

NEWSLETTER

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DOING BUSINESS

Procedure for issuing individual currency licenses simplified

The National Bank of Ukraine has simplified the procedure of obtaining electronic licenses for natural persons. The respective changes were introduced by Resolution of the National Bank of Ukraine No. 45 dated back to 26 April 2018. Now, the list of documents proving the sufficiency of income necessary to carry out transactions based on an individual license, required to obtain an individual electronic license, has been expanded, and the sufficiency of income may be verified both on the basis of private ownership of the natural person applying for a license, and on the basis of the joint ownership of the spouses.

The documents proving the source of income sufficient for the transaction used to include property status and income declarations bearing a mark of the controlling body, certificates issued by the controlling bodies stating the income received by the natural person and taxes paid by the natural person as well as information from the

official website of the National Agency on Corruption Prevention taken from property status and income declarations.

Now, the documents on the basis of which the authorized bank must verify the source of the natural person's funds, including the funds that are the joint property of the spouses, include contracts for the sale of movable and / or immovable property and other documents proving the source of the natural person's funds (in addition to the above mentioned documents).

According to the recent changes, the source of the natural person's funds, including the funds considered to be the joint property of the spouses, may be: wages and/or other payments and remuneration paid (provided) in connection with labour relations, income from business / independent professional activities, income from sales of movable and / or immovable property, investment income, inherited funds, and other payments in accordance with the terms of civil legal transactions (contracts).

In addition to the documents proving the source of the funds, the person should also submit to the bank an application for the e-license signed by the natural person (the applicant), as well as the originals or copies of the documents proving the purpose of the transfer from Ukraine (a contract, an invoice and / or other documents used in the international practice). The originals of the required documents may be submitted to the authorized bank in the paper and / or electronic form. The application for the e-license to be submitted to the National Bank in electronic form must be signed by the natural person (applicant) using an electronic digital signature equivalent to his / her handwritten signature in accordance with the Law of Ukraine On the Electronic Digital Signature.

The changes also apply to individual entrepreneurs. If electronic individual licenses used to be issued solely to natural persons, now individual entrepreneurs may also submit their applications for an individual e-license to the bank. Now, the rules of issuing e-licenses also apply to foreign currency transactions of natural persons irrespective of their being granted the entrepreneur's status or not, provided that these transactions are carried out by these natural persons for their own needs and are not related to their business activities.

The natural persons may use individual electronic licenses to carry out transactions such as investing abroad (purchasing real property or corporate rights abroad), making a payment under a life insurance contract to a foreign insurance company, as well as transferring funds on his / her own account in a foreign state. In order to obtain an electronic individual license for these transactions, a natural person shall submit a specified list of documents to the authorized bank, which in turn shall, having verified the documents, address the National Bank of Ukraine, directly issuing an e-license.

After obtaining the individual e-license, the natural person may, within a calendar year, on the basis of the e-license issued to him / her, carry out foreign exchange transactions for an amount not exceeding a total of USD 50,000 (or the equivalent in another foreign currency).

PRIVATIZATION

Ukraine sets new rules for privatising state-owned and municipal property

On 10 May 2018, the Cabinet of Ministers of Ukraine adopted Regulation No. 358-r approving a list of large state-owned enterprises, scheduled to be privatised in 2018.

Thus, 23 companies were included in the list of large-scale privatisation objects for the year 2018, namely:

1. **Energy industry:** the *Centrenergo* Public Joint-Stock Company, the *Ternopiloblenergo* Open Joint-Stock Company, the *Zaporizhzhiaoblenergo* Public Joint-Stock Company, the *Kharkivoblenergo* Joint-Stock Company, the *Mykolaivoblenergo* Joint-Stock Company, the *Khmelnyskoblenergo* Public Joint-Stock Company, the *Kherson combined heat and power plant* Joint-Stock Company, the *Dniprovsk combined heat and power plant* Joint-Stock Company, the *Kryvyi Rih combined heat and power plant* Public Joint-Stock Company, the *Severodonetsk combined heat and power plant* State Enterprise.
2. **Mining:** the *United Mining and Chemical Company* Public Joint-Stock Company, the *Krasnolymanska Coal Company* State Enterprise.
3. **Engineering:** the *Azovmash* Public Joint-Stock Company, the *Turboatom* Joint-Stock Company, the *Electrotyazhmash* Plant State Enterprise, the *Dniprovsky Electric Locomotive Plant* State Enterprise.
4. **Chemical industry:** the *Sumykhimprom* Public Joint-Stock Company, the *Odesa Port-Side Plant* Public Joint-Stock Company, the *Zaporizhzhia Titanium and Magnesium Combine* Limited Liability Company.
5. **Processing industry:** the *Oriana* Open Joint-Stock Company.
6. **Healthcare, culture and sports:** the *President-Hotel* Private Joint-Stock Company, the *Indar* Private Joint-Stock Company.
7. **Agriculture:** the *Ukragroleasing National Joint-Stock Company* State Public Joint-Stock Company.

It should be noted that on 7 March 2018, the new Law of Ukraine *On Privatisation of State-Owned and Municipal Property* came into force. It provides for many changes in the procedure for sale of state-owned and municipal enterprises and creates transparent privatisation conditions.

The new Law aims at combining all privatisation laws into one and improves the privatisation process. Among other things, a new simplified classification has been adopted: facilities of large-scale and facilities of small-scale privatisation.

Large-scale privatisation facilities include single property units of state-owned and municipal companies and shares in joint-stock companies where more than 50% of the shares are owned by the state and whose assets, according to the previous year's financial statements, exceed UAH 250 million. The remaining facilities were classified as facilities of small-scale privatisation.

The list of large-scale privatisation facilities that are subject to privatisation is approved by the Cabinet of Ministers of Ukraine on the proposal of the State Property Fund of Ukraine. The list of small-scale privatisation facilities to be privatised, however, shall be approved by the Fund itself.

The new Law provides for the transition to market prices for state-owned facilities by establishing a uniform and clear algorithm for the sale of large-scale privatisation facilities and a uniform procedure for the sale of small-scale privatisation facilities.

The Law also provides that small-scale privatisation facilities shall be sold exclusively through the online auctions. The starting price for facilities of small-scale privatisation shall be set by the auction commission at the book value of the facility (the facility assets) of small-scale privatisation. If the facility offered for sale by auction is not sold, another auction will be held with a 50% lower starting price.

As for the state-owned facilities of large-scale privatisation, the procedure and conditions for their sale are now defined by the Cabinet of Ministers of Ukraine. On the other hand, the procedure and conditions for the sale of municipal property facilities of large-scale privatisation are to be determined by the respective local councils. Preparations for the privatisation and sale of large-scale privatisation facilities are carried out using services of consultants hired on a competitive basis. The starting price for a facility shall be set by the consultant (if such a consultant is hired). If no consultant is selected, the starting price shall be set by the auction commission on the basis of the value determined according to the valuation method approved by the Cabinet of Ministers of Ukraine.

In addition, the law prohibits initiating bankruptcy proceedings against insolvent state-owned companies for which a privatisation decision has been made until the privatisation is complete. Moreover, in order to create conditions for the recovery of companies after privatisation, no bankruptcy proceedings against companies may be initiated within one year after the completion of privatisation on the grounds that arose prior to the completion of privatisation.

In order to ensure the protection of investors' rights, the limitation period for challenging the privatisation of large-scale privatisation facilities was limited to three years. Moreover, the Law provides for the possibility of using best international practices in the field of dispute resolution and applying international law to sale and purchase contracts until 2021. For example, if the buyer wishes to enter into a sale and purchase contract under the laws of England and Wales, the privatisation authority must comply with that request.

Finally, according to the new Law, the country denounced as an "aggressor", the persons subject to sanctions and offshore companies may not participate in the privatisation of Ukrainian companies.

TAX LAW

List of low-tax jurisdictions updated

By Resolution No. 295 dated back to 11 April 2018, the Cabinet of Ministers of Ukraine excluded Bulgaria from the list of the states transactions with the residents of which were deemed to be controlled. The list of the states transactions with the residents of which are subject to control is laid down in Resolution of the Cabinet of Ministers of Ukraine No. 1045 dated back to 27 December 2017 *On approval of the list of states (territories) meeting the criteria set out in subpara. 39.2.1.2 of subpara. 39.2.1 of para. 39.2 of Article 39 of the Tax Code of Ukraine.*

In particular, the list approved by the government includes those countries with which Ukraine has not entered into international treaties containing provisions on the exchange of tax information. Moreover, on 7 March 2018, Resolution of the Cabinet of Ministers of Ukraine No. 108 dated back to 31 January 2018 which provides for excluding Georgia, Estonia, Latvia, Malta and Hungary from that list entered into force.

According to the Tax Code of Ukraine, business transactions of a taxpayer are deemed to be controlled if they may affect the income that is subject to income tax payable by the taxpayer, in particular:

1. business transactions with non-resident related persons;
2. foreign economic transactions for the sale and / or purchase of goods and / or services through non-resident commission agents;
3. business transactions with non-residents, registered in the states (territories) included in the list of states (territories) approved by the Cabinet of Ministers of Ukraine or who are residents of these states;
4. business transactions with non-residents not paying income (corporate) tax, including tax on income received outside of the state of registration of such non-residents, and / or who are not tax residents of the state they are registered in as legal entities. The list of legal forms of such non-residents in the context of the states (territories) is to be approved by the Cabinet of Ministers of Ukraine.

Contact Persons:

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

Dmitriy Sykaluk,
Senior 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

IQ Business Centre | 13-15 Bolsunovska Street | 04050 Kyiv, Ukraine | www.DLF.ua | info@DLF.ua
T +380 44 384 24 54 | F +380 44 384 24 55