



INTEGRITES

KYIV  
MOSCOW  
NUR-SULTAN  
ALMATY

MUNICH\*  
LONDON\*



## MANUFACTURING IN UKRAINE

For some years now, tensions in international trade relations have become more apparent. The pandemic has also created new challenges for companies in their international supply chains. More and more companies are working to make their supply chains more robust. One way of doing this is to bring production closer to the own market, also geographically. The "Made in Europe" label is already a positive feature among consumers, even though consumers are now looking to regional or even local production, especially for food. And even if consumers are increasingly willing to pay a premium for regional or local production, there are "pain thresholds" here too. Not every product is suitable for regional production. Especially in the area of labour-intensive production and low automation, Ukraine is in the spotlight as a production location.

In the past, many manufacturing companies, especially in the automotive and textile sectors, chose Ukraine. These companies take advantage of the geographical proximity to markets and customers in Western Europe, the relatively low wages, and the good level of education of the workforce in Ukraine. Ukraine offers a secure legal framework for investment and the clear alignment with European Union standards, including some advantages for companies. Last but not least, profit taxation in Ukraine can also be considered low.

But above all these advantages, it should not be forgotten that Ukraine also faces some special challenges. From a Western perspective, there is a desire for an even clearer and more consistent fight against corruption and an even more independent judiciary. And even though the administration has been reformed and streamlined in many areas, there is still room for improvement.

In the following, essential areas of investment conditions will be examined in more detail.

1, DOBROVOLCHYKH BATALIONIV ST. 01015 KYIV  
TEL/ТЕЛ +380 (44) 391 38 53  
INFO@INTEGRITES.COM

БУЛ. ДОБРОВОЛЬЧИХ БАТАЛЬЙОНІВ, 1  
01015 КИЇВ  
FAX/ФАКС +380 (44) 391 38 54  
WWW.INTEGRITES.COM

\* CONTACT OFFICES

## A. General conditions

Ukraine is in the immediate vicinity of the European Union. It shares borders with Poland, Slovakia, Hungary and Romania. Typical distances to Western and Central European industrial regions are:

Lviv - Lodz	Lviv - Košice	Lviv - Budapest	Lviv - Stuttgart	Lviv - Milan
<b>466km</b>	<b>340km</b>	<b>575km</b>	<b>1,340km</b>	<b>1,555km</b>

Most of the traffic is handled by trucks, but intermodal transport in the combination of rail/truck and water/rail/truck is also developing. The Silk Road project, however, seems to be literally bypassing Ukraine as it stands at present: The northern routes run through Russia and Belarus, while the southernmost route runs through the Middle East and Turkey.

Average wages and salaries in Ukraine are low compared to those of neighbouring countries but also compared to China, for example. The following table gives a brief overview of average net salaries, bearing in mind that wages may well vary up or down depending on the local labour market situation:

Czech Republic	China	Poland	Hungary	Ukraine
<b>€ 1,109</b>	<b>€ 944</b>	<b>€ 758</b>	<b>€ 705</b>	<b>€ 421</b>

Source: [www.numbeo.com](http://www.numbeo.com) | November 2021

There are also sometimes significant differences in salaries depending on the job and the sector. For example, salaries in industry are significantly higher than in construction.

This makes Ukraine interesting as a location for wage-intensive manufacturing companies. Many German and other Western European automotive suppliers have therefore settled in Western Ukraine in recent years:



Income tax in Ukraine is 18% plus a temporary military tax of 1.5%. In addition, 22% social security contributions are payable on gross salary. However, social security contributions are capped and are only payable up to a gross salary of UAH 97,500 (app. EUR 3,260; as of 1 December 2021).

A certain role is played by bogus self-employment in Ukraine. There are various forms of reduced taxation on the income of so-called "sole entrepreneurs". Particularly popular is the 3rd group in which, with few exceptions, any activity may be carried out up to an annual remuneration of UAH 7 million (EUR 234,000). This income is taxed at a flat rate of 5% (or 3% if VAT is shown) and social security contributions are not payable.

This form of employment is typically chosen in better paid jobs and is particularly widespread in the IT sector. However, as sole entrepreneurs usually have only one client, it is strictly speaking not a free entrepreneurial activity but dependent employment. Similar to German law, there would be reason to re-qualify this form of employment. However, this is obviously not desired politically at present.

For Western companies that want to comply with the law in this respect, this means a strong distortion of competition for talent: Employees do not compare gross salaries but net salaries and in order to get the same net salary an employer in a regular employment relationship has to pay about 14.5 - 36% more.

However, as noted, the issue of bogus self-employment does not concern the lower income groups in production. Within this income group, it is more likely that there are still companies that pay only a marginal salary "white" and with all taxes and social contributions, and the rest "in an envelope", without taxes and social contributions. However, this is a form of payment which is less and less accepted by employees and employers with "white" salaries do have an advantage on the labour market.



## B. Secure Legal Framework

The Ukrainian legal system belongs to the so-called continental legal system, in which the law is codified, i.e. comprehensively regulated in laws and entire codes. Since Ukraine became independent in 1991, civil law, commercial and business law, administrative law, tax law, criminal law and many other areas of law have been comprehensively modernized. In addition, since the conclusion of the Association Agreement with the EU, many regulations have been brought into line with EU law.

Today, Ukrainian law offers a secure legal framework for investors to reliably embed investments and contractual relationships.

## I. Company Law

Various legal forms are available to foreign investors in Ukraine for market development. There are two basic types: the representative office and the legal entity. In addition, there is a special form of joint venture through a so-called "contract of joint activity", which, however, almost never occurs in practice and is therefore not further considered here.

The representative office is in principle a branch of the foreign parent company and not an independent legal entity. The parent company is always entitled and obliged. Depending on the scope of its activities, it is often a permanent establishment for tax purposes. However, a representative office is practically out of the question for setting up a production facility in Ukraine.

Legal persons, on the other hand, are independent legal entities. They are only liable with their own assets; it is hardly possible to take action against the shareholder (so called "piercing the corporate veil"). The most common legal form is the limited liability company, abbreviated in Ukrainian as TOV. The TOV can largely be compared with LLCs in other jurisdictions, although special features must be observed in detail.

Special forms such as the GmbH & Co KG, which are well known from German law, are theoretically possible under Ukrainian law, but since Ukrainian partnerships are also taxed like legal persons, there is no tax incentive to do so.

### 1. Overview corporations

Typical forms of corporations in Ukraine are the already mentioned TOV as well as the public (PAT) and private (PrAT) joint-stock company. They are subject to a special formation and registration procedure. Corporations have separate assets with which they are liable for their liabilities. They may acquire property rights and personal non-property rights in their own name, as well as assert these rights and appear as plaintiff and defendant in court.

### 2. Registration of legal entities

A legal entity comes into existence with its state registration. In principle, all legal entities are subject to registration, regardless of their organisational and legal form. This registration is carried out in the Company Register by state-appointed registrars at the registered office of the legal entity. Within 3 working days of the application, the Registrar issues the extract from the Single State Register of Legal Entities, Private Entrepreneurs and Social Associations (hereinafter referred to as the "Companies Register"). The Companies Register is available for general inspection, also via the Internet. It contains, inter alia, information on the persons authorised to represent the company without further authorisation, such as the managing director, and the names of the shareholder(s) and the ultimate beneficial owners (UBO). Third parties may rely on the information contained in the State Register.

### **3. Organisational constitution of corporations**

Every corporation has a shareholders' meeting as its highest decision-making body. The partners' meeting decides on fundamental issues such as capital measures, the distribution of competences within the company, the direction of business activities, the appropriation of profits, liquidation, etc.

The day-to-day management of the TOV is the responsibility of the General Director as a single body or the Board of Directors as a collegial body. Special representation rules such as the "four-eye principle" and/or sum restrictions and approval reservations are possible and can be entered in the company register. Procuration does not exist as a concept in business life; however, powers of attorney can of course be granted, but these are not entered in the Companies Register.

A supervisory board can be formed to monitor the management, also in TOV; in public limited companies, the supervisory board must be appointed as a mandatory requirement.

In addition, an audit commission may be formed to exercise control over the financial and economic activities of the executive body. In practice, however, the audit commission is rarely formed in TOVs. In joint stock companies, the audit commission is formed regularly.

### **4. Limited liability company (TOV)**

In practice, the TOV is the most popular legal form because it is the easiest to establish and operate. It is also regularly preferred by foreign investors. It will therefore be described in more detail below.

#### **a) Shareholders**

A TOV can have any number of shareholders. Shareholders can be natural persons and legal entities; sole shareholder companies are also possible. Each shareholder is authorised to sell or otherwise assign all or part of his share in the company to one or more shareholders in the company. In the case of sale to third parties, pre-emption rights apply and special approval requirements may be stipulated in the articles of association.

Every minority shareholder has the right to withdraw from the company at any time and without "good cause". However, the withdrawal of the majority shareholder (50% +1 share) requires the consent of the co-shareholders.

Shareholders can additionally regulate the relationships among themselves through shareholder agreements, including voting agreements. Such agreements may also provide for call and put options, drag-along and tag-along rights. To fulfil their obligations under shareholder agreements, shareholders may grant irrevocable powers of attorney.

#### **b) Statutory capital**

The statutory capital of the company consists of the contributions of the shareholders. The amount must be determined in the articles of association; there is no minimum charter capital. However, it is advisable to capitalise the company sufficiently to ensure that it is actually capable of conducting business, at least in the initial phase of its activities (renting an office, procuring equipment, salaries, etc.). The charter capital must be paid up within 6 months of the company's formation, unless otherwise specified in the articles of association.

The charter capital is regularly paid in money. However, the shareholders may also decide to pay the charter capital in whole or in part "in kind". If a foreign shareholder contributes "in kind", the import is duty-free; however, import VAT must be paid (save to certain exemptions under investment incentive rules; see below).

### **c) Establishment of TOV**

The registration of a TOV with the Companies Register is completed within one day. However, more time should be planned for the preparation of the establishment, especially for the preparation of any documents abroad (extract from the commercial register, powers of attorney), as these documents regularly require an apostille. In total, the formation of a TOV takes about 2 - 4 weeks.

### **d) Shareholders' meetings**

The shareholders exercise their rights within the framework of the shareholders' meeting. The shareholders' meeting must be convened at least once a year as an ordinary shareholders' meeting within 6 months. At the ordinary shareholders' meeting, a decision must at least be taken on the appropriation of profits; however, there is no formal "discharge of the management".

Shareholders' meetings can be held in person or by telephone or video conference. In addition, shareholder resolutions can be passed by written circular resolutions; however, there are restrictions in this respect.

In the case of a sole shareholder, shareholder resolutions are made by written decision of the shareholder.

### **e) Management Board**

The management may consist of one person (director) or several persons as a collegial body (board of directors). Persons who are not shareholders may also be appointed as director or members of the directorate. The management is appointed by the shareholders' meeting. The management is responsible for implementing the decisions of the shareholders' meeting.

The Law on LLC expressly provides for a non-competition and confidentiality obligation and obliges the management to disclose the persons associated with them and to point out conflicts of interest where necessary.

### **f) Capital measures and financial resources of the company**

The increase or reduction of the statutory capital of a TOV requires a resolution of the shareholders' meeting and the entry of corresponding changes in the company register. Particularly with regard to the reduction, it must be taken into account that this requires the notification of all creditors and that these creditors can make use of special termination rights in certain cases.

Many companies are provided with shareholder loans, especially in the initial phase. This requires the servicing bank to register the loan with the National Bank. This is an internal bank process; however the KYC requirements in banks have increased significantly in recent years. In addition, tax law aspects such as the "Thin Capitalization Rule" must be taken into account: Payors of corporate income tax face limitation of deductibility of interest in case loans from foreign entities exceed 3.5 times the equity.

## II. Labour Law

One of the few areas of law that has not yet been fundamentally reformed by a new Code is labour law. The Labour Code of 1971 is still applicable, albeit with many amendments. A new Labour Code has been under discussion for many years, and only last year it became apparent that a comprehensive reform could be achieved in the near future. It is expected to be more employer-friendly and flexible and to reduce unnecessary bureaucratic regulations.

Ukrainian labour law is largely mandatory. Contracts between employers and employees may therefore not contain any provisions that worsen the employee's legal position as defined in labour legislation. If such provisions are nevertheless included in contracts, they are invalid. In the following, the main provisions of employment contracts will be briefly explained.

### 1. Employment agreement

An employment agreement can be concluded in both written and oral form. According to legislation, the employment agreement must be concluded in writing if, among other things

- the work under the employment agreement is associated with a high health risk
- the employment agreement is concluded in the special form of an employment contract;
- the employee requests the written form;
- the worker is a minor;
- the employer is a natural person.

Fixed-term agreements can only be concluded exceptionally if the nature of the work does not allow for a permanent agreement (e.g. to replace an employee who is temporarily absent) or if the law directly provides for this possibility (e.g. in the case of special types of agreements such as employment contract (see below), seasonal work). If neither of the parties terminates the fixed-term employment agreement and the employee continues to work after the end of the agreement period, the employment agreement is deemed to be extended for an indefinite period.

The so-called employment contract (the Ukrainian labour law and language makes a distinction between "agreement" and "contract") is a special form of employment agreement that can only be concluded with certain employees, such as managing directors. Labour contracts are somewhat more flexible than employment agreements, especially with regard to

- the duration of the contract;
- Rights and obligations of the parties;
- Liability of the parties;
- Conditions of the contract, including early termination.

When concluding employment agreements, a trial period of 1 month (simple employees) or 3 months (more qualified employees) can be agreed upon. During the probationary period, an employee may be dismissed due to lack of qualifications, subject to the general rules of dismissal. If the employee continues to work after the probationary period has expired, the latter shall be deemed to have passed the probationary period. Thereafter, termination of employment is only permissible in accordance with the general rules.

Every employee is entitled to at least 24 calendar days of paid leave per calendar year (not including public holidays). The right to full annual leave accrues to the employee after six months of the first year of work in case of uninterrupted employment in the company. Before the expiry of this six-months period, the employee may be granted part of the annual leave in proportion to the time worked. Later, leave will be granted at any time in accordance with the vacation schedule usually determined internally. The employee must be informed of the vacation at least two weeks before the specified start of the vacation if the employer exercises its right to set the

vacation (company vacation). The annual vacation can be divided into individual parts at the employee's request, whereby at least one part of the vacation must be 14 calendar days or more.

## **2. Termination of the employment agreement**

Employment agreements can be terminated as follows:

- by a termination agreement between the parties;
- by expiration of the agreed term of the agreement, provided that the employment relationship is not continued;
- Conscription of a worker for military service;
- Transfer of the employee to another organisation, company with the consent of the employee;
- where the worker refuses to comply with a transfer to another area or to continue to work with substantial changes in working conditions;
- a final court judgement prohibiting an employee from carrying out his or her work duties.

## **3. Termination by the employee**

In addition to the above-mentioned reasons, an employee may terminate an open-ended employment agreement at any time and without a specific reason, provided he/she has informed his/her employer in writing two weeks in advance. A fixed-term employment agreement may only be terminated prematurely by the employee in exceptional circumstances, for example, if the employee is permanently sick and this makes it impossible for him/her to perform his/her work duties, or if the employer violates conditions of the employment or collective agreement, etc.

## **4. Dismissal by the employer**

The employer cannot terminate an employment agreement without good reason. Exceptional termination is possible in the following cases:

- Changes in the company structure (dissolution, transformation, reorganisation, etc.);
- Change (reduction) of the establishment plan (so-called operational redundancies);
- Sickness or lack of qualifications of the employee which makes it difficult or impossible for him to perform his work duties;
- Systematic failure to perform work duties if disciplinary proceedings have already been initiated against the employee and the employee has again failed to perform his duties within one year of the imposition of the disciplinary penalty;
- Absence from work without good reason (in particular absence from work for more than three hours);
- Permanent incapacity to work for more than four months, except in cases provided for by law, e.g. pregnancy, industrial accident (in this case, the job is maintained until the employee recovers)
- Reemployment of a person previously employed at the workplace concerned;
- Appears at work in a drunken state or under the influence of drugs;
- Theft in the workplace (also in the case of petty offences);
- Gross violation of work duties by the head of the company;
- Culpable acts by an employee entrusted with money or valuables which lead to a loss of confidence;
- Misconduct by a person who has assumed educational functions.

In the case of extraordinary dismissal, deadlines and forms must be observed and, depending on the reason for dismissal, compensation must be paid to the employee.

Exclusively for company officials (e.g. directors, general managers) in companies, there are dismissal regulations according to which they can be dismissed at any time, even if an employment contract with special reasons for dismissal has not been concluded with them. However, the employer must pay a severance pay of at least 6 months' salary (higher compensation may be contractually agreed).

## **5. Foreign labour force**

In principle, foreign employees may be employed only on the basis of a work permit (ukr. *dozvil na zastosuvannja pratsi*) issued by the Labour Office (one of the local authorities of the Ukrainian Ministry of Social Policy). Exceptions apply in special cases such as transport staff, journalists diplomatic service, sportsmen and sportswomen, international technical assistance and others. There are no exceptions in the field of economics, in particular production.

Employment relationships of foreign nationals working in Ukraine are subject to mandatory Ukrainian labour law. Exceptions are foreigners working in diplomatic missions of foreign states or in representations of international organisations in Ukraine, as well as foreign employees of representative offices of foreign legal entities.

Foreigners legally working in Ukraine enjoy the same labour rights and legal protection as Ukrainian nationals (with a few exceptions in the social field).

Foreign employees can be employed by Ukrainian companies on various bases. The typical case is that a foreign worker is permanently employed by the Ukrainian company. There are also the following special cases:

### **a) Intra-corporate transferees**

Ukraine's accession to the WTO and, as a result, the necessary adoption of a new procedure for issuing work permits to foreign nationals under the GATS agreement have paved the way for further contractual arrangements. If a foreign employee is in an employment relationship with a legal entity established on the territory of a WTO member state, the legal entity can temporarily second him to its Ukrainian subsidiary as an intra-corporate transferee. This category of employees includes directors, managers and specialists. Also, in this case, the foreigner requires a work permit, which can be issued for a longer period of time (according to the relevant contract and transfer decision). The assignment is based on a corresponding agreement between the foreign employee and the foreign parent company as the employer and on the decision of the parent company on the transfer of the foreign employee to work in Ukraine. This secondment agreement is not necessarily subject to Ukrainian law.

### **b) Secondment on the basis of a foreign trade agreement**

If an agreement is concluded between a foreign company and a Ukrainian company under which the foreign party performs certain work or provides certain services in Ukraine, and temporarily sends its employees to Ukraine for this purpose, work permits are also required for such employees. The work permit must then be obtained by the Ukrainian company on the basis of the service or work contract. The employee, however, remains in his old employment relationship.

### **c) Employees of representative offices**

Foreigners working in representative offices of foreign legal entities in Ukraine receive a so-called service card from the Ministry of Economy of Ukraine instead of a work permit. Service cards are issued by the Ministry of Economy for a period of 3 years. The advantage of an official card is that its application requires much less effort than the application for a work permit. As a rule, these employees have employment agreements with the parent company, which are subject to the law of the state where the company has its headquarters.

#### **d) Application for a work permit**

The procedure for issuing, extending and withdrawing work permits for foreign nationals is regulated in the Employment Act. It is not the foreign employee himself/herself who is responsible for applying for a work permit, but the Ukrainian employer. Typically, the work permit is issued for one year.

For 3 years the work permit can be valid for the following foreign employees:

- Highly paid specialists (50 times minimum wage, as of 1 December 2021 UAH 325,000 or app. EUR 10,800 per month)
- Foreign investors (UBOs)
- IT specialists
- Staff seconded by service providers

There is a legal requirement regarding the amount of the foreign employee's salary. According to the law, the foreigner's salary may not be lower than 10 minimum salaries (UAH 65,000 as of 1 December 2021; app. EUR 2,170).

Since 2017, workers can also obtain a work permit for several jobs. Highly paid specialists can take up a second job without having to obtain another work permit.

For intra-corporate transferees and foreigners who are active in the Ukraine on the basis of a foreign trade agreement, corresponding agreements (assignment or foreign trade contract) must also be submitted. The application fee amounts to four current statutory subsistence minima (as of 1 December 2021 UAH 9,572 or app. EUR 320) per employee. Experience shows that the procedure, including the compilation of the documents, takes 2 to 3 weeks.

The application for renewal must be submitted to the Labour Office at least 20 calendar days before expiry. If the work permit is extended, additional fees are payable.

#### **e) Residence law issues**

Foreigners who work in Ukraine must legalise their stay properly. Citizens of countries with a visa requirement for Ukraine receive permanent "D" type visas from the relevant consulates of Ukraine abroad on the basis of their work permits or invitations. They enter Ukraine with these visas and immediately apply for temporary residence permits at the local branches of the State Immigration Service of Ukraine. They must then register their place of residence with the local residents' registration office within 30 days.

Citizens of countries without visa requirements do not need a visa to enter Ukraine. They may stay in Ukraine for 90 days within each successive period of 180 days, starting from the day of first entry. If a longer stay is intended, these foreign workers must apply for a temporary residence permit in Ukraine and register their residence. A type "D" visa is also required for this purpose.

The temporary residence permit is issued for the duration of the work permit or for one year if the work permit is longer valid. The number of entries and exits is also unlimited. The application for a temporary residence permit is quite cumbersome and bureaucratic due to the large number of documents to be submitted. Careful preparation and planning are therefore required; first and foremost, the foreigner should secure his or her accommodation in Ukraine (rental contract and approval of the house owner for registration), if possible before entering the country (if necessary with the help of the employer).

### III. Real Estate Law

Over the past 30 years, Ukrainian real estate legislation has been developed into a secure framework for foreign investment. There are, however, special features that continue to astonish investors, especially among investors from German-speaking countries.

For example, the ownership of the building and the ownership of the land may be in different hands and this is often the case in practice. With regard to the ownership of the building, the owner has a legal right to use the land underneath it if this is necessary to use the building. The owner of the building also has a pre-emptive right to acquire the land. Typically, in such cases, the ownership of the land belongs to the state or municipality. However, if a building owner has also acquired land plot and transfers ownership of the building to a third party, the ownership of the land plot must also be transferred. In the long term, therefore, the ownership of the building and the ownership of the land plot is likely to be aligned.

In practice, this means that investors do not necessarily have to acquire land to build on it. In fact, it can be much easier to just lease and build on a plot of land and only then acquire ownership of it.

Many land plots are still owned by the state or municipality and, as a general rule, such land may be purchased/leased only through an auction. However, there are also a number of exceptions from this general rule, such as a buy-out of a land plot by an owner of a building located on such land plot, renewal of a land lease, use of land for exploration of subsoil, construction of facilities financed by the state budget, etc.

Since 2013, a unified real estate register has been introduced, which includes all proprietary rights to buildings and land. Rights to buildings and land can officially be recognized only after its registration in the real estate register. The data in the register is publicly available and can be accessed by anyone via Internet with the help of the digital encryption key.

Each land plot is zoned for a particular purpose which determines how the land plot can be used. Within certain limits, a land plot's zoning can also be changed. There are 9 different categories of zoning, including for residential and general development, agricultural purposes, recreational areas and others. It is important to note that only land category for "industry, transport, communications, energy, defence and others" is eligible for the development of production facilities.

Towns and municipalities in Ukraine have been making great efforts to attract businesses for several years. This is due to the fact that since an administrative reform in the years after 2014, cities and municipal associations have been given more responsibility for local self-government, combined with a larger share of tax revenues, especially income tax, levied in their territory. The towns and municipalities are thus directly interested in the economic success of the region.

## IV. Main features of the building law

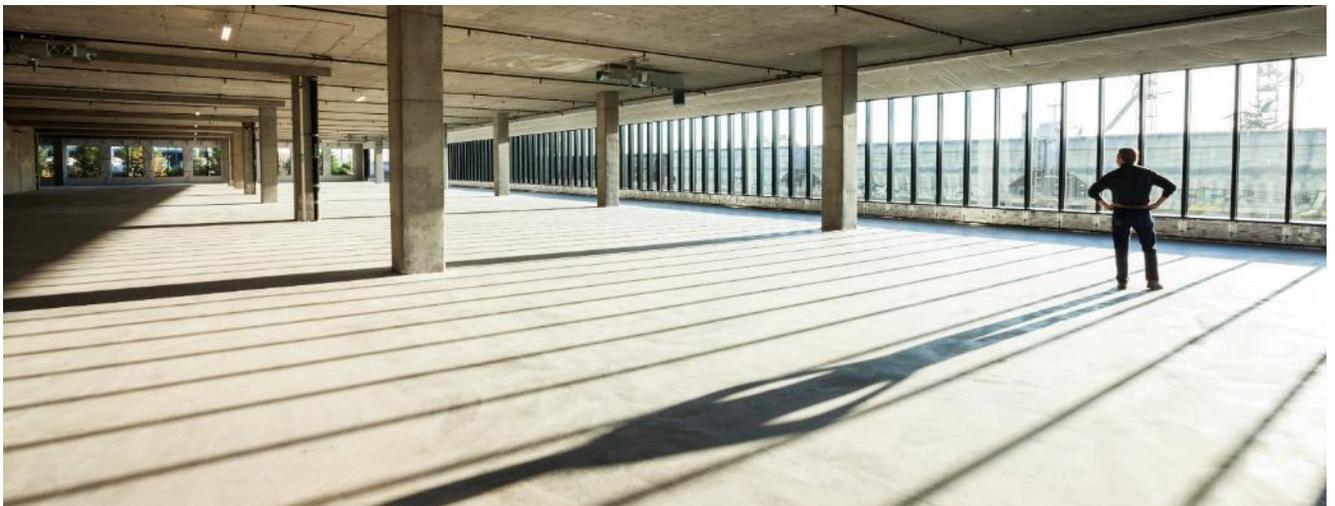
There are typically two real estate situations that can be considered for the construction of production facilities: either a plot of land can be found already built on with a suitable building that can be adapted if necessary ("brownfield"), or a free plot of land can be found that is newly built on ("greenfield"). Developed land can have the advantage that the necessary infrastructure such as roads and possibly even railways, as well as electricity and gas connections, already exists. Typically, however, major alterations and extensions to the building are likely to be required.

In the case of undeveloped land, the infrastructure has yet to be provided. In this area, however, the cities and municipalities can do a lot to help if they want to promote the establishment of manufacturers. In particular, local authorities (especially in small and middle-size towns and villages) often support potential investors during development of utilities; if needed, provide expropriation of land plots (if the construction relates to transport or energy infrastructure, mining works etc.).

Building law must be observed. For instance:

- The developer must comply with the land zoning and restrictions on the use of land (i.e. to preserve hedgerows, to comply with the electric grid protection areas limitations, etc.);
- The relevant design must comply with town-building documentation and technical conditions on connection to utilities;
- The construction may be commenced only based on a building permit and completed – based on a commissioning certificate;
- Finally, execution of major construction works require a construction license.

A significant step has been made towards transparency and consolidation of data in the construction. In particular, a unified state e-system in construction has been introduced which includes, inter alia, the register of permitting documents (i.e. building permits, commissioning certificates, construction licenses, etc.). This register makes it possible to check and trace authorizations and permitting documents in relation to any construction facility, as well as provides investors with more detailed information about actual construction.



## V. Investment promotion

### 1. General investment promotion

On 13 February 2021, the Law "On State Aid for Investment Projects of Significant Size" (Investment Law) entered into force. It is somewhat mockingly referred to in the media as the law on "investment nannies", following an identical announcement by President Zelenskyy at the World Economic Forum in Davos in early 2020. The Law does indeed provide for a state agency to be entrusted with the intensive supervision of particularly large investment projects in Ukraine. However, this is only a small part of the investment promotion. In addition, two laws regulating tax and customs incentives for these projects entered into force on 28 March 2021.

The Investment Law provides special support for investment projects that meet the following criteria:

- The investment project concerns manufacturing (except tobacco and alcohol), extraction of mineral resources for further processing (except coal, oil and gas), waste management, transport, storage, postal and courier services, health care, arts, culture, sports, tourism and recreation;
- construction, modernisation or technical equipment of plants/buildings for the above purposes;
- The investment volume in fixed assets is at least EUR 20 million;
- The implementation of the project will not exceed 5 years;
- Creation of at least 80 new jobs with average salaries at least 15% higher than the regional average salary for equivalent jobs in the previous year.

By means of a special investment promotion agreement, the following benefits or subsidies may be granted to the investor:

- Exemption from certain taxes (see below)
- Exemption from import duties for a new plant (see below)
- Preferential right to lease state or municipal land with right of first refusal
- Construction of infrastructure (roads, communications, energy) at the expense of the state or municipality.

The total value of benefits or subsidies may not exceed 30% of the planned investment. The terms of state support for each investor are set out in special investment agreements. The state guarantees that the investor's rights stipulated in the investment agreement will be governed by the law in force at the time of the investment, unless the law changes to the investor's advantage (reduction of the tax burden, simplification of control procedures, etc.). It is interesting to note that the investment contract can also be concluded under foreign law and a non-Ukrainian arbitration court can be chosen for disputes.

It is important to note that the law does not cover public-private partnerships.

### 2. Tax and Customs Incentives

The following tax and customs incentives are foreseen for the projects described above:

- Exemption from import duties on new equipment (manufactured not earlier than three years prior to the import date) and its spare parts imported for the purpose of implementing the investment project (only applicable to individually specified HS Codes<sup>1</sup>);

---

<sup>1</sup> These are the eligible HS codes: 8402-8405, 8406 82 00 10, 8406 82 00 90, 8411, 8412, 8413 40 00 00, 8413 50, 8413 60 20 00, 8413 60 70 00, 8413 60 80 00, 8413 70 21 00, 8413 70 29 00, 8413 70 30 00, 8413 70 35 00, 8413 81 00 00, 8413 82 00 00, 8414 10, 8414 40 90 00, 8414 80, 8416, 8417, 8418 (excluding 8418 10 20 10, 8418 10 80 10, 8418 21, 8418 29 00 00, 8418 50, 8418 91 00 00, 8418 99), 8419, 8420, 8421, 8422 (excluding 8422 11 00 00), 8423 (excluding 8423 10 10 00, 8423 81 25 00, 8423 90), 8424 10 00 90, 8425 (excluding 8425 41 00 00, 8425 42 00 00, 8425 49 00 00), 8426-8431, 8433 60 00 00, 8434, 8435 (only machines and mechanisms for producing juices or similar beverages), 8436-8442,

- Exemption from import VAT of the equipment (see above) and its spare parts (as opposed to the standard import VAT of 20 %);
- Exemption from corporate profit tax for 5 consecutive years from the date chosen by the investor in the special application submitted to the tax authority (as opposed to the standard CPT of 18%);
- Reduction or exemption from land tax and reduction of land lease payments, subject to a decision to that effect by the local authority.

The following restrictions apply:

- The amounts of tax and duty exemptions shall be counted against the total amount of State aid, which shall be determined in the specific investment agreement and shall not exceed 30% of the investment. When this threshold is reached, the general tax rules apply;
- The profit tax exemption does not apply to (i) transactions subject to transfer pricing rules that do not comply with the arm's length principle and (ii) profits of controlled foreign enterprises;
- Land tax reduction or exemption, land rent reduction and profit tax exemption cannot be granted for projects in the extraction of mineral resources for further processing;
- the exemption from import duties and VAT cannot be applied to the import of goods originating from an aggressor state and/or occupying state and/or imported from the occupied territories of Ukraine;
- the investor may be required to repay the exempted taxes and duties together with the payment of fines and/or late payment penalties if the imported equipment is disposed of within five years of its import, if the equipment is misused or if the special investment agreement is terminated prematurely (unless the termination is caused by Ukraine's breach of its obligations to provide state aid under the special investment agreement or by circumstances of force majeure). The tax and customs consequences depend on the nature of the event.

All tax and customs incentives are valid until 1 January 2035.

### **3. Promotion of the Production of Electric Vehicles**

Two laws of 15 July 2021 on amending transitional provisions of the Tax Code and the Customs Code of Ukraine "to promote the development of ecological transport in Ukraine" (Nos. 1660, 1661) will introduce some tax and customs facilitations with effect from 1 January 2022.

#### **a) Import promotion of certain goods**

Enterprises that maintain, establish or modernise production for the manufacture of the following means of transport will be exempted from import VAT and import duty on the import of certain goods until 1 January 2031:

Vehicles equipped exclusively with electric motors (one or more) and falling under the following Harmonised System numbers:

- 8603 (self-propelled trams and metro cars only),
- 8701 20 (wheel tractors for semi-trailers),
- 8702 motor vehicles designed to carry 10 or more persons including the driver,

---

8443 (excluding 8443 13 10 00), 8444 00, 8445-8448, 8449 00 00 00, 8451, 8452 (excluding 8452 10, 8452 30 00 00, 8452 90 00 00), 8453-8466, 8470 30 00 00, 8471 50 00 00, 8472 30 00 00, 8474, 8475, 8477, 8479, 8480, 8481 (excluding 8481 80), 8483, 8486, 8487, 8501, 8502, 8503 00, 8504, 8506, 8507, 8511, 8514, 8515, 8525, 8526, 8528, 8529, 8530, 8537, 8538 10 00 00, 8543, 8607, 8608 00 00 00, 8709, 9006 30 00 00 (only for photography cameras intended for medical and surgical examination of internal organs), 9007, 9008, 9010 50 00 00, 9010 90 20 00, 9011, 9012, 9018 (excluding 9018 31, 9018 32, 9018 39 00 00), 9019, 9020 00 00 00, 9022, 9023 00, 9024, 9026, 9027, 9030, 9031, 9032.

- 8703 Motor cars, passenger vans and other motor vehicles principally designed for the transport of persons (other than motor vehicles of heading 8702), including vans and racing cars,
- 8704 Motor vehicles for the transport of goods,
- 8705 special purpose motor vehicles, other than those principally designed for the transport of persons or goods (for example, lorries for emergency repairs, mobile cranes, fire engines, concrete mixers, street cleaning vehicles, workshop vehicles).

The total of 126 goods are defined in a positive list in the Customs Code<sup>2</sup>.

#### **b) Exemption from profit tax**

Until 31 December 2035, the following enterprises will be exempt from paying profit tax:

- Companies that exclusively manufacture electric motors intended for vehicles that are exclusively electrically powered (as defined in 3.a above);
- Companies that exclusively manufacture lithium-ion batteries intended for vehicles that are exclusively electrically driven (as defined in 3.a above);
- Companies that exclusively manufacture chargers for lithium-ion batteries intended for vehicles that are exclusively electrically driven (as defined in 3.a above);
- Companies that exclusively manufacture vehicles that are exclusively electrically driven (as defined in 3.a above);
- undertakings producing exclusively electrically powered self-propelled trams and metro cars, and / or non-motorised tram or metro cars.

The company must use the saved tax funds for research and testing work, for the construction or conversion of production facilities, for the expansion of production capacities or for the introduction of new technologies. The use of these funds must be related to the production activity of the enterprise. The funds are considered to be targeted financing.

---

<sup>2</sup> These are the eligible HS codes: 3926 30 00 10, 4016 99 52 10, 4016 99 57 10 7007 10 11 10 , 7007 21 20 10, 7009 10 00 10, 7304 31 80 10 , 7304 31 80 90, 7304 41 00 10 7304 41 00 90, 7311 00 13 00, 7311 00 19 00, 7311 00 30 00, 7311 00 91 00, 7311 00 99 00, 7613 00 00 00 , 8302 30 00 10 , 8302 30 00 90, 8302 60 00 90, 8407 33 20 00 , 8407 33 80 00, 8407 34 10 00, 8407 34 91 10 8407 34 99 10, 8413 30 20 00, 8413 30 80 00, 8413 60 20 00, 8413 60 31 00, 8413 81 00 00, 8414 80 73 10 8414 80 75 00, 8415 20 00 10 8415 20 00 90, 8415 90 00 00, 8483 10 50 90, 8483 40 23 00, 8483 90 81 00, 8501 10 99 10, 8501 33 00 90, 8501 52 20 90, 8501 52 30 90, 8501 52 90 90, 8501 53 50 00, 8504 40 55 00, 8504 40 82 00, 8504 40 84 00, 8504 40 88 00, 8504 50 95 90 , 8504 90 99 00, 8505 20 00 00, 8507 50 00 00, 8507 60 00 00, 8507 80 00 00, 8507 90 30 00, 8507 90 80 00, 8512 20 00 10 8512 30 10 10, 8512 30 90 10 , 8512 40 00 11, 8512 90 90 10 8516 29 91 00, 8516 80 20 90, 8516 80 80 30 8516 90 00 00, 8531 10 95 90, 8532 10 00 00, 8532 29 00 00, 8533 29 00 00 , 8535 10 00 00, 8535 21 00 00, 8536 20 90 00, 8536 50 80 00, 8536 69 90 10 8537 10 91 00, 8537 10 98 10 8538 90 91 00, 8539 21 30 10, 8541 40 10 00 , 8544 30 00 91, 8607 21 90 00 , 8607 29 00 00, 8607 99 80 00, 8707 10 10 10, 8707 10 10 20, 8707 90 10 00, 8707 90 90 00, 8708 10 90 91, 8708 21 90 91, 8708 29 10 00, 8708 29 90 00, 8708 30 91 91, 8708 30 99 91, 8708 30 99 98 , 8708 40 50 91, 8708 40 91 10 8708 40 99 91, 8708 50 35 10 8708 50 55 10 8708 50 91 91, 8708 50 99 91, 8708 70 10 10 8708 70 10 90, 8708 70 50 10 , 8708 70 99 10, 8708 80 35 91, 8708 80 55 10 8708 80 99 91, 8708 80 99 98, 8708 91 91 10 8708 91 91 90, 8708 91 99 91, 8708 91 99 98, 8708 92 91 10 , 8708 92 99 91, 8708 93 90 91, 8708 94 35 91, 8708 94 91 10 8708 94 99 91, 8708 95 10 10 8708 95 10 90, 8708 95 91 10 8708 95 99 91, 8708 99 93 10 , 8708 99 97 91, 9015 10 10 00

#### 4. Promotion of the import and distribution of electric vehicles

Until 1 January 2022, the Tax Code granted VAT exemptions for the import into Ukraine and supply of certain vehicles with exclusively electric propulsion to the customs territory of Ukraine. This period has been extended until 1 January 2026 and the eligible vehicles have been specified in more detail. Eligible vehicles are:

- 8701 20 (tractor units for automobile semi-trailers only).
- 8703 80 10 10: other new vehicles, electric drive only
- 8703 80 90 10: other vehicles with electric drive only (i.e. second-hand vehicles)
- 8704 90 00 00: certain other vehicles for the carriage of goods

#### 5. Promotion of natural gas and biogas powered vehicles

The two subsidy laws also provide for subsidies for the import and manufacture of vehicles powered by natural gas or biogas.

Until 1 January 2026, the import into the customs territory of Ukraine and the supply of new vehicles (including vehicles manufactured in Ukraine; HS No 8701 20, 8703, 8704) equipped with spark-ignition internal combustion engines are exempt from VAT if the vehicles are powered exclusively by compressed natural gas, liquefied natural gas or biogas.

The import of goods on the positive list (see a) above) will also be exempt from import VAT and import duty until 1 January 2031 if they are used for the production of vehicles that run exclusively on compressed natural gas, liquefied natural gas or biogas.

Finally, companies that exclusively produce vehicles that are exclusively operated with compressed natural gas, liquefied natural gas or biogas will also be exempt from profit tax until 31 December 2035; in this respect, the above statements apply accordingly.

---

1, DOBROVOLCHYKH BATALIONIV ST. ВУЛ. ДОБРОВОЛЬЧИХ БАТАЛЬЙОНІВ, 1  
01015 KYIV 01015 КИЇВ  
TEL/ТЕЛ +380 (44) 391 38 53 FAX/ФАКС +380 (44) 391 38 54  
INFO@INTEGRITES.COM WWW.INTEGRITES.COM

---



**DISCLAIMER:** Please be advised that nothing in this article constitutes legal advice. It is merely an analysis of some of the issues relevant for investing in Ukraine. If you have particular questions or need advice on any of the above topics you are welcome to contact me at [julian.ries@integrites.com](mailto:julian.ries@integrites.com)