 17d Hlybochytska Street | 04050 Kyiv, Ukraine | www.DLF.ua | info@DLF.ua
T +380 44 384 24 54 | F +380 44 384 24 55