The Legal 500
Country Comparative Guides

Ukraine
TAX

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This country-specific Q&A provides an overview of tax laws and regulations applicable in Ukraine.

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1. How often is tax law amended and what are the processes for such amendments?

In Ukraine, the frequency and regularity of amendments/updates in tax regulations is not legally defined and depends on the current concept of the state tax system. The main acts of tax legislation in Ukraine are the Tax Code itself and the laws that amend it. Based on existing practice, such laws are adopted several times a year. The subjects of legislative initiative in Ukraine are the President of Ukraine, people’s deputies and the Cabinet of Ministers. The legislative initiative is implemented by submitting draft legislative acts, propositions and amendments to them to the legislative body (Verkhovna Rada of Ukraine). Laws are adopted by open voting by deputies of the Verkhovna Rada of Ukraine, after which the law is signed by the President and is subject to publication in the official mass media. The Cabinet of Ministers of Ukraine, as well as relevant departments (such as the State Tax Service), within the framework of their competence, adopt by-laws that establish the procedure and mechanisms for the implementation of laws. The legal system in Ukraine is constantly changing. The practical application of Ukrainian laws depends to a large extent on the position of state authorities and services as well as on the existing court practice.

2. What are the principal procedural obligations of a taxpayer, that is, the maintenance of records over what period and how regularly must it file a return or accounts?

Taxpayers in Ukraine are individuals (residents and non-residents of Ukraine), legal entities (residents and non-residents of Ukraine) and their separate subdivisions that possess, receive (transfer) objects of taxation or carry out taxable transactions. The main taxpayer’s duties are to be formally registered with the tax service, keep records of income and expenses, prepare and submit tax reports, as well as to provide the tax authorities with information determined by law, including for the purposes of tax audits. The tax system of Ukraine provides for different systems of taxation depending on the size of the taxpayer’s income, and each of them has its own procedure and terms for submission of tax reports. There are monthly (e.g., VAT), quarterly (e.g., single tax under the simplified taxation system, income tax) and annual (e.g., financial reporting, income tax return) reports.

3. Who are the key regulatory authorities? How easy is it to deal with them and how long does it take to resolve standard issues?

The key regulatory authority in the field of taxation is the State Tax Service of Ukraine. Standard problems in this regard are registration actions, obtaining certificates, reconciling tax liabilities and tax payments, registration of tax invoices, assigning “risk” status to the taxpayer, coordination of tax liabilities accrued by the decision of the tax authority on the results of the tax audit. The law provides for the procedure of pre-trial administrative appeal against decisions of tax authorities, but complaints of taxpayers are satisfied very rarely, as a result of which the taxpayer still has to go to court, and it takes him a lot of time and money. In addition, often in violation of the procedure for the use of tax information and pursuing corrupt or political goals of pressure on business, the tax authorities (their investigative units) start illegal prosecution of taxpayers who have not complied with the procedure for identifying tax violations. Courts often go to such investigative bodies and make illegal decisions that block the economic activities of taxpayers, arrest special accounts intended for tax payments, arrest products in warehouses and so on. In such cases, the restoration of the violated taxpayers’ rights may last for years. Mass violations of the taxpayers’ rights by the tax authorities are the result of the failure of the state to apply the procedures of bringing the violators to justice.
4. Are tax disputes capable of adjudication by a court, tribunal or body independent of the tax authority, and how long should a taxpayer expect such proceedings to take?

All tax disputes without exception may be settled by court. Such categories of disputes in Ukraine are subject to administrative courts’ consideration. The administrative court system provides for the first, appeal and cassation instance, as well as appeal against court decisions in connection with newly discovered or exceptional circumstances. Thus, court proceedings may run in a circle and last for years, but in most cases such disputes are still considered within a year (before the court decision comes into force), depending on the category of the dispute. The problem is also that tax authorities are never in a hurry to implement the court decision made in favour of the taxpayer, and he has to resort to the enforcement procedure, which is also not always effective.

5. Are there set dates for payment of tax, provisionally or in arrears, and what happens with amounts of tax in dispute with the regulatory authority?

There are deadlines for payment of all types of taxes; in case of delay, the taxpayer is subject to financial penalties in the form of fines or penalties. In case of disagreement with the amounts of additional taxes or financial sanctions, the taxpayer is entitled to apply to the court with a claim to the tax authority for recognition of such decisions of the tax authorities as illegal in whole or in part. In case of satisfaction of such taxpayer’s demands by the court, his tax liabilities will be subject to fulfilment only in the part where the decision of the tax body according to the results of the court consideration will remain subject to fulfilment.

6. Is taxpayer data recognised as highly confidential and adequately safeguarded against disclosure to third parties, including other parts of the Government? Is it a signatory (or does it propose to become a signatory) to the Common Reporting Standard? And/or does it maintain (or intend to maintain) a public Register of beneficial ownership?

Pursuant to the norms of the tax legislation of Ukraine, officials of controlling bodies are obliged to prevent disclosure of information with limited access that they receive, use or store in the course of performing the functions entrusted to controlling bodies. A taxpayer has the right not to disclose information about such payer by the controlling authority (its officials) without its prior written consent. Information about the person should be collected, stored and used solely for the purposes and in the manner prescribed by law.

Accounting standards in Ukraine are regulatory documents approved by the Ministry of Finance, which defines the principles and methods of accounting and financial reporting. These principles do not contradict the International Financial Reporting Standards.

Compiling financial statements and consolidated financial statements in accordance with international standards is mandatory for the following categories of enterprises:

1. Enterprises of public interest (securities issuers whose securities are listed on the stock exchange, banks, insurers, private pension funds, other financial institutions (except for other financial institutions and private pension funds belonging to micro and small enterprises) and large enterprises with book value of assets exceeding EUR 20 million, net income from product sales exceeding EUR 40 million, average number of employees over 250);
2. Public joint stock companies;
3. Enterprises of national importance that are involved in mining activities;
4. Enterprises providing financial services, pensions and supporting activities in the field of financial services.

There is no separate public register of beneficial ownership in Ukraine. However, information on beneficial owners of shares in Ukrainian enterprises is contained in the public Unified State Register of Enterprises and Organizations of Ukraine.

7. What are the tests for residence of the main business structures (including transparent entities)?

The criteria for determining residency, based on the provisions of Ukrainian law, are: place of residence or permanent residence; location of the centre of vital interests (place of permanent residence of family members or registration as a business entity); time of stay on the territory of the country at least 183 calendar days, citizenship. On the basis of the said criteria, the tax authorities shall recognise a person as a tax resident..
of Ukraine or not for taxation purposes. The procedure for the loss of tax residency of Ukraine is not envisaged by law, which leads to ambiguity of law enforcement.

8. Have you found the policing of cross border transactions within an international group to be a target of the tax authorities’ attention and in what ways?

Control of cross border transactions within an international group is subject to the attention of tax authorities to the extent that the parties to the transaction or individual business transactions may constitute taxable entities. Also, it should be taken into account that the parties or one of the parties to a transaction may be a controlled foreign company, i.e. a foreign company controlled by a resident of Ukraine, within the meaning of the Ukrainian tax law. In this case, the tax law of Ukraine will also consider such an entity as a taxpayer and the transaction as a possible subject to taxation.

9. Is there a CFC or Thin Cap regime? Is there a transfer pricing regime and is it possible to obtain an advance pricing agreement?

The notion of controlled foreign company (CFC) was introduced into the legal field of Ukraine this year. As of today CFCs are subject to accounting and reporting, special taxation rules have been introduced for their controllers – residents of Ukraine. The object of taxation of the controlling entity is the part of adjusted profit of CFC, proportional to the share owned or controlled by such CFC on the last day of the respective reporting period. Adjusted CFC profit is recognized as CFC pre-tax profit (i.e. EBITDA) in accordance with its unconsolidated financial statements.

The ‘thin capitalization (Thin Cap)’ concept is based on the peculiarities of tax accounting of interest on loans. In tax accounting, interest accrued on borrowed funds received from non-residents, which have certain specific features. It consists in the fact that in case the amount of debt obligations to non-residents exceeds the amount of the taxpayer’s equity capital by more than 3.5 times (for financial institutions and leasing companies – by more than 10 times), interest expenses on such obligations is reflected under special rules. According to these rules, interest expenses in favour of related persons – non-residents for taxation purposes are accounted in the amount not exceeding 50 percent of the amount of the financial pre-tax result, financial expenses and the amount of depreciation deductions according to the financial statements of the reporting tax period in which such interest is accrued.

The transfer pricing regime in Ukraine is established by the Tax Code and provides that a taxpayer who participates in a controlled transaction must determine the amount of its taxable profit in accordance with the arm’s-length principle. Controlled transactions are business transactions of the taxpayer, which may affect the taxable entity with the corporate profit tax of the taxpayer.

Ukrainian legislation provides for a procedure for the preliminary approval of pricing for controlled transactions, the results of which are used to conclude agreements that are unilateral, bilateral or multilateral in nature - a written agreement between a large taxpayer and the tax service based on the results of the price approval procedure, under which the criteria for determining whether the conditions of controlled transactions carried out or planned by a taxpayer comply with the arm’s-length principle. Under the agreement of the tax service and the taxpayer, the agreement may be extended to the entire reporting period in which it is concluded, and / or for reporting periods prior to entry into force, if in respect of such reporting periods is not carried out and verification of compliance with the taxpayer’s arm’s-length principle.

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10. **Is there a general anti-avoidance rule (GAAR) and, if so, in your experience, how would you describe its application by the tax authority? Eg is the enforcement of the GAAR commonly litigated, is it raised by tax authorities in negotiations only etc?**

In Ukraine, GAAR has been transformed into a transaction reality and business objective, which is actively pursued by the tax authorities. Prior to 23 May this year, the business purpose was defined as a reason that can occur only if the taxpayer has the intention to obtain economic benefits from economic activity. On May 23, 2020 a law came into force which supplemented this definition by disclosing the concept of economic effect and introducing rules under which the absence of a business purpose has negative tax consequences for the taxpayer. At present, the concept of business purpose is applied only to transactions with non-residents and only in the context of income tax. The only negative consequence of the absence of a business purpose today in the tax legislation of Ukraine is non-recognition of expenses (or, more precisely, adjustment of the financial result) for operations with non-residents. It does not contain grounds for extended interpretation of this concept and its application to any other operations (e.g., with residents) or other taxes (e.g., VAT). The concept of business purpose provides for studying purposes, intentions and expectations of the taxpayers' business activity. And such subjective indicators begin to play an important role for the purposes of tax accounting, which results in the need to document them by taxpayers, although formally the obligation to prove the absence of a business purpose rests with the controlling authority.

11. **Have any of the OECD BEPs recommendations been implemented or are any planned to be implemented and if so, which ones?**

With the entry into force on May 23, 2020 of the Act “On Amendments to the Tax Code of Ukraine with regard to the improvement of tax administration, elimination of technical and logical inconsistencies in tax legislation,” the following rules were established in the tax legislation: (1) Business now needs to prove the existence of a “business purpose of a business operation” with a non-resident; (2) The rule of controlled foreign companies (CFC) was introduced. This means that Ukrainian shareholders of a foreign company will have to report to the tax authorities of Ukraine; (3) The concept of permanent establishment has been expanded; (4) The powers of the tax authorities have been significantly expanded. They will now be able to establish the existence of the taxpayer’s guilt and the “tax offense”, the business purpose in the business operation and the economic effect of the operation, determine the presence of a permanent establishment in Ukraine and impose a fine for lack of its registration; (5) A three-level reporting structure for international groups of companies has been introduced, which includes transfer pricing documentation (local file), global documentation (master file) and country-by-country reporting.

12. **In your view, how has BEPS impacted on the government’s tax policies?**

In 2017, the Government approved the Recommendations for the implementation of the BEPS Action Plan. The Cabinet of Ministers of Ukraine has approved the List of organizational and legal forms of non-residents not paying income tax (corporate tax), including the income tax received outside the state of registration of such non-residents and/or if they are not tax residents of the state in which they are registered as legal entities. In 2020, the tax legislation of Ukraine was updated, having introduced a number of instruments for implementing the BEPS Plan.

As a follow-up to this process, the Government has included in its programme a number of actions that it plans to implement the BEPS Plan. Thus, the government plans to initiate capital amnesty, replacement of income tax with a tax on withdrawn capital, as well as to create a virtual residence tool (e-Residency). Also, among the government’s planned initiatives, there are the creation of the Financial Investigation Service, the automatic extension of licenses and permits, the cancellation of some types of tax reporting, if these data can be taken from the registers, as well as the optimisation of the tax administration and statistical reporting. In addition, the government intends to propose a temporary ban on scheduled business tax audits and to improve legislation in the context of the BEPS Action Plan.

13. **Does the tax system broadly follow the recognised OECD Model? Does it have taxation of; a) business profits, b) employment income and pensions, c) VAT (or other indirect tax), d) savings income and royalties, e) income from land, f) capital gains, g) stamp and/or capital duties. If so, what are the current rates and are they flat or graduated?**
We still lack the perspective to assess whether the current Ukrainian tax system has come close to the OECD Model, but what we can really state today is the ongoing implementation of the new initiatives with the aim to fulfil Ukraine’s international obligations within the framework of the global OECD initiative.

Ukrainian tax legislation defines these types of taxes and fees in Ukraine:

(1) National taxes:
   - Corporate income tax (base rate 18%);
   - Personal income tax (base rate 18%);
   - Value added tax (20% rate);
   - Excise tax (progressive rate);
   - Environmental tax (progressive rate);
   - Rent (progressive rate);
   - Duty.

(2) Local taxes:
   - Property tax (including real estate tax, land tax, transport tax) (rates are progressive);
   - Flat tax (fixed rate, size depending on the payer’s group).

(3) Local taxes:
   - Parking charge for vehicle parking spaces;
   - Tourist tax.

Tax legislation provides special tax regimes for certain categories of business entities. Special tax treatment may provide for a special procedure for determining the elements of tax and collection, exemption from payment of certain taxes and fees.

Wages are taxable with:

Flat social contribution (accruals that are not part of the general taxation system but are mandatory payments) – 22 %;

PIT – Personal income tax – 18 %;

The military fee is 1.5%.

Pensions are taxed at the rate of 15%, if their amount exceeds UAH 3654.

14. Is the charge to business tax levied on, broadly, the revenue profits of a business as computed according to the principles of commercial accountancy?

In Ukraine, income tax is levied. It is levied on profit with the source of origin from Ukraine and abroad, which is determined by adjusting the financial pre-tax result (profit or loss), determined in the financial statements of the enterprise in accordance with either national accounting regulations (standards) or the international financial reporting standards (IFRS), for margins arising in accordance with the provisions of tax legislation of Ukraine.

15. Are different vehicles for carrying on business, such as companies, partnerships, trusts, etc, recognised as taxable entities? What entities are transparent for tax purposes and why are they used?

Taxpayers are all and any legal entities (residents and non-residents of Ukraine) and their separate subdivisions, which possess, receive (transfer) taxable objects or carry out transactions taxable under the tax laws of Ukraine, and are obliged to pay taxes and fees.

16. Is liability to business taxation based upon a concept of fiscal residence or registration? Is so what are the tests?

At present, responsibility for tax payments is imposed on all resident companies of Ukraine, as well as on non-resident companies receiving income with a source of origin from Ukraine.

The list of profit tax payers in Ukraine includes all legal entities on the simplified taxation system – on income with source of origin from Ukraine, which were paid to non-resident.

Non-resident income, out of which the tax should be withheld, includes, inter alia, interest, dividends, royalties, freight and engineering income received from a resident, leasing/rental payment, income from the sale of real estate on the territory of Ukraine, income from the alienation of investment assets, income from joint activities or long-term contracts, remuneration for cultural, educational, religious, sports, entertainment activities on the territory of Ukraine, brokerage, commission or agency fees, contributions and fees, and other fees.

In fact, investment profits of non-residents derived from transactions with investment assets with a Ukrainian component are taxed in Ukraine.

When an investment asset is purchased by a resident of
Ukraine, such resident will act as a tax agent for the payment of income tax. A non-resident who buys an investment asset from another non-resident who does not have a permanent establishment in Ukraine shall become a tax agent with respect to profits from sale – shall withhold tax at the rate of 15% and transfer it to the Ukrainian budget.

The tax legislation of Ukraine from January 1, 2021 introduces the concept of “a foreign company that has effective management on the territory of Ukraine”. This concept was introduced to recognize such companies as payers of income tax in Ukraine.

A foreign company has effective management in Ukraine if at least one of the conditions is met:

- Meetings of the executive body are held in Ukraine more regularly than in another country;
- Management decisions and current (operating) activity of officials are mainly from Ukraine;
- Actual management is carried out by persons primarily from Ukraine, irrespective of whether such persons have formal authority.

If a company can be found to have good governance in another State, at least one of the following conditions is taken into account to establish a place of good governance from Ukraine:

- Bank account management;
- Accounting and management accounting;
- Personnel management.

In order to avoid the risk of recognition of a foreign company as an efficient management company in Ukraine, the company may independently make the appropriate decision and recognise itself as a tax resident of Ukraine. Similarly, it is possible to resign from tax residency.

17. Are there any special taxation regimes, such as enterprise zones or favourable tax regimes for financial services or co-ordination centres, etc?

The legislation of Ukraine provides for special (free) economic zones.

A special (free) economic zone is a part of the territory of Ukraine where a special legal regime of economic activity, a special procedure of application and action of the legislation of Ukraine is established. On the territory of the Special (Free) Economic Zone privileged customs, tax, currency and financial and other business conditions of domestic and foreign investors may be introduced. The territory and status of a special (free) economic zone, including the term for which it is created, is determined by a separate law for each special (free) economic zone.

Such zones can be of different functional types: free customs zones and ports, export, transit zones, customs warehouses, technological parks, technopolises, complex industrial zones, tourist, recreational, insurance, banking and so on. Individual economic zones may combine different functions.

18. Are there any particular tax regimes applicable to intellectual property, such as patent box?

There is no patent box in the Ukrainian tax legislation. But for operations on supply of software products temporarily, from January 1, 2013 to January 1, 2023 a preferential VAT taxation regime was introduced.

19. Is fiscal consolidation employed or a recognition of groups of corporates for tax purposes and are there any jurisdictional limitations on what can constitute a group for tax purposes? Is a group contribution system employed or how can losses be relieved across group companies otherwise?

The concept of consolidated group of taxpayers existed in Ukrainian tax law until 2011, but these provisions were excluded from the Tax Code, and to date tax consolidation in Ukrainian tax law does not apply.

20. Are there any withholding taxes?

According to the tax legislation of Ukraine, a tax agent who accrues (pays, provides) taxable income in favour of the taxpayer, must withhold tax from the amount of such income at his expense. If the taxable income is accrued by the tax agent, but is not paid (provided) to the taxpayer, the tax to be withheld from such accrued income is to be transferred to the budget by the tax agent within the terms established by the tax legislation for the monthly tax period.

21. Are there any recognised environmental taxes payable by...
businesses?

Payers of the environmental tax are business entities, legal entities that do not carry out economic (business) activity, budgetary institutions, public and other enterprises, institutions and organizations, permanent missions of non-residents, including those that perform agency (representative) functions in relation to such non-residents or their founders, when carrying out activities on the territory of Ukraine and within its continental shelf and exclusive (maritime) economic zones.

22. Is dividend income received from resident and/or non-resident companies exempt from tax? If not how is it taxed?

Tax is accrued and withheld by the tax agent when dividends are accrued to the taxpayer. The tax rate is set at 18% – for passive income, including those accrued as dividends on shares and/or investment certificates.

The income received by a non-resident with the source of their origin in Ukraine means, in particular, dividends paid by a resident. A resident who pays dividends to a non-resident withholds tax from the amount of dividends at the rate of 15 percent. Tax legislation determines that income received from sources outside Ukraine is any income received by residents, including any type of their activities outside the customs territory of Ukraine, including, in particular, dividends. If the source of payment of any taxable income is foreign, the amount of such income is included in the total annual taxable income of the taxpayer – recipient, which is obliged to submit an annual tax return, and is taxed at the rate of 18%.

The tax rate for income in the form of dividends on shares and/or investment certificates, corporate rights accrued by non-residents, joint investment institutions and business entities that are not payers of CPT is set at 9%.

23. If you were advising an international group seeking to re-locate activities from the UK as a result of Brexit, what are the advantages and disadvantages offered by your jurisdiction?

Unfortunately, we have advised no international groups seeking to move activities out of the UK while waiting for Brexit.