

Legal Update – 19 November 2014

UKRAINIAN TAX AND CURRENCY LAWS - RECENT DEVELOPMENTS

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In this Legal Update we provide an outline of the key developments of the last several months in the taxation and currency regime of Ukraine.

1. VAT charged on deliveries of medicines and medical products

Pursuant to Law dated 27.03.2014 "On Preventing Financial Catastrophe and Creating Conditions for Economic Growth in Ukraine" (the "**Law on Preventing Financial Catastrophe**"), as of **1 April 2014** VAT exemption for deliveries of medicines and medical products is cancelled and **7%** VAT to be charged on such goods.

The following operations are taxable:

- delivery within and importation into the customs territory of Ukraine of the medicines that were approved for production and use in Ukraine and registered in the State Register of Medicines, as well as of the medical products mentioned in the list approved by the Cabinet of Ministers of Ukraine;
- delivery within and importation into the customs territory of Ukraine of the medicines, medical products and/or medical equipment approved for use within the clinical trials permitted by the authorized central executive body.

Pursuant to the Law "On Amendment to the Tax Code of Ukraine Concerning Special Means of Individual Protection and Medicines" dated 1 July 2014 for the time of the antiterrorist operation ("**ATO**"), imports into and delivery within the customs territory of Ukraine of medicines, medical products, special means of individual protection intended for ATO/treatment of the persons involved in the ATO are VAT exempt in connection with the ATO in Ukraine.

Disclaimer

The content of this Legal Alert is not legal advice, but a general informational summary of the law. Resource to qualified legal counsel is always required for legal advice. Failure to make timely inquiries of legal counsel may cause important legal deadlines to be missed.

2. Excise tax rates raised

Pursuant to the Law on Preventing Financial Catastrophe, excise tax rates were raised for:

- alcoholic drinks and tobacco products - **by 25%**;
- beer - **by 42,5%**;
- new cars and motorcycles - **doubled**.

The higher excise tax rates took effect on different dates between **1 May** and **1 July 2014**.

Law "On Amendments to the Tax Code of Ukraine and Some Other Legislative Acts of Ukraine" dated 31.07.2014 stipulates increased excise tax rates, particularly:

- **effective 1 September 2014**, for tobacco products, tobacco and industrial tobacco substitutes - **by 5%**. Also, minimal excise tax liability for tobacco products was raised by **5%**;
- **effective 1 November 2014**, drinks currently classified as flavoring additives and seasonings containing 8,5% or more ethyl alcohol will be treated as alcoholic drinks, excise tax rate for such products will be UAH 70,53 per liter of 100% alcohol;
- **effective 3 August 2014**, temporarily, **until 1 January 2015**, excise tax will be charged on alternative motor fuel at the rate **EUR 99 for 1000 kg**.

3. Mandatory State pension insurance fee to be collected on foreign currency purchased (exchange) by wire transfer or cash

Pursuant to the Law on Preventing Financial Catastrophe, as of **1 April 2014** mandatory State pension insurance fee is collected on foreign currency purchased by wire transfer or cash.

The payers are legal entities and individuals that purchase foreign currency.

The fee rate is **0.5%** of taxable object (amount of the purchased foreign currency).

4. Rules for levying taxes on individuals' passive incomes changed

The Law "On Amendments to the Tax Code of Ukraine and Some Other Legislative Acts of Ukraine Concerning Passive Incomes" dated 04.07.2014 stipulates a single **15%** rate of the individual income tax ("IIT") to be charged on individuals' passive incomes received as interests.

15% tax is collected on royalty and investment profits (**17%** if taxable base is more than 10 salaries established as of January 1st of the accounting tax year, to be levied on the excessive amount), and 5% tax is collected on dividends. **15% (17%)** tax is collected on the dividends accrued on the shares or other corporate rights that are preferential or imply payment of a fixed amount of dividends.

15% tax is collected on other passive incomes from capital investments.

The Law also provides more details with respect to the Tax Code provisions concerning the procedure for recalculating the IIT in the event of an early cancellation of a deposit contract and related recalculation of an income derived as interests.

Banks are responsible for stating IIT amounts in IDF reports.

The above passive incomes taxation rules are applicable since **1 August 2014**.

The Law on Preventing Financial Catastrophe stipulates progressive taxation of the passive incomes derived as interests (these provisions took effect on 1 July 2014). Depending on income amount, IIT rate ranges **from 15% to 25%** and is applicable since **1 July 2014**.

In connection with these amendments, the IIT accrued on deposit interests between 01.07.2014 and 01.08.2014 must be cancelled and is not paid to the budget.

5. Military fee introduced in Ukraine

The Law "On Amendments to the Tax Code of Ukraine and Some Other Legislative Acts of Ukraine" dated 31.07.2014 stipulates temporary (**until 1 January 2015**) **1.5%** military fee to be collected from individuals' incomes.

Taxable object is incomes received as salaries, other fees and remunerations calculated for the benefit of the taxpayer in connection with his/her labor relations or under civil-law contracts; prizes in public and non-public lotteries, player (participant) prize received from a gambling organizer.

The military fee payment provisions took effect on **3 August 2014**.

6. Subsoil Use fee increased

Pursuant to the Law on Preventing Financial Catastrophe, as of **1 April 2014** the Subsoil use fee rates were raised for:

- natural gas - **from 25% to 28%**;
- condensed gas - **from 39% to 42%**;
- ferrous and non-ferrous metal ores, uranium-containing ores – single fee rate of **5%** (instead of former three rates 1.3%, 2.7%, 3.5%).

Pursuant to the Law "On Amendments to the Tax Code of Ukraine and Some Other Legislative Acts of Ukraine" dated 31.07.2014, **as of 3 August 2014 and until 1 January 2015**, the Subsoil use fee rates were temporarily further raised for:

- natural gas produced from up to 5 km deposits and sold for industrial needs - **from 28% to 55%**, for deposits deeper than 5 km - **from 15% to 28%**;
- condensed gas from deposits up to 5 km - **from 42% to 45%**, from deposits deeper than 5 km - **from 18% to 21%**;
- oil from deposits up to 5 km - **from 39% to 45%**, deeper than 5 km - **from 18% to 21%**;
- iron ore - **from 5% to 8%**.

7. Lower Subsoil use fee when natural gas production wells are drilled

According to the Law "On Amendments to the Tax Code of Ukraine and Some Other Legislative Acts of Ukraine" dated 31.07.2014, lower Subsoil use fee will be paid when natural gas production wells are drilled, provided the wells are registered in the State Register of Oil and Gas Wells after 1 August 2014. The fee was reduced following the introduction of a factor to be applicable during two years after the date on which such wells are registered in the State Register of Oil and Gas Wells.

8. Electronic VAT administration to be effected on 1 January 2015

According to the Law "On Amendments to the Tax Code of Ukraine and Some Other Legislative Acts of Ukraine" dated 31.07.2014, electronic VAT administration will be effected on 1 January 2015.

A bank to be specified by the Cabinet of Ministers of Ukraine will open a special account for each taxpayer on the basis of the information received from tax authorities. The VAT received from buyers will be placed to that special account. Pursuant to CMU Resolution No. 569 dated 16 October 2014, the State Treasury Service will be acting as the bank that opens the special accounts.

The bank will use this account to write off its clients' tax liabilities based on period results and the information received from tax authorities. The electronic administration system will maintain, with respect to each taxpayer, automatic records of all issued and received tax bills, taxes paid during imports, the amounts placed to replenish the special accounts, the VAT amounts with respect to which the taxpayers have the right to issue tax bills.

The electronic system implies full transition to electronic reports and the need to register in a single log all tax bills and adjustment calculations (regardless of amount).

9. Grounds for mandatory registration of VAT payers will be changed on 1 January 2015

The Law "On Amendments to the Tax Code of Ukraine and Some Other Legislative Acts of Ukraine" dated 31.07.2014, stipulates an increase, as of 1 January 2015, of the total amount of received incomes that will trigger mandatory registration of a person as a VAT payer (**from UAH 300'000 to UAH 1'000'000**).

10. Profit tax and VAT rates reduction cancelled

The Law on Preventing Financial Catastrophe cancels the previously planned reduction of profit tax rate (down to 16%) within the upcoming years, stipulating the rate of **18%**.

It also cancels the previously planned reduction of VAT (down to 17%), stipulating the rate of **20%**.

11. The National Bank of Ukraine's currency measures

Pursuant to Resolution No. 515 of the Board of the National Bank of Ukraine (the "NBU") dated 20.08.2014:

- Payments to residents of Ukraine concerning exports and imports must be made in good time, no later than within **90 calendar days** (please be reminded that this restriction has been stipulated in NBU resolutions since 19 November 2012).
- Because of the mandatory sale of currency proceeds, authorized banks are prohibited from cancelling currency control over residents' export operations on the basis of discharge documents by offsetting similar counter claims.
- Residents must sell **75% of their currency proceeds** on the interbank currency market of Ukraine, including directly to the NBU.

The Resolution stipulates a list of the currency proceeds that are not subject to mandatory sale, in particular:

- currency proceeds for benefit of the State or against State guarantees;
- currency proceeds within credits/loans under the international contracts of Ukraine that were approved as binding by the Verkhovna Rada of Ukraine, or those received from international financial organizations of which Ukraine is a member or from the international financial organizations under contracts with which Ukraine undertook to provide the legal regime enjoyed by other international financial organizations;
- currency proceeds to non-resident banks' foreign currency correspondent accounts in authorized banks;
- currency proceeds for the benefit of resident intermediaries under contracts of commission, consignments or under agency agreements to be further remitted to the money owners.

The restrictions set forth in NBU Board Resolution No.515 will be effective **until 21 November 2014**.

12. The National Bank of Ukraine introduced additional mechanisms to stabilize Ukrainian monetary, credit and currency markets

In order to stabilize Ukrainian monetary, credit and currency markets, NBU Board Resolution No. 540s dated 29.08.2014 stipulates certain restrictions, particularly:

- currency credits/loans under contracts with non-residents cannot be repaid prior to the repayment term stipulated by the contracts;
- banks cannot purchase or sell currency for Hryvnias on the interbank currency market without delivering currencies;
- limits on the sale of cash foreign currency and bank metals to one person within one operation (business) day: the amount must not be more than the equivalent of **UAH 3'000** within one bank. This restriction does not apply when currency is sold to repay individuals' liabilities to banks under foreign currency loan agreements;

- limits on the foreign currency amounts that can be remitted to other countries by individuals:
 - without supporting documents from a foreign currency current account or without having such an account: the amount the equivalent of which is not more than **UAH 15'000 within one operational day**. Non-resident individuals must remit such amounts on the basis of the documents certifying a source (origin) of the money;
 - from a foreign currency current account: the amount the equivalent of which is more than **UAH 15'000, but no more than UAH 150'000 per month**. Resident individuals must remit such amounts exclusively on the basis of supporting documents.
- national currency cash can be issued via cash desks and ATMs **within UAH 150'000 per day per client**. Exceptions are: salaries, business trip costs, pensions, grants, social benefits, payments made by the Individuals' Deposits Guarantee Fund;
- cash can be received within Ukraine by electronic payment means issued by residents or non-residents in Hryvnias only;
- legal entities can buy foreign currency no earlier than **the 3rd operation day** after the day on which the corresponding request is submitted and the Hryvnias to be exchanged are remitted to the special account;
- some foreign currency operations are prohibited, particularly:
 - returning to other countries the money received by foreign investors within sales of the securities issued by Ukrainian persons (except for State bonds) out of stock exchanges;
 - returning to other countries the money received by foreign investors within sales of legal entities' corporate rights not executed as shares;
 - returning dividends to foreign investors to other countries (except when the dividends for the securities circulated on stock markets are returned).

Resolution No. 540 took effect **on 2 September 2014 and will remain effective through 2 December 2014**.

13. The National Bank of Ukraine reduced the amount of the operations that can be carried out without the price expert examination statement of the State Information and Analytical Centre for Monitoring Foreign Commodity Markets

NBU Board Resolution No. 685 dated 30.10.2014 amends NBU Board Resolution No. 597 dated 30 December 2003 on "Remitting National and Foreign Currency for the Benefit of Non-Residents Under Certain Operations". The amount for the payments for works/services (including the services of selling goods against credits, delivering property for rental, leasing, granting intellectual property rights) and intellectual property rights, which can be carried out without the price expert examination statement of the State Information and Analytical Centre for Monitoring Foreign Commodity Markets, has been reduced from EUR 100000 **to EUR 50000**.

If the above operations within a calendar year are in excess of that amount, in order to be able to make payments thereunder a resident will have to provide (in addition to the other documents) to its bank the price expert examination statement of the State Information and Analytical Centre for Monitoring Foreign Commodity Markets.

14. The National Bank of Ukraine has defined the specifics of applicability of some of the currency legislation provisions during temporary occupation of "Crimea" Free Economic Zone.

Pursuant to the Law of Ukraine "Creating "Crimea" Free Economic Zone" and the Specifics of Carrying Out Economic Activities in the Occupied Territory of Ukraine", NBU Resolution No. 699 dated 03.11.2014 defines the specifics of applicability of some of the currency legislation provisions during temporary occupation of the "Crimea" Free Economic Zone.

- for the purposes of applying NBU regulations, the persons that have their seats (registrations/permanent residence) in the "Crimea" Free Economic Zone are treated as non-residents (or as foreign investors when investments are concerned);
- payments from continental Ukraine to the "Crimea" Free Economic Zone or from the "Crimea" Free Economic Zone to continental Ukraine must be made in accordance with the procedure stipulated by the NBU regulations that govern remittances from/to Ukraine;
- residents' investments in the facilities located (registered) in the Crimea are prohibited;
- the following operations in Russian Roubles are prohibited within continental Ukraine:
 - deposits under bank deposit contracts, including increases of the deposits made before the entry into force of the Law of Ukraine "Creating "Crimea" Free Economic Zone" and the Specifics of Carrying Out Economic Activities in the Occupied Territory of Ukraine", prolongation of such contracts;
 - granting credits (loans), including overdraft credits, including by extending credit/loan or some of credit/loan amounts use timeframes under the agreements entered into before the entry into force of the Law of Ukraine "Creating "Crimea" Free Economic Zone" and the Specifics of Carrying Out Economic Activities in the Occupied Territory of Ukraine";
- banks must suspend operations under the accounts that were opened before the entry into force of the Law of Ukraine "Creating "Crimea" Free Economic Zone" and the Specifics of Carrying Out Economic Activities in the Occupied Territory of Ukraine" for the legal entities that have their seats in the "Crimea" Free Economic Zone, and must take steps to close those accounts;
- remitting Russian Roubles via the administrative border of the "Crimea" Free Economic Zone is forbidden, except when Russian Roubles are remitted by individuals in amounts within the equivalent of UAH 10000, provided that the remittances are declared orally to customs officials.

The Resolution took effect on 5 November 2014.

15. Tax reform draft developed by the Cabinet of Ministers of Ukraine

A draft of a Law “Amendments to the Tax Code and Some Other Laws of Ukraine (Concerning Tax Reform) No. 5079, developed by the Cabinet of Ministers of Ukraine, was registered in the Verkhovna Rada of Ukraine on 15 September 2014.

- The Draft stipulates a reduction of number of taxes - **from 22 to 9** and abolishes the following charges:
 - fee for some entrepreneurial activities;
 - fee collected as a target charge to the effective natural gas tariff for consumers of all forms of ownership;
 - rent for transporting oil and oil products via main oil and oil product pipelines, transit transportation of natural gas and ammonia via pipelines within Ukraine;
 - vehicle parking fee;
 - tourist fee;
 - fee collected for the development of wine growing, gardening and hop-growing.
- Consolidation of several taxes into one tax:
 - excise tax will include ecological tax charged on fuel, fee collected as a target charge to the effective electric and thermal energy tariff (except for the electric power produced qualified co-generator installations, excise tax);
 - the ecological tax will include the ecological tax itself (except for the tax charged on fuel), fee for the use of timber resources, vehicle first registration fee;
 - real estate tax will include the tax levied on real estate other than land plot and a land fee;
 - fixed agricultural tax will be included in the single tax;
 - rent will include Subsoil use fee, fee for using radio-frequency resources of Ukraine, fee for special use of water.
- The category of the aggregate single tax will be changed from national to local.
- The Draft also stipulates a reform of company profit tax: single records of incomes and expenses will be maintained based on financial report standards. Taxable base will mean financial results calculated in accordance with financial report standards, adjusted by tax differences. Tax differences will be reduced from 49 to 3, preserving only depreciation, formation of reserves, financial operations (operations with securities, interest expenses).