



## International tax

# Ukraine Highlights 2012

### Investment basics:

**Currency** – Ukrainian Hryvnia (UAH)

**Foreign exchange control** – As a general rule, only local currency may be used in business transactions between residents. Foreign currency may be used in cross-border transactions between residents and nonresidents. Foreign currency proceeds received by a company from its foreign clients must be credited to a local bank account no later than 180 days after the date goods or services are exported, with penalties for noncompliance. (Similarly, goods must be imported into Ukraine 180 days after prepayments have been made by a Ukrainian company to a foreign supplier). A Ukrainian resident must obtain a license to invest abroad, particularly when purchasing shares/securities issued by a foreign entity, opening an account with a foreign bank, etc. In certain cases, a Ukrainian entity can make payments abroad using its own foreign currency (borrowed funds or purchased foreign currency may not be used).

**Accounting principles/financial statements** – Ukrainian accounting standards apply. These standards are generally in line with IFRS, but differ in certain areas. Financial statements must be prepared on a quarterly basis.

Joint stock companies, banks, insurance and some other companies (listed in the Decree of the Cabinet of Ministers of Ukraine) must prepare financial statements in compliance with IFRS. As from 1 January 2012, other companies may opt to prepare financial statements in compliance with local GAAP or IFRS.

**Principal business entities** – These are the limited liability company, private and public joint stock company, representative office and branch/permanent establishment (PE) of a foreign corporation.

### Corporate taxation:

**Residence** – A legal entity incorporated and operating under Ukrainian law generally is

considered a tax resident, whereas a legal entity incorporated abroad and operating according to the laws of another country normally is treated as a nonresident.

**Basis** – A resident entity is taxed on worldwide income received or accrued within the reporting period, depending on the type of income. A nonresident company is taxable on business income derived from carrying out trade or business activities in Ukraine and other non-business income received from Ukraine sources. A branch or PE of a nonresident in Ukraine is treated as a separate entity for tax purposes.

**Taxable income** – Taxable income is determined by subtracting allowable deductible expenses and depreciable and amortizable items from gross income.

**Taxation of dividends** – Dividends paid by a Ukrainian company are subject to a 21% advance corporate income tax (ACT) at the time the dividends are paid. The tax is accrued on a gross basis and is charged to the payer of the dividends. A Ukrainian company may use ACT to reduce its corporate income tax liability for future periods. If the taxpayer does not have sufficient corporate income tax liability for the period, ACT paid may be carried forward indefinitely. ACT does not apply to dividends paid by a Ukrainian investment fund, an agricultural company that pays the fixed agricultural tax (FAT) or a holding company that pays dividends out of dividends received from other companies.

**Capital gains** – Capital gains are treated as ordinary income and taxed at the standard corporate tax rate.

**Losses** – Tax losses generally may be carried forward indefinitely. Restrictions are sometimes imposed for certain periods. The carryback of losses is not permitted.

**Rate** – 21% for calendar year 2012. The rate reduces to 19% for 2013 and 16% as from 2014. Certain types of businesses (e.g. insurance, agriculture, etc.) are taxed under special regimes, which may imply lower tax rates.

**Surtax** – A 20% surtax applies to payments made for advertising services performed outside Ukraine to nonresident providers.

**Alternative minimum tax** – No

**Foreign tax credit** – Foreign tax paid may be credited against Ukrainian tax or deducted from taxable income under an applicable tax treaty. The credit or deduction is limited to the amount of Ukrainian tax payable on the foreign income.

**Participation exemption** – Dividends received from a nonresident are not subject to Ukraine tax if the resident recipient owns more than 20% of the payer entity.

**Holding company regime** – See under “Participation exemption.”

**Incentives** – A corporate taxpayer deriving income from the domestic sale of certain types of energy saving equipment it has manufactured is entitled to an 80% exemption from corporate income tax provided the tax benefit is reinvested to increase production. Qualifying companies (listed in a national registry) may receive a 50% exemption for profits earned in the course of developing, implementing and utilizing energy saving and energy efficient technology. This benefit is available for 5 years from the time the company earns its first profits attributable to the technology. A 0% corporate income tax rate applies from 1 April 2011 to 1 January 2016 provided a taxpayer meets certain criteria (i.e. annual income does not exceed USD 375,000 and the average salary paid is no less than 2 minimum salaries).

Small-sized entities may be subject to a special tax regime, such as unified tax.

### Withholding tax:

**Dividends** – A 15% withholding tax is levied on dividends paid to a nonresident (that is the beneficial owner), unless the rate is reduced under a tax treaty.

**Interest** – A 15% withholding tax is levied on interest paid to a nonresident (that is the beneficial owner), unless the rate is reduced under a tax treaty.

**Royalties** – A 15% withholding tax is levied on royalties paid to a nonresident (that is the beneficial owner), unless the rate is reduced under a tax treaty.

**Technical service fees** – A 15% withholding tax is levied on technical service fees paid to a nonresident (that is the beneficial owner), unless the rate is reduced under a tax treaty.

**Branch remittance tax** – Although the Corporate Income Tax Law does not specifically impose a branch remittance tax, the Ukraine tax authorities tend to require payment of a 15% tax on the repatriation of after-tax branch profits (unless an applicable tax treaty provides otherwise).

**Other** – No

### Other taxes on corporations:

**Capital duty** – No

**Payroll tax** – Salary or similar employment compensation paid to a domestic employee is subject to the Unified Social Security Contribution at a rate that ranges from 36.76% to 49.7%, depending on the taxpayer's risk category.

**Real property tax** – A land tax of up to 1% applies to the assessed value of land (or at a fixed amount per hectare if the value cannot be properly assessed). Land tax is imposed depending on the location of the land and how it is used.

As from 1 January 2012, legal entities and individuals (including nonresidents) that own residential real estate are subject to a tax at a rate equivalent to 1 minimum salary as at 1 January of the reporting year, depending on the size of the property.

**Social security** – See under "Payroll tax."

**Stamp duty** – No

**Transfer tax** – No, but see "Other" below for state duty and mandatory pension fund contributions triggered by transfers of real estate or vehicles.

**Other** – A state duty is imposed on the transfer of real estate (1%) and vehicles (5%); mandatory pension fund contributions of 1% (land and buildings) and 3% (vehicles) also apply.

### Anti-avoidance rules:

**Transfer pricing** – Income received in transactions between related parties or transactions with a nonresident may not be less than the "normal" value (price) of property transferred or services provided,

and deductible expenses incurred in such transactions may not exceed the normal value of the property or services acquired. The burden is on the tax authorities to determine the normal/regular price and fair market price. A quasi-advance pricing agreement procedure is available for certain transactions.

New transfer pricing rules that are expected to be based on the OECD transfer pricing guidelines will apply as from 1 January 2013.

**Thin capitalization** – Although Ukraine does not have formal thin capitalization rules, interest may be partially disallowed if the taxpayer is an entity with 50% or more of its statutory capital owned or managed, directly or indirectly, by a nonresident and a loan is granted by the nonresident or a party related to the nonresident. Interest expense will be deductible to the extent of the taxpayer's interest income, plus 50% of net non-interest income (defined as all taxable revenue (excluding interest income) reduced by deductible expenses (excluding interest expenses)). The disallowed portion of the interest expense may be carried forward indefinitely. Interest is fully deductible if the creditor is a Ukrainian resident corporate income taxpayer.

**Controlled foreign companies** – No

**Other** – Ukraine does not have a general anti-avoidance rule. However, to prevent tax avoidance, restrictions are imposed on the deductibility of expenses as follows: (1) purchases of consulting, marketing and advertising services from nonresidents are limited to 4% of prior year sales (revenue); (2) royalties paid to nonresidents are limited to 4% of prior year sales (revenue) (and nondeductible if paid to a nonresident, whose company is located in an offshore jurisdiction or that is not the beneficial owner of the royalty payment); (3) engineering services are limited to 5% of the customs value of imported equipment (and fully nondeductible if purchased from an offshore company).

The deduction of expenses incurred for purchases from offshore companies is limited to 85% of the expenses incurred. The official list of offshore jurisdictions is published by the Cabinet of Ministers and updated periodically.

**Disclosure requirements** – Individual shareholders (beneficial owners) must be disclosed at the time a legal entity registers with the state and at the time of a merger or acquisition.

### Administration and compliance:

**Tax year** – Calendar year

**Consolidated returns** – Consolidated returns are not allowed; each entity must file a separate return.

**Filing requirements** – Corporate income tax returns must be submitted within 40 days following the quarterly reporting period, with tax due paid within 10 days of submission of the return. The returns for the year are cumulative, so that all income from the beginning of the year to the close of the period is accounted for and credit given for taxes paid in the tax year's preceding periods.

**Penalties** – Penalties and/or fines apply to: late payments (120% of the national bank's discount rate); failure to comply with filing requirements; and accuracy-related penalties (25% of the underpaid amount for the first violation, 50% for the second violation and thereafter). More severe penalties may apply if the understatement is significant or if the taxpayer is convicted of a tax evasion. If the taxpayer reveals the understatement, the penalty will be 3%-5% of the amount of the tax liability for the entire understatement period, regardless of the number of tax periods that have passed. A penalty of up to 75% of the understated tax liability will be imposed for failure to pay withholding tax to the government.

**Rulings** – Taxpayers may request an explanation of the tax treatment of a particular issue. Taxpayers may not be fined for acting based on a ruling issued by the tax authorities, but additional tax liabilities may still be accrued if the authorities change their opinion.

### Personal taxation:

**Basis** – Resident individuals are taxable on their worldwide income. Income is taxable whether received in cash or in kind. Nonresidents are taxed on income received from Ukraine sources.

**Residence** – An individual is tax resident if he/she has a permanent home in Ukraine. If an individual has a permanent home in more than 1 country, he/she is considered a tax resident of the country with which he/she has closer personal and economic ties. If it is impossible to determine residence under either of the preceding tests, an individual will be deemed to be tax resident if he/she is present in Ukraine for at least 183 days cumulatively during a calendar year (the day

of arrival and the day of departure are included separately). If tax residence still cannot be determined, the individual will be deemed a tax resident if he/she has Ukraine citizenship or if the individual "self recognizes" his/her tax residence. Foreign citizens who are considered tax residents in Ukraine are taxed in the same manner and under the same rules as Ukrainian resident citizens.

**Filing status** – Joint filing is not permitted.

**Taxable income** – Taxable income includes employment income (including benefits); proceeds from trading or professional activities (including proceeds from intellectual property); proceeds from the alienation of property; gifts and prizes; insurance payments; and contributions to unqualified pension plans made on behalf of a taxpayer by another person/employer.

**Capital gains** – Although taxed at the 15%/17% personal income tax rate, income from investment asset transactions (e.g. securities, corporate rights) is accounted for separately from other personal income. Tax losses from such transactions may not be offset against taxable income from other sources (and vice versa) and must be carried forward to offset future investment income.

**Deductions and allowances** – Limited deductions may be taken for mortgage interest, contributions to registered charities, educational expenses for the taxpayer and his/her immediate relatives and medical expenses. A special annex to the tax return must be submitted to claim the deductions.

**Rates** – The general rate is 15%, with a 17% rate applying to amounts exceeding 10 minimum salaries (as from 1 January 2012, the minimum salary equals approximately USD 135). Ukraine-source income (from a Ukrainian or foreign employer) received by a foreign employee who does not qualify as a Ukraine tax resident is taxed at the same rate as a resident, unless otherwise provided in the law.

### Other taxes on individuals:

**Capital duty** – No

**Stamp duty** – No

**Capital acquisitions tax** – No

**Real property tax** – Gains derived from the sale of a house, flat (or part thereof), room or village house (including a land plot) are not subject to tax if the sale takes place once during the year, provided the owner of the property has possessed legal title for at least

3 years before the sale (as from 1 January 2012, the 3-year ownership period does not apply to inherited property). The rate is 5% if the taxpayer makes more than 1 sale per year.

As from 1 January 2012, legal entities and individuals (including nonresidents) that own residential real estate are subject to a tax at a rate equivalent to 1 minimum salary as at 1 January of the reporting year, depending on the size of the property.

Land tax is imposed on the owner/user, with the rate determined depending on location and use of the land. Settled land of an assessable value is taxed at 1% of the estimated value. Otherwise, the rate starts at UAH 0.24 per square meter in towns with less than 3,000 inhabitants and increases up to UAH 3.36 per square meter in cities with more than 1 million residents. For regional centers, zone coefficients from 1.2 to 3 are applied. Agricultural land is taxed at rates of 0.03% to 0.1% of the estimated value.

**Inheritance/estate tax** – Inheritances (real estate, chattels, securities, corporate rights, etc.) are taxable at the following rates: 15% (or 17%) if the recipient is not a relative or is a nonresident; 5% if the recipient is a resident relative not classified as a close relative; and 0% if the recipient is a resident classified as a close relative (i.e. parent, spouse, parents of spouse or children).

**Net wealth/net worth tax** – No

**Social security** – Salary or similar employment compensation paid to a local employee (including compensation to individuals under civil law contracts) is subject to the Unified Social Security Contribution, amounting to 3.6% of salary (2.6% of the compensation under civil law contracts), which is withheld by the employer. Social security contributions are subject to monthly caps.

### Administration and compliance:

**Tax year** – Calendar year

**Filing and payment** – Employers and other taxable entities are considered the tax agents of individuals and are responsible for withholding personal income tax and state pension and social security contributions from salaries and other types of remuneration. These taxes must be remitted before or at the time the income is paid. If income is paid in kind, the tax agent must remit tax to the government on the following banking day after payment has been made. It is the tax agent's responsibility to make

timely payments of withholding taxes on salaries and file personal income tax reports on a quarterly basis. However, to claim a tax credit for certain expenses incurred during the calendar year, individual taxpayers must file an annual tax return. If an individual receives taxable income from sources other than from a tax agent (e.g. foreign income), he/she must file a personal income tax return by 1 May of the year following the reporting year, with any tax due paid by 1 August.

**Penalties** – Late payments (of personal income tax and social security contributions) are subject to interest at a rate of 120% of the effective national bank discount rate, calculated for each day of the delay (see under "Corporate taxation"), while additional penalties apply to understatements (25%-50% of the understated liability). If an employer fails to withhold personal income tax when paying salaries, a penalty of up to 75% of the amount of unpaid tax may be imposed. The same penalty applies to understatements of the Unified Social Security Contribution payments.

### Value added tax:

**Taxable transactions** – VAT is levied on the supply of goods and services in Ukraine and the import/export of goods and auxiliary services. Certain supplies are not subject to VAT (e.g. the issuance of securities, insurance services, payment of dividends, royalties and services (except for transport outside Ukraine). VAT-exempt supplies include certain medical or medical-related products, domestically produced baby food products, published periodicals, student notebooks, textbooks and books.

**Rates** – The standard rate is 20% for domestic supplies and imported goods and auxiliary services (set to decrease to 17% on 1 January 2014). Exported goods and auxiliary services are zero rated. For VAT purposes, auxiliary services are considered services that are included in the customs value of imported/exported goods.

**Registration** – Registration is required (for residents and nonresidents) if turnover is at least UAH 300,000 during any rolling 12-month period. A business entity may apply for voluntary registration as a VAT payer if one of the following criteria is met: the authorized share capital or book value of assets (fixed assets, intangible assets, inventory) exceeds UAH 300,000; or the amount of taxable supplies is less than UAH 300,000, but VAT-able supplies comprise not

less than 50% of the total sales for the past 12 months.

**Filing and payment** – The tax period (and the filing and payment obligation) is either a calendar month or calendar quarter (depending on turnover). Monthly returns must be submitted within 20 days of the last calendar day of each reporting month. Quarterly returns must be submitted within 40 days of the last calendar day of each reporting quarter.

As from 1 January 2012, VAT invoices must be registered with the electronic register kept

by the tax authorities is required if the amount of VAT in an invoice exceeds UAH 10,000.

**Source of tax law:** Ukrainian Tax Code, of 2 December 2010; Law of Ukraine No. 2464 of 8 July 2010, “On the Unified Social Security Contribution”; Law of Ukraine No. 996-XIV of 16 July 1999 “On Accounting and Financial Reporting in Ukraine”.

**Tax treaties:** Ukraine has more than 60 treaties.

**Tax authorities:** State Tax Administration of Ukraine

**International organizations:** CIS, Black Sea Economic Cooperation, WTO

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