

The Tax Code of Ukraine - the Chaos Begins

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- **1995** – the President of Ukraine creates the Commission for Development of the Tax Code of Ukraine
- **1995 – 2010** – Various draft Tax Codes prepared by various authors (including, Government) are discussed, including in the Parliament
- **June 2010** – the Tax Code drafted by the current Government is adopted by the Parliament as the draft for consideration
- **July 2010** – the draft Tax Code is available for public discussion
- **September 2010** – as a result of public discussion a totally new draft Tax Code had to be prepared
- **October 2010** – the new draft is registered with Parliament
- **November 2010** – the Tax Code is adopted by Parliament
- **November 2010** – mass protests against the new Tax Code throughout Ukraine (“Tax Maidans in Kyiv and other Ukrainian cities)
- **November 2010** – the President of Ukraine vetoes the Tax Code
- **November 2010** – the Parliament adopts the restated Tax Code taking into consideration the proposals of the President of Ukraine
- **December 2010** – the President of Ukraine signs the law enacting the Tax Code and it is published
- **1 January 2011** – the Tax Code of Ukraine comes into effect (except for certain chapters and articles)

More than 500 pages, 20 Chapters, 340 Articles

Tax Code:

- Chapter I. General
- Chapter II. Administration of taxes, charges (obligatory payments)
- Chapter III. Corporate tax
- Chapter IV. Personal income tax
- Chapter V. Value added tax
- Chapter VI. Excise tax
- Chapter VII. Vehicle tax
- Chapter VIII. Ecological tax
- Chapter IX. Rent payments for oil and gas transportation
- Chapter X. Rent payments for oil and gas production
- Chapter XI. Subsoil use payments
- Chapter XII. Local taxes and charges
- Chapter XIII. Land payments
- Chapter XIV. Special tax regimes
- Chapter XV. Radio frequency charge
- Chapter XVI. Water special use charge
- Chapter XVII. Forest special use charge
- Chapter XVIII. Taxation of production share agreements
- Chapter XIX. Miscellaneous
- Chapter XX. Transition provisions

Positive

- Lessens the overall number of taxes (18 state taxes, 2 local taxes and 3 local charges)
- Gradual reduction of corporate tax and VAT
- 'Automatic' VAT refund
- Seeks to harmonize financial and tax accounting
- Itemization of accounting and depreciation/amortization of assets
- Taxation of non-resident individuals similarly to resident
- Transfer pricing (transactions between tax related parties) based on OECD guidelines
- Reduction of certain tax penalties
- Indirect methods for tax assessments by tax authorities are disallowed
- Prohibition of retroactive enforcement
- Dealing with some tax loopholes

Negative

- Increase of personal income tax
- Limitation of some tax deductible expenses
- Prohibition of some tax deductible expenses
- Tax authorities will examine compliance of taxpayers with labor legislation in respect to the conclusion of employment agreements
- Introduction of beneficial ownership concept
- Limiting the use of a simplified taxation system
- Increase of powers of the tax authorities
- No simplification of the tax administration
- No specific tax incentives for foreign investments
- Additional regulations and clarifications are required
- No coverage of combined social contributions
- Numerous discrepancies between the rules, often significant
- In fact, increase of tax burden is anticipated by businesses
- Short time for adaptation to new tax rules

Positive

- Cancelled:
 - 1) Advertisement tax,
 - 2) Market (bazaar) charge,
 - 3) Communal (social) tax
 - 4) Local trademark use charge
- Large & medium companies will have to file tax returns solely in an electronic format
- If tax rules may be interpreted differently, then the decision must be made in favor of the taxpayer
- Individual tax rulings are available
- Tax authorities are disallowed from non-accepting properly drafted tax returns

Negative

- New tax administration rules are virtually the same to the previous ones, i.e. no simplification (which businesses needed)
- Introduced new taxes:
 - 1) Real estate tax
 - 2) Ecological tax
 - 3) Tourist charge
 - 4) Business levied charges
- Ukrainian representative agents of foreign companies must register as taxable permanent establishments of such foreign companies

Positive

- The administrative appeal procedure is two-level and the obligation to substantiate the decisions by the tax authorities during such appeal lies with the tax authorities
- An amended tax return for the period already covered by a tax audit is permitted, but (see Negative)
- Original documents can not be retained by the tax authorities, only copies
- Permanent tax losses are not grounds for a tax audit anymore
- Tax police can not participate in a tax audit unless there are related criminal grounds

Negative

- New type of audit (an actual audit) is introduced. No prior notice is needed to the taxpayer
- Tax authorities will have additional grounds for conducting non-scheduled audits
- Tax documents must be kept for 3 years
- Signing of tax returns by outsourced accountants is not possible anymore
- If a tax return is not accepted by the tax authorities, the option to send it by mail is not available anymore
- Filing of an amended tax return for the period already covered by a tax audit is grounds for a non-scheduled tax audit
- Deemed non-compliance with labor legislation (the non-conclusion of an employment agreement) is ground for a non-scheduled tax audit

Positive

- Fine for tax underpayment is 25% of the underpaid amount
- Fine for non-withholding of applicable tax (for example, payments to a non-resident) is 25% of the applicable tax
- Corporate taxpayers and taxpayers that have switched to a regular taxation system will not be subject to tax penalties in 2nd and 3rd quarters of 2011
- Tax penalties from 1 January 2011 to 30 June 2011 are limited to UAH 1 (USD 0.12) per each non-compliance

Negative

- Period of limitation is 3 years
- Disposals of property under tax liens are subject to a fine amounting to the value of such property

Positive

- A tax residency certificate (confirming the entitlement of its holder to the benefits under a tax treaty) may be in a format applicable in the jurisdiction of its issuance, but such certificate still requires legalization abroad and translation into Ukrainian

Negative

- The tax treaty applies if the qualifying foreign resident is a beneficial owner of income sourced in Ukraine
- A beneficial owner is a foreign legal entity or individual entitled to receive such income, provided that any agent, nominee or intermediary does not qualify as a beneficial owner, even if any of them are entitled to such income (appears to be the standard approach of the OECD, but Ukraine is not a OECD member, and therefore there is a risk of misapplication by Ukrainian tax authorities)
- Foreign tax debts of Ukrainian taxpayers may be collected in Ukraine

Positive

- New CPT rules apply from 1 April 2011
- Gradual reduction of rates:
 - 23% - from 1 April 2011
 - 21% - from 1 January 2012
 - 19% - from 1 January 2013
 - 16% - from 1 January 2014
- Unlimited loss carry forward
- Tax holidays (0% tax) for certain qualifying businesses (hotels, textile, clothing, footwear, etc)
- Tax privileges granted to certain qualifying industries and businesses (ship- and aircraft building, renewable energy, etc) remain unchanged
- Advances received are not considered income
- Financial aid obtained from a parent/shareholder/participant, including foreign, and returned within 365 days is not income
- Deductible expenses include advertisement costs
- Dividends obtained from the related non-residents that do not have a 'tax haven' status are not taxable
- Detailed rules for depreciation/amortization of fixed assets (16 groups) and intangibles (6 groups)
- New transfer pricing rules (based on OECD guidelines) from 1 January 2013
- Forex tax accounting based on financial accounting principles

Negative

- Income is recognized when the ownership right transfers to a buyer
- Advances paid are not deductible expenses
- Tax haven limitations (85% deductibility) continue and even expand – prohibition for the deduction of consulting, marketing, advertisement, engineering fees, and royalties
- Deduction of consulting, marketing and advertisement fees to non-residents (except their permanent establishments in Ukraine) is limited to 4% of prior annual sales
- Deduction of engineering fees to non-residents (except their permanent establishments in Ukraine) is limited to customs value 5% of the imported equipment
- No deduction of engineering fees to non-residents, if they are not beneficial owners of these fees
- Deduction of royalties to non-residents (except their permanent establishments in Ukraine) is limited to 4% of prior annual sales
- No deduction of royalties to non-residents, if they are not beneficial owners of these royalties, or if the royalties incurred regarding intellectual property rights first occurred in Ukraine, or if they are not taxed in their jurisdictions regarding such royalties
- No deduction of payments to the private entrepreneurs - unified tax payers (except those from IT business)
- No clear guidance as to deductibility of payments to individual entrepreneurs who are regular taxpayers and to CPT payers paying tax at discounted or zero rates
- Advance tax on dividends remains
- No detailed methods of transfer pricing

Positive

- 17% from 1 January 2014
- Consulting, engineering, legal, accounting, audit and IT services are not subject to VAT (Negative?)
- Carbon trading is not subject to VAT (Negative?)
- Corporate reorganizations (mergers, division, etc) are not VATable transactions
- 'Automatic' VAT refund, subject to compliance with certain criteria
- Late refund penalty amounting to be levied on the State (currently, 9.3% p.a.)

Negative

- Supply and exportation of grain and metal scrap are not subject to VAT (i.e., no right to VAT recovery)
- Registration of VAT invoices (over UAH 1mln from 1 January 2011, over UAH500,000 from 1 April 2011, over UAH100,000 from 1 July 2011 and over UAH10,000 from 1 January 2012)
- The difference between a particular VAT invoice and the data from the Register of VAT invoices is grounds for a non-scheduled tax audit
- Corporate rights exchange – is there VAT?
- Right to record VAT credit is limited by 365 days
- Impossibility for individual payers of a unified tax to register as VAT payers
- Additional grounds for the annulment of a VAT registration
- Advances received remain to be subject to VAT
- Still slight chances to obtain a VAT refund in cash
- Detailed criteria for 'automatic' VAT refund

Registered VAT payer is entitled to 'automatic' VAT refund, if:

- It is not subject to bankruptcy procedures, and
- It is properly registered and acting entrepreneur/company, and
- It performs transactions subject to 0% tax (for example, export), and
- The difference between VAT credit of this particular VAT payer and VAT obligations of its suppliers does not exceed 10% of claimed VAT refund, and
- An average monthly wage paid by such VAT payer is 2.5 times larger than the minimum monthly wage, and
- It has more than 20 employees, or has fixed assets used in its main activities, which assets' book value exceeds the claimed VAT refund, or its paid CPT/obtained income ratio exceeds the industry average ratio, and
- It does not have a tax debt

Positive

- Residents and non-residents are taxed at the same rates (basically, 15% and 17%)
- No more need for foreigners to obtain Ukrainian tax residency
- Basic tax rate is 15%
- 5% on dividends and royalties
- One sale of immovable property per year is not taxable, but (see Negative)
- More than one sale of immovable property per year is subject to 5% tax
- One sale of a motorcycle or car per year is subject to 1% tax
- More than one sale of a motorcycle or car per year is subject to 5% tax
- Annual tax return should be filed by 1 May

Negative

- 17% tax on incomes exceeding 10 minimum monthly wages (current minimum monthly wage is UAH922 (USD115))
- 30% tax on prizes (except lotteries)
- 5% tax on bank deposits (from 1 January 2015)
- Forgiven debts are taxable for debtors
- Very limited deductible expenses for individuals
- Only the once per year sale of immovable property owned at least 3 years is tax exempt
- 15(17)% tax on any sale of immovable property by non-residents
- Salary payable to a non-resident by a foreign employer for work in Ukraine is subject to tax in Ukraine. Such salary must be credited at the Ukrainian bank account opened by the non-resident
- Quarterly advance tax payments for individual entrepreneurs based on income earned in the previous year

- Effective from 1 January 2012
- Payers – foreign, local individuals and legal entities owning residential real estate
- Taxable base – residential area of a particular real estate
- Rates per 1 sq.m:
 - 1% minimum monthly wage as of 1 January of the reporting year for residential apartments not exceeding 240 sq.m; for houses – not exceeding 500 sq.m
 - 2,7% minimum monthly wage – for real estate with larger residential area
- No tax (only for one apartment or house), if the residential area does not exceed 120 sq.m for apartments and 250 sq.m for houses
- Payable once per year

Effective from 1 January 2011:

- They can not register as VAT payers
- Payments of CPT payers to such entrepreneurs are not tax deductible
- They have to pay the combined social contribution (CSC), and there is no clear guidance as to how to pay it in combination with the unified tax
- Deterioration (and even cancellation) of unified tax regime is expected

Questions?



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