

E-residency in Ukraine: legal and tax aspects

Law on e-residency

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On 26 October 2022, the President signed the Law of Ukraine "On Amendments to the Tax Code of Ukraine and Certain Other Legislative Acts of Ukraine on Peculiarities of Taxation of Business Activities of Electronic Residents" (the "Law").

The Law will come into force on 1 April 2023.

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Foreign individuals will be able to become "digital" residents of Ukraine (hereinafter referred to as "e-residents"), register as individual entrepreneurs (hereinafter referred to as "IEs") in Ukraine and pay the single tax (hereinafter referred to as "ST") under the simplified taxation system at the rate of 5% on income up to UAH 7,850,500 (approx. EUR 199,820).

All registration stages will be carried out online, even opening a bank account in Ukraine will be carried out remotely. Moreover, banks will act as tax agents for e-residents, meaning that they will be responsible for withholding and paying taxes.

Thus, e-residency has the advantage of being simple, transparent, and available online for individuals, primarily for IT professionals and consultants who want to pay taxes at a relatively low rate enjoyed by ordinary residents of Ukraine, while not actually being in Ukraine.

1. E-resident status in Ukraine

1.1. Acquiring e-resident status in Ukraine

The Tax Code of Ukraine introduces the concept of an e-resident, which is defined as a foreigner who meets the following criteria:

- has reached the age of 18;
- is not a tax resident of Ukraine;
- has received appropriate qualified electronic trust services and
- is not registered in the E-Resident information system.

A foreigner has the right to acquire the status of an e-resident after the following stages:

- submitting an application for e-resident status through the E-Resident information system (currently under development), which is an integral part of the Unified State Web Portal of Electronic Services;
- identification;
- provision of qualified electronic trust services.

The Cabinet of Ministers of Ukraine determines:

- Procedure for acquiring and revoking the e-resident status, identification of persons applying for the e-resident status, and providing them with access to qualified electronic trust services;
- Procedure for the formation and maintenance of the E-Resident information system and access to it by tax authorities and tax agents of ST

payers.

The list of states whose citizens or residents may acquire e-resident status is established by the Ministry of Digital Transformation (hereinafter referred to as the "MinDigital"), in coordination with the Ministry of Finance, in accordance with the procedure established by the Cabinet of Ministers of Ukraine.

All of the above regulations are yet to be adopted.

1.2. Who is not eligible for e-residency of Ukraine

The following persons may not be e-residents:

- citizens of Ukraine;
- foreigners who have the right to permanent residence in Ukraine or are tax residents of Ukraine;
- stateless persons;
- persons receiving income originating in Ukraine for goods, works, services (except for passive income);
- persons who are citizens (subjects), residents or persons whose place of permanent residence (stay, registration) is in the countries (jurisdictions) not included in the List of countries whose citizens or residents may obtain e-resident status.

The List of countries whose citizens or residents may acquire the status of an e-resident may not include a country:

- recognized as an aggressor and/or occupying state in relation to Ukraine;
- included in the FATF "black/grey list";
- recognized by the European Commission as a country with weak regimes for preventing and combating money laundering, terrorist financing and financing the proliferation of weapons of mass destruction.

1.3. Revocation of e-resident status in Ukraine

The grounds for revoking the e-resident status are as follows:

a) submission by a foreigner of an application for revocation of the e-resident status at his/her own request;b) revocation of the e-resident status based on the decision of the MinDigital, in case of receipt of information about:

- a person's death or recognition as missing;
- restriction of a person's civil capacity or recognition of his/her incapacity;
- non-compliance of the person with the requirements listed in clause 1.2. above;

c) expiration of the document on the conformity of a qualified electronic signature or a positive expert opinion based on the results of a state examination in the field of cryptographic information protection of a qualified electronic signature used by an e-resident. The status will be revoked if the e-resident does not obtain a new document within 1 month from the date of expiration of the relevant document.

2. State registration of an individual entrepreneur

For state registration as a private entrepreneur, an e-resident shall submit an application in electronic form using the Unified State Web Portal of Electronic Services. Signing the application with a qualified electronic signature is a mandatory prerequisite.

The application procedure is determined by the Ministry of Justice of Ukraine and the MinDigital.

The identity document of an e-resident is a passport document for traveling abroad.

3. Taxation of an e-resident in Ukraine

3.1. Tax accounting of an e-resident

An e-resident is registered by a tax authority on the basis of information received from the E-Resident information system.

The registration of e-residents as payers of the 3rd group of the ST (which provides for a simplified taxation regime for individuals at a rate of 5% of annual income up to UAH 7,850,500 or approx. EUR 199,820) is carried out by the supervisory authority within 2 working days from the date of receipt of information from the state registrar on the registration of an e-resident as an individual entrepreneur.

E-residents registered as IEs in accordance with the established procedure are considered to be single tax payers from the date of their state registration without the need to submit an application for the simplified taxation system.

Correspondence between the tax authorities and taxpayers having acquired the e-resident status shall be carried out exclusively by means of electronic communication in electronic form in compliance with the requirements of the Laws of Ukraine "On Electronic Documents and Electronic Document Management" and "On Electronic Trust Services".

3.2. Simplified taxation system for e-residents

To be subject to the simplified taxation system of the 3rd group during a calendar year, e-residents having registered as IEs and carrying out business activities such as providing services, manufacturing and/or selling goods exclusively to non-residents of Ukraine must meet all of the following criteria:

- not to use labour of hired persons who are citizens or residents of Ukraine;
- not to receive income originating from Ukraine, except for passive income;
- the amount of their income may not exceed 1,167 minimum wages established by law as of January 1 of the tax (reporting) year, which currently amounts to UAH 7,850,500 (approx. EUR 199 820).

The tax (reporting) period for the payers of the 3rd group of the ST and tax agents of the e-resident payers of the 3rd group of the ST is a calendar quarter.

3.3. Single tax rate for e-residents

For e-residents, the ST rate is set at 5% of income (including VAT).

In case of exceeding the specified income limit, the ST rate is 15%.

3.4. Withholding single tax from e-residents

For an e-resident payer of the 3rd group, the tax agent is the Ukrainian bank in which the e-resident has opened a current account.

The e-resident has the right to open a current account online, namely exclusively through the E-Resident information system in one independently selected Ukrainian bank available for selection in the E-Resident information system.

The bank is obliged to send a notice of opening or closing an account by an e-resident payer of the 3rd group to the supervisory authority where such e-resident is registered as a taxpayer on the day of opening/closing the account.

When crediting funds to the current account of such a payer, the Ukrainian bank – the tax agent of the e-resident – is obliged to withhold tax from the amount of crediting at the expense of such funds and transfer the tax to the state budget of Ukraine no later than the next 2 working days.

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In case of crediting foreign currency to the current account of an e-resident, the respective tax shall be converted by the tax agent (Ukrainian bank) into UAH at the exchange rate. For the purposes of determining tax liabilities for the payment of taxes and fees, the official exchange rate of the Ukrainian currency to foreign currency set by the National Bank of Ukraine as of 0 o'clock on the day of the occurrence (determination) of tax liabilities shall be applied.

3.5. Deregistration of e-residents of Ukraine

If the tax authority receives information about the loss of the e-resident status of a person, it automatically deregisters such person as an e-resident.