

## **15 September 2017**

Summary of the legal and tax amendments which were approved or came into force during preceding several months.

### **1. Electronic register of VAT refund launched**

Electronic register of VAT refund was launched on 01 April 2017 providing for automatic entry of the application in chronological manner, open access to the register at the web-site of the Ministry of Finance of Ukraine and possibility to obtain refund after reconciliation of the amount of VAT refund.

### **2. Criteria of Risks Evaluation for Suspension of Registration of VAT-Invoices Approved / List of Documents Required for Registration of VAT Invoices Approved**

On 13 June 2017 the Ministry of Finance of Ukraine passed the Decree which approved criteria of risks evaluation for suspension of registration of VAT-invoices<sup>1</sup>, whereby the State Fiscal Service of Ukraine shall evaluate the sufficiency of risks required for suspension of registration of VAT-invoices / calculation of adjustments in the Unified Register of VAT Invoices.

The evaluation shall be made by permanent automatized monitoring and provided one of the approved criteria is met, the registration of VAT-invoices / calculation of adjustments in the Unified Register of VAT Invoices shall be suspended. To resume the registration, the taxpayer shall submit the respective document underlying the transaction.

### **3. New monitoring rules of controlled operations**

The State Fiscal Service of Ukraine approved the Decree<sup>2</sup> which provides for the new rules of monitoring of controlled transactions. From 16 June 2017, such monitoring shall be made by analyzing of: (i) taxpayers' reports on controlled transactions and transfer pricing documentation; (ii) information sources that contain information on taxpayers' business and that contain relevant information for identification of the conformity of conditions of controlled transactions with "arm's length" principle; (iii) tax information received on request of the controlling authorities.

### **4. NBU lifts some currency restrictions**

NBU extended currency restrictions until 13 December 2017, whereby certain already existing restrictions were lifted, including:

- NBU cancelled the restriction for the purchase of the foreign currency if a customer holds less than USD100,000 or equivalent at its accounts;
- the rule of 180 calendar days for settlements in export operations was restored;
- foreign investors will be allowed to repatriate proceeds in maximum amount of USD5 million per month from the following operations: (1) sale of debt and equity securities issued by Ukrainian issuers (such as bonds and shares), (2) sale of equity interests in Ukrainian limited liability companies, (3) exit from the company or decrease of the company's share capital.

### **5. NBU simplifies registration procedure for loans with non-residents**

Procedure of registration of cross-border loans was simplified, in particular, NBU changed the procedure of replacement of the creditor from the resident to the non-resident; adopted a new system of registration of loan agreements as well as cancelled the requirement of mandatory submission to NBU by the borrowers of info concerning the amount of actual received loans and its indebtedness.

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<sup>1</sup> The Decree of the Ministry of Finance of Ukraine "On approval of criteria of risks evaluation for suspension of registration of VAT-invoices / calculation of adjustments in the Unified Register of VAT Invoices and list of documents required for registration of VAT invoices / calculation of adjustments in the Unified Register of VAT Invoices" of 13 June No. 567.

<sup>2</sup> The Decree of the State Fiscal Service of Ukraine "On Approval of Amendments to Procedure of Monitoring of Controlled Transactions and Procedure of Questioning of Taxpayer's Authorized Personal or Employees Concerning Transfer Pricing" of 28 April 2017 No. 470.

## 6. Seals were cancelled

On 19 July 2017, the law which canceled mandatory use of seals on the documents that shall be submitted to the state or municipal authorities. Thereon, any document that is submitted by the legal entity to the state or municipal authority has to be authorized only by the signature of the authorized person. The law further introduced an express prohibition to require use of the seal on the documents by the state or municipal authorities.

## 7. Work Permits: Latest Changes

On 27 September 2017, the law simplifying the procedure related to obtaining work permits and temporary residence certificate for the foreign nationals and stateless persons in Ukraine, including:

- a. possibility of employment of the foreign national with several employers or holding few positions within the same company;
- b. possibility of issuance of three-year work permit for certain categories of foreign employees, including founders, shareholders or beneficiary owners of Ukrainian companies, graduates of the world's top 100 universities, art professionals, IT professionals;

On the other hand, the law provides for increase of the fee for issuance or extension of the work permit which shall depend on the term for which work permit is issued or extended: from 1 up to 3 years – UAH 9,600.00 approximately EUR 326.00 in 2017. The law further establishes a minimum official wage for a foreign national employed in Ukraine of not less than 10 minimum wages (UAH 32,000.00 or approximately EUR 1,100.00) for employees of business entities.

In addition, the law establishes that holding of EUR100,000.00 in the share capital of Ukrainian entity is a ground for obtaining temporary residence permit for foreign nationals and stateless persons.

## 8. Corporate agreements finally introduced

On 04 June 2017, the law which introduced corporate agreements for joint stock companies and limited liability companies came into force, providing for the following:

- a. a breach of the agreement can serve as a ground to invalidate decisions of the company's governance bodies;
- b. provisions of the agreement are confidential and may not be disclosed, unless the law or the agreement establishes otherwise;
- c. a party to the corporate agreement must notify the company about its execution within three business days thereafter.

Additionally, the law implemented such legal instruments as: (i) irrevocable power of attorney, (ii) suspensive and subjective condition, (iii) negative obligations (involves abstention from certain acts), (iv) optional agreement (envisages obligations of the performance of the acts under agreements within the certain period in the case of requirements).

## 9. Corporate governance: further development of the legal framework

On 04 June 2017, the long-expected law envisaging implementation of squeeze out, sell-out of the shares of joint-stock companies owned by the minority shareholders and escrow agreements came into force.

The squeeze-out procedure establishes the right of a shareholder, who holds a prevailing controlling stake exceeding 95%, to purchase from the minority shareholders all their shares, subject to serving to the company of a respective public irrevocable request. The sell-out procedure vests in the minority shareholders a right to request purchase of their shares by the dominant shareholder, by sending respective written request to the company. The escrow agreement mechanism introduces monetary settlements through an escrow agent as an independent intermediary whereby, a bank acting as an escrow agent may credit monetary funds received from the escrow account owner or third parties, and pay them to beneficiaries on the grounds or under circumstances stipulated in the escrow agreement.