

Corporate income tax: taxation of non-residents in Ukraine

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Taxation of non-residents

The income of non-resident legal entities derived from Ukrainian sources of origin is taxed by corporate income tax (CIT) at the rate of 15%. The CIT tax base is the income from interests, dividends, royalties, freight, as well as the proceeds of engineering, leasing and rent, profits from sale of real estate, investment assets (securities and corporate rights), and the proceeds of joint activities and entertainment activities.

In relation to the income from Ukrainian sources of origin, the following rates apply:

Dividends	15%
Interest	15%
Royalty	15%
Freight	6%
Other profits from Ukrainian sources of origin	15%

Dividends are a payment made by a legal entity (including issuers of company rights, investment certificates, or other securities in favour of their holder) in connection with a part of its profit distribution, calculated following accounting rules;

The following amounts are also considered dividends for tax purposes:

- payment in cash or in-kind made by a legal entity for the benefit of its founder and / or member (participant) due to the distribution of net profit (its part);
- amount of income in the form of payments for securities (company rights) paid to a non-resident in controlled operations and over the amount corresponding to the arm's length principle;
- value of goods (works, services), except for securities and derivatives purchased

from a non-resident, over the amount corresponding to the arm's length principle;

- the amount of undervaluation of goods (works, services) sold in controlled operations to a non-resident compared to the amount corresponding to the arm's length principle;
- payment in cash or in-kind made by a legal entity in favour of its founder and/or non-resident member in connection with the reduction of the authorized capital, the withdrawal of corporate rights by the legal entity in its own share capital, the resignation of a company's member or other similar operation between a legal entity and its member, in the amount that reduces the undistributed profit of the legal entity.

In certain cases, the lower tax rate might apply under the double taxation agreements. Ukraine has valid double taxation agreements with approximately 75 countries. It should also be noted that double taxation agreements with specific countries may provide for more favourable taxation arrangements.

Tax benefits in the form of a tax exemption or the application of a reduced tax rate provided for by a double taxation agreement are not granted for the mentioned type of income or profit if the main purpose or the overriding purpose of the relevant business operation of a non-resident with a resident of Ukraine was getting direct or indirect benefits in the form of a tax exemption or the application of a reduced tax rate.

Taxation of the activity through permanent representative offices

Incomes of non-residents operating in Ukraine through a permanent representative office are taxable on general terms. For the purposes of taxation, such a permanent representative office is equated to a taxpayer performing its business independently of a respective non-resident.

A permanent representative office determines the amount of its taxable income received during a reporting (tax) period, following the arm's length principle. The taxable income of the permanent representative office must correspond to the income of an independent company carrying on the same or a similar activity under the same or similar conditions and operating in complete independence from the non-resident, for which it serves as the permanent representative office.

According to tax law, the term "permanent representative office" includes:

- a) construction site, a construction, assembly, or installation facility, or related supervisory activity. The total working period must exceed twelve (12) months;
- b) provision of services by a non-resident (excluding HR services) with the total duration exceeding 183 days within any twelve (12) months;
- c) persons who exercise the authority in the interests, at the expense and/or for the benefit of a non-resident, to negotiate the essential terms of legal transactions and/or enter into agreements/contracts on behalf of a non-resident;
- d) persons from whose warehouse the supply of stocks (goods) on behalf of a non-resident is carried out, except for non-residents acting as holders of temporary storage or customs warehouses.

The business activity of a non-resident through a resident intermediary is not treated as a permanent representative office if the agency services of the resident intermediary are provided within the scope of the resident's main (ordinary) business activity and under normal conditions. Maintaining a permanent place of business only for preparatory or ancillary activities to a non-resident is not a permanent representative office.

Non-residents operating in Ukraine through separate divisions, including permanent representative offices, are required to register with the competent regulatory authorities. Simultaneously with the registration of a non-resident, his/her separate division (permanent representative office) is registered as well.

Performance of business operations without tax registration by a non-resident through a separate division, including a permanent representative office, entails a fine of UAH 100,000 (approx. USD 3,605) for the non-resident.