

Tax incentives for industrial park members in Ukraine

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On 19 July 2022, the laws "On Amendments to the Tax Code of Ukraine regarding the creation of favourable conditions for the activities of industrial parks in Ukraine" and "On Amendments to Article 287 of the Customs Code of Ukraine regarding the creation of favourable conditions for industrial parks in Ukraine" entered into force.

The mentioned laws define and regulate a number of issues concerning favourable tax treatment of industrial parks activities.

I. Corporate income tax (CIT)

1. For which period is the CIT exemption provided?

Members of industrial parks are entitled to exemption from corporate income tax for a period of 10 years.

2. Income from which activities can be exempted from CIT?

Activities in the following areas, among others, are exempt from corporate income tax:

- processing industry (production of foodstuffs; production of non-alcoholic beverages, mineral water and other bottled waters; textile industry, production of clothing, production of leather, leather goods and other materials; wood processing and manufacturing of wood and cork products, except furniture; production of straw and plant materials for weaving; production of paper and paper products);
- collection, treatment, and disposal of waste;
- material recovery;
- research and development activities.

Exceptions: manufacture of cast iron, steel, and ferroalloys; manufacture of excisable goods (except for production of cars, car bodies, trailers and semi-trailers, motorbikes, vehicles designed for transportation of 10 or more people, vehicles for cargo transportation); disposal of waste cannot be exempted from corporate income tax in Ukraine.

3. How does one apply for the CIT exemption?

A member of an industrial park must submit an application with the supervisory authority at the taxpayer's registration place. The application can be filed in any form but must contain the following:

- a request to use the right to apply for the exemption from corporate income tax;
- reference to Clause 142.4 of the Tax Code of Ukraine under which the exemption can be granted;
- determination of the calendar quarter from which the industrial park member intends to use the exemption.

The period of time (10 years) during which the member will be entitled to the CIT exemption starts from the first month of the calendar quarter specified in the application (unless, of course, the supervisory authority denies the application of the exemption).

4. Under what conditions is the CIT exemption applied?

The CIT exemption is allowed under the following conditions:

- the taxpayer will maintain the status of an industrial park member in Ukraine for at least 10 years;
- during the 10-year period the taxpayer will operate exclusively within the territory and boundaries of the industrial park;
- no dividends or similar payments to corporate rights holders will be accrued or paid during these 10 years;
- the industrial park is included in the Register of Industrial Parks of Ukraine.

Related article: Creation and operation of industrial parks in Ukraine

Irrespective of these conditions, some members of industrial parks will not be entitled to such tax exemptions. In particular, this applies to:

- companies with a share belonging to legal entities being gambling organisers in their authorised capital;
- companies with a share in the authorised capital of legal entities acting as gambling organisers;
- companies with a share belonging to legal entities registered in offshore zones (if such offshore zones are included in the list established by the Cabinet of Ministers of Ukraine) in their authorised capital;
- companies with a share owned by legal entities registered in countries on the FATF list of non-cooperative countries in the field of anti-money laundering in their authorised capital.

5. What are the peculiarities of application of the CIT exemption?

If a member of an industrial park in Ukraine has exercised the right to the exemption from corporate income tax, the amounts of unpaid corporate income tax must be used for the development of its activities within the industrial park. Such funds must be used no later than 31 December of the following calendar year. Otherwise, the member of an industrial park will lose the right to the exemption. In addition, for all other tax periods in which the industrial park member used the exemption but did not utilise the funds which were not paid to the budget, the member must pay corporate income tax on the general basis along with penalties and fines.

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If an industrial park member decides to stop using the corporate income tax exemption on its own initiative or loses its member status, corporate income tax shall be levied on the general basis for the tax period in which the member stopped using the exemption or lost its member status.

Regardless of whether an industrial park member enjoys the income tax exemption, in some cases the CIT exemption is not applicable and corporate income taxation on the general basis is imposed instead. This applies in particular to:

a) cases in which an industrial park member carries out controlled operations, in which:

- the object of taxation is determined at the level of excess of the arm's-length price over the contractual value of the goods, works or services in question;
- the object of taxation is determined at the level of excess of the contractual value over the price determined by the arm's-length principle.

b) cases where an industrial park member is a controlling entity, in which case the object of taxation is the adjusted profit of the controlled foreign company.

II. Value added tax (VAT)

1. Which transactions are exempt from VAT?

Operations on the import of new equipment imported into Ukraine by members of industrial parks solely for their own use are exempt from VAT. The legislator defines new equipment as equipment and its components, manufactured not more than three years prior to importation, and which have not been used before.

Irrespective of compliance with the VAT exemption conditions determined by the law, such exemption does not apply to the following equipment and components:

- originating from a country recognised as an occupier or aggressor state in relation to Ukraine under Ukrainian legislation;
- imported from the territory of an occupier (aggressor) state or temporarily occupied territory of Ukraine determined as such by Ukrainian legislation.

In addition to the equipment condition (new, unused), the terms of its further use in Ukraine are an important criterion for the application of the VAT exemption.

2. What are the terms for using equipment imported on favourable terms?

The imported equipment and its components shall:

- be used in the areas defined in the law, in particular, in processing industry, waste collection, treatment, and disposal, recovery of materials, etc.

Exceptions: operations on importation of equipment and components to Ukraine for the production of certain excisable goods, waste disposal, and some other activities may not be exempt from VAT.

- be used exclusively within an industrial park's territory
- not to be rented, leased, or used by third parties on any other terms for 5 years from the date of their importation into the customs territory of Ukraine
- not be alienated during 5 years from the date of their importation to the custom territory of Ukraine.

3. What are the consequences of non-compliance with the terms of use of imported equipment?

If an industrial park member having imported equipment on favourable terms violates the conditions of its use, it is liable to pay the amount of VAT that was to be paid on the import of such goods into the customs territory of Ukraine as well as penalties.

III. Land tax

The law entitles local authorities of Ukraine to reduce the land tax and rent rates or to completely waive the payment of land tax for land plots forming the territory of an industrial park.

IV. Import duty

1. Which goods are exempt from import duty?

The Law of Ukraine "On Amendments to Article 287 of the Customs Code of Ukraine regarding the creation of favourable conditions for the activities of industrial parks in Ukraine" contains the list of codes under the Ukrainian Classification of Goods, on the import of which preferential treatment is applied for members of industrial parks. The goods specified in this list are exempt from import duty.

2. What are the requirements for such goods and their use terms?

Goods that may be exempted from import duty in this case must:

- be new (produced not more than 3 years prior to the date of importation into the customs territory of Ukraine);
- be unused;
- be imported by members of industrial parks exclusively for their own use within the territory of the relevant industrial park without the right of alienation, rent, lease or other right to use to any third parties on any terms for 5 years from the date of their import into the customs territory of Ukraine;
- not originate from a country that is recognised as an occupier and/or aggressor state in relation to Ukraine according to Ukrainian legislation;
- not be imported from the territory of an occupier (aggressor) state or from the temporarily occupied territory of Ukraine.

3. What are the consequences of non-compliance with the terms of use of goods exempted from import duty?

If a member of an industrial park taking advantage of such exemptions loses its member status or violates the terms of use of imported goods, it must pay the full amount of import duty unpaid and penalties.

It should be noted that the implementation of the favourable treatment provided by the abovementioned laws will also be regulated by separate regulations of the Cabinet of Ministers of Ukraine; in particular, the following should be approved by 20 September 2022:

- the procedure for the use of funds spared by an industrial park member for the development of its activities within the industrial park;
- the procedure for import and intended use of goods whose import into Ukraine is exempt from VAT;
- the procedure for import and intended use of goods whose import into Ukraine is exempt from import duty.