



*cutting through complexity*

# Your Business in Ukraine

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[kpmg.ua](http://kpmg.ua)



# Foreword



Dear partner,

“Your Business in Ukraine” offers a practical overview on key aspects of the Ukrainian legal system and the regulation of business activities for companies operating in or considering their entry to the Ukrainian market.

This publication is a general guide which provides some insights and answers to many questions, such as:

- What market entry strategies may investors consider?
- What key tax, customs, and regulatory challenges investors are likely to face in Ukraine?
- What are some of the advantages of Ukraine compared to other jurisdictions?
- What obstacles and what incentives are there for investors that repatriate profits from Ukraine?

Ukraine is a country with a legal system in continuous development. Doing business in Ukraine is complex and there are many hurdles to overcome in setting up here, and in managing day-to-day operations. However, in our experience, with the support of knowledgeable experts, it is possible to “navigate these waters” and to operate a profitable business in Ukraine. In addition, it is possible to repatriate profits abroad efficiently. This makes Ukraine an attractive business destination, with great proximity to the markets of Europe.

Ukraine boasts over 30% of the world’s reserves of fertile black soil. It is a suitable location for organic agriculture and sustainable biodynamic farming. Such sectors as consumer markets (esp. food and beverage), telecommunication and technology, banking, pharmaceuticals, logistics, and transportation are also attractive areas to invest. Ukraine also possesses a huge potential of all types of renewable energy resources - biomass, solar, wind, geothermal and micro hydropower.

Visit Ukraine, if you’ve never been here, to discover the country and meet great people! Ukraine has a highly qualified workforce. I manage an organization with 350 highly dedicated and qualified Ukrainians on our staff. Clients often praise the spirit and friendliness of KPMG people. While they are essentially buying services from KPMG, what they are really getting is a professional relationship. In general, I see that Ukrainians are ambitious, motivated and very good at what they do.

We would be happy to provide you with tax and legal updates, or with further information on a specific industry or area of the Ukrainian legislation in which you might have a particular interest.

Enjoy doing your business in Ukraine!

**Floris Schuring**  
Managing Partner  
KPMG in Ukraine

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# 1. Starting a business in Ukraine

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- Representative office (1.1.4) (commercial and non-commercial)
- Ukrainian subsidiary (1.1.5)
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To become more competitive on a world-wide investor map, Ukraine has lately introduced a series of legislative changes aimed at simplifying the start-up and conducting of business. They include, *inter alia*, the following:

- establishment of a “one-stop shop” for corporate registration
- online access to the Unified State Register (country-wide list of business entities and individual entrepreneurs) and the Unified License Register
- abolition of the permit requirement for company seal production, and of the requirement to notarize copies of documents for registration purposes
- adoption of the model charter, and
- moderate simplification of the liquidation procedures.

Some of the declared changes are yet to be made operational (e.g., online corporate registration).

In addition, mandatory licensing or other state authorizations were abolished in many industry sectors; the “silent consent” concept and the declaratory principle (which implies a company may undertake certain types of business upon making a relevant declaration to the state authorities) were implemented instead of some licenses and permits. In particular, procedures for obtaining a construction permit were simplified significantly.

## 1.1 Market entry strategies

Foreign investors can consider the following options for entering the Ukrainian market:

- direct sales
- agency and commission arrangements
- joint venture with a Ukrainian partner
- representative office and
- Ukrainian subsidiary.

The choice made by the foreign investors is usually motivated by the incorporation and maintenance costs (if any), as well as the legal and tax risks involved.

### 1.1.1 Direct sales

The simplest option for entering the Ukrainian market is by way of direct sales contracts. A foreign legal entity which sells goods or services to customers (or distributors) in Ukraine directly from abroad would not be subject to Ukrainian taxes. Depending on the agreed terms of delivery, the Ukrainian customers (or distributors) would be responsible for customs clearance and would have to pay customs duties and taxes (import VAT, excise) (if any).

A foreign company engaged in direct sales should not be taxed on profits in Ukraine

A properly drafted cross-border contract allows a foreign company to avoid taxation in Ukraine. The possibility to choose the foreign law as the governing law of the contract makes direct sales a viable option for business. However, in choosing the foreign law, the public order rules and imperative norms of Ukrainian laws (e.g., currency control regulations, *etc.*), must be complied with.

### 1.1.2 Agency and commission arrangements

Agency and commission contracts present another comfortable alternative for structuring a business in Ukraine. From a legal standpoint, such arrangements allow a foreign company to carry out commercial activities in Ukraine without setting-up a corporate vehicle, employing personnel, meeting accounting and reporting requirements, as well as bearing all associated costs and risks.

From a tax perspective, agency and commission contracts may trigger taxation in Ukraine, specifically when an agent acts exclusively on behalf of a particular foreign company, and the supply of agency or commission

An agency/commission agreement may expose a foreign company to a risk of permanent establishment in Ukraine

services does not constitute its core business (e.g., as may be the case for securities, insurance brokers). Agency and commission contracts for activities of a preparatory or auxiliary nature (such as market research and analysis) should not generally create a permanent establishment of the foreign entity, and hence its profits would be taxed only in the country of tax residence.

### 1.1.3 Joint venture with a Ukrainian partner

Per the Ukrainian laws, a foreign investor is granted the right to enter into a joint venture with a Ukrainian partner (formally referred to as "a joint activity agreement", which can take the form of a simple partnership agreement, a joint production, or a joint co-operation agreement with a Ukrainian partner(s)). Investment of this kind is subject to state guarantees and should be registered with local state authorities of Ukraine.

### 1.1.4 Representative office (commercial and non-commercial)

Day-to-day business in Ukraine can also be carried on through a representative office ("RO"). A RO is not a legal entity but a division of a foreign company registered in Ukraine. Its head office assumes all rights and obligations of the RO and bears the liability for its actions.

A representative office carrying out activities of preparatory and auxiliary nature should not be subject to taxation in Ukraine

A RO which carries out commercial activities in Ukraine is deemed to be a commercial RO (which in different jurisdictions is called a "branch") and triggers a permanent establishment of the foreign company for tax purposes. This, in turn, implies that, if a relevant double tax treaty is in place between Ukraine and the foreign company's

tax residence jurisdiction, only a portion of the company's profits, which are attributable to the RO, will be taxed in Ukraine.

A RO which undertakes activities of a preparatory or auxiliary nature usually does not create a permanent establishment and is not subject to corporate income taxes in Ukraine.

Generally, a RO would be subject to registration in the Ministry of Economic Development and Trade, the State Tax Service, the State Statistics Services, and the State Pension Fund. A foreign bank's RO shall be registered with the National Bank of Ukraine. However, the list of registering authorities may be expanded due to specific industry particularities. The registration period takes up to 3 months following submission of all necessary documents. The preparation of documents may take additional time as in many cases they would require approval, notarization, and/or legalization.

## 1.1.5 Ukrainian subsidiary

A foreign company may choose to establish a Ukrainian subsidiary for doing business in Ukraine. A Ukrainian subsidiary controlled by foreign companies or nationals, generally enjoys the same legal treatment as legal entities without foreign participation. Such company, with minor limitations justified by national interests, may enter into agreements, assume legal obligations, acquire property, as well as sue and be sued in its own name. It may engage in any commercial activity envisaged in its charter (articles of incorporation). For more details on different forms of incorporation see the Section “*Corporate and Labor law*” below.

## 1.2 Foreign investment treatment

### Areas for foreign investments

Most of industry and service sectors are open for foreign investments

Most business areas available on the Ukrainian market are open to foreign investors. However, foreign investors' access to certain economy sectors is forbidden or restricted, namely:

- in the media industry, foreign investors are not allowed to be founders of television and radio companies or sole founders of information agencies; the share of foreign investments in a Ukrainian information agency may not exceed 35 per cent; foreign investors may not hold more than 30 per cent of shares in a Ukrainian publishing house
- foreign investments are prohibited in the armament, explosive, launch vehicles development, production and handling industry, as well as in other areas of national interest
- foreign investors may not own agricultural land in Ukraine (even if they inherit it).

In addition, foreign investors who wish to acquire / increase a significant shareholding in a Ukrainian bank are required to submit some additional documents before approval may be granted.

### Types of investments

The Law of Ukraine “*On Foreign Investment Treatment*” defines “*foreign investment*” as an investment made by a foreign investor (foreign individual or company) in compliance with the Ukrainian laws for profit generating purposes or for achieving a social effect. Under the Ukrainian investment laws, foreign investments may be made in a variety of forms, including:

- establishment of a company ("greenfield investment") by the foreign investor solely or jointly with a Ukrainian partner
- acquisition of stock (shares) in an existing Ukrainian company (a Ukrainian company with foreign investments constituting at least 10% of its share capital is deemed to be a "*company with foreign investments*")
- acquisition of other types of securities (except for promissory notes)
- acquisition of movable or immovable property in Ukraine
- acquisition of the right to use land and/or to exploit natural resources
- joint venture with a Ukrainian partner (not associated with incorporation), etc.

Investments may be effected in hard currency, in local currency or in kind

Foreign investors are allowed to effect investments in hard currency attributed to the first group of the Currency Classifier of the National Bank of Ukraine ("NBU") (among them are USD, EUR, GBP, JPY, etc.), as well as in Ukrainian Hryvnia (while re-investing into an existing or newly established enterprises). Starting November 2012 foreign investments in Ukraine cannot be made in cash

but only through non-cash payments from offshore bank accounts or through investment accounts opened in Ukraine. Foreign investments can also be made in the form of a contribution of fixed assets to the share capital of a Ukrainian company. Foreign investments can also be made in the form of a contribution of fixed assets to the share capital of a Ukrainian company.

Currency transfers can be easily executed, while the contribution in kind requires special procedures to be followed to formalize it.

## Registration of foreign investments

Generally, registration of investments is not required, but might be advisable in certain instances.

In-kind contributions to share capital may be exempt from import customs duties

For instance, if a foreign investment is made in kind (i.e. as a contribution of fixed assets into share capital) the contributed fixed assets may be exempt from import customs duties provided the relevant investment is registered with the Ukrainian authorities. However, if the assets invested are disposed of within three years following the date they have been recorded in the books

of the Ukrainian entity, all applicable import duties should be paid to the Ukrainian budget.

Foreign investment registration is to be made with the regional state administration (oblast, Kyiv city, *etc.*) within three days following the actual contribution.

Ukrainian laws reflect generally recognized standards for foreign investment and investor protection

### State guarantees for foreign investments

In general, the Ukrainian investment protection legislation stipulates national treatment for all investors and investments in Ukraine (with some exceptions imposed by specific laws). Domestic legal safeguards available to foreign investors include:

- “grandfather clause” against adverse changes in the basic legal treatment of investments (as set out in the Law of Ukraine *“On Foreign Investment Treatment”*)
- prohibition of nationalization
- prohibition of expropriation not justified by evacuation / rescue measures taken in connection with disasters, accidents or epidemics, as well as judicial redress against a decision to expropriate the investment
- expedient, adequate, and effective compensation for damages (including lost profits and non-pecuniary damages) incurred as a result of actions or omissions of the state authorities and their officials, as well as compensation for the value of the expropriated investment
- time limitation (6 months) for return of the investment (including profits gained), *etc.*

In practice, though, it can be difficult to challenge actions or omission committed by the state before national courts.

Ukraine maintains a network of over 50 bilateral investment treaties aimed to protect investors' rights

### Protection of foreign investments under international law

Although a moderately young state, Ukraine maintains more than 50 bilateral investment treaties (“BITs”) concluded with countries from the Americas, Europe, Asia, *etc.* In line with modern international practice, BITs sustain an effective tool in the hands of foreign investors to defend themselves against arbitrary and discriminatory measures of the state authorities. Most of Ukraine’s BITs contain clauses granting a “most-favored nation” treatment and national treatment to foreign investments and investors.

Importantly, Ukraine has acceded to the 1965 Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States, which provides an opportunity for foreign investors to challenge actions of the state before the International Center for Settlement of Investment Disputes ("ICSID"). For certain advantages of the ICSID proceedings, see Section "*Dispute Resolution*" below.

Ukraine acceded to the ICSID Convention in 2000. Since that time, foreign investors may submit disputes arising out of foreign investments before a bench of mutually agreed arbitrators

## Return of investments

The state guarantees the right of foreign investors to repatriate their investments and all profits associated with them. Generally, no individual currency license is required to purchase foreign currency with a view to repatriate the investment and other income attributable to the investor.

For general information on the winding-up of business, see Section "*Winding-up*" below.



## 2. Company and Labor law

- Company law (2.1)
- Labor regulations (2.2)
- Immigration regulations (2.3)

In Ukraine, statutory corporate regulations have undergone positive changes in recent years.

Ukraine recently introduced important levers for enhancing the rights of minority shareholders

In the first place, the procedure for starting and winding-up a business was substantially simplified.

In addition, the Law of Ukraine *“On Joint Stock Companies”* introduced a series of generally recognized legal instruments to protect minority shareholders, namely:

- cumulative voting rule for election of a supervisory board and an audit committee
- the right of a minority shareholder to sell shares to a purchaser of a controlling stake at a fair market price
- the right of a shareholder to claim buyout of shares by a company in case of material changes related to the business of the company (e.g., reorganization, changes in share capital, etc.)
- special requirements to be met by the company to enter into material transactions and transactions with affiliated parties.

### 2.1 Company law

#### Common corporate structures

In Ukraine, common corporate forms are a limited liability company (“LLC”) and a joint stock company (“JSC”). Ukrainian laws provide for certain other corporate structures, which are rarely used due to their undetermined legal status or practical inefficiency.

#### Registration

Unlike an LLC, a JSC is entitled to issue shares which are subject to registration with the National Securities and Exchange Commission (“Securities Commission”). Due to this peculiarity, the timing for registering an LLC is shorter (3-4 weeks) than for a JSC (2-4 months).

In the majority of cases, foreign businessmen prefer to set up an LLC rather

Most common forms of bodies corporate are a limited liability company and a joint stock company

than a JSC, in Ukraine. Similarly to a JSC, the liability of LLC's shareholders (participants) is limited to their investment in the share capital. In addition, requirements as to the incorporation and operation of an LLC are simpler and more straightforward than those of a JSC.

A Ukrainian company (either LLC or JSC) should be registered with the state registrar, tax, social security and statistical authorities.

## Number of shareholders

An LLC may be established by a sole shareholder unless the latter itself is held by a sole shareholder. A person is not allowed to be a sole shareholder (participant) of more than one LLC. When the number of LLC shareholders exceeds 100, it shall be transformed into a JSC.

A JSC may be either public (when its shares are traded publicly) or private (when its shares are privately held).

Limited liability companies do not have minimum share capital. Declared share capital must be fully contributed within one year following company incorporation

## Minimum share capital

Currently, there is no minimum share capital requirement for an LLC. Founders of an LLC should contribute 100% of the declared share capital in cash or in kind within one year from the date of incorporation. Otherwise, the declared share capital needs to be reduced.

In case at a later stage an LLC would be willing to raise capital through an IPO, or in case the number of participants (shareholders) exceeds 100, its reorganization into a public JSC will be required.

The minimum share capital of a JSC is set at 1,250 minimum monthly salaries as set by the state (as of 1 December 2012, UAH 1,417,500, circa USD 177,343). Shareholders of a JSC shall pay their shares in full before the company's state registration.

Net assets requirement may become an issue for a joint stock company

## Net assets issue

Per the Civil Code of Ukraine, if the value of net assets of an LLC or a JSC at the end of the second and any subsequent year of its operation is less than the amount of its declared share capital, the company is required to decrease its declared (nominal) share capital and register the relevant changes to the charter, or make additional

Companies should normally have a general meeting of shareholders, an executive organ, and a controlling body

capital contributions with share premiums. If the value of a JSC's net assets becomes less than the minimum share capital prescribed for JSCs (as indicated above), such JSC should be liquidated. The same rule applies to an LLC, yet it appears that since no statutory share capital is prescribed for such companies, the rule is difficult to apply in practice.

Mandatory external audit is not necessary for most limited liability companies

## Governing bodies

An LLC should have at least three internal bodies, namely:

- general meeting of participants
- board of directors (or a single director), and
- controlling body – an audit committee.

An external audit is generally not mandatory for an LLC.

A principal JSC's decision-making body is a **general meeting of shareholders** ("GMS"), which has the ultimate authority to resolve issues arising in the course of the JSC's business. GMS may alter the JSC's charter and by-laws, change its share capital, elect members of the executive body, approve annual reports, and adopt decisions on reorganization or liquidation.

A JSC's executive body responsible for day-to-day management of the JSC's business is a **board of directors** or a **sole director**. A JSC that has 10 or more shareholders must also have a **supervisory board** responsible for monitoring the activities of the executive body and protecting the rights of shareholders. Finally, a JSC should have an **audit committee** (internal auditor) within its corporate structure.

A public JSC should arrange for an annual external audit of its financial statements and file the audited financial reports with the Securities Commission. Any JSC is required to arrange for an external audit upon request of the shareholder(s) holding at least 10% of its shares.

## Corporate rights

An LLC shareholder (participant) may alienate its shares in the LLC's capital to a third party, unless otherwise provided in the LLC's charter. In this case, other LLC participants would have priority in purchasing its shares.

In case of withdrawing from the company, a participant is entitled to a share in the company's assets proportionate to its share in the LLC's capital. An LLC participant may be expelled from the company under a general meeting of participants' resolution in case he violates corporate obligations or

prevents the company from achieving its goals.

Shareholders of a public JSC may alienate their shares freely. Shareholders of a private JSC, however, may be restricted in this freedom by the right of first refusal granted to other shareholders (if such right is stipulated in the JSC's charter).

## Reorganization

Reorganization under Ukrainian law can be effected through merger, acquisition, split-up, spin-off or transformation of a corporate body.

Reorganization is usually initiated by resolution of GMS or a similar executive body. In certain instances (e.g., when a company is abusing its monopoly position) the Antimonopoly Committee of Ukraine may order the company to proceed with the split-up procedure.

As a result of reorganization, all rights and liabilities of a company are transferred to its successors.

Reorganization requires a number of stages to be followed, e.g., a tax audit to be conducted by the tax authorities, a written notification forwarded to creditors, and repayment of obligations prematurely, clearance with the antimonopoly authorities (in certain cases), etc.

## Liquidation

For details on liquidation procedures, see Section on “*Winding-up*” below.

## 2.2

## Labor regulations

The main legislative act regulating employment relations in Ukraine is the Labor Code of Ukraine (“Labor Code”). The Labor Code is inherited from the Soviet era and has not undergone any major revisions since its adoption in 1971. Consequently, it appears that it does not meet the demands of the market economy. A new Labor Code has been drafted and is now under the parliament's consideration.

The Labor Code applies to all companies, institutions, and organizations in Ukraine, irrespective of their legal form, type, or area of activity, and to individual entrepreneurs who hire employees. Employment of foreign nationals in Ukraine is generally subject to the Ukrainian labor and immigration laws, unless otherwise provided in the effective international treaties which Ukraine is a party to.

## Employment agreements

Employment can be formalized through an employment agreement or an employment contract, whether in written form (obligatory for an employment contract, or in certain other instances) or verbally.

## Rights of employees

In Ukraine, the length of a working week should not exceed 40 hours. Overtime may not exceed four hours during two consecutive days or 120 hours per year with compensation provided at double rates. Employers need to undertake certain employee guarantees prescribed in the law.

Employers need to ensure certain employee guarantees prescribed in the law

Employees are entitled to annual leave of at least 24 calendar days (unless a longer term is established by law). Women are entitled to paid maternity leave for 70 calendar days prior to, and 56 (sometimes 70) calendar days after childbirth. A woman is also entitled to unpaid leave until the child reaches the age of three.

The Ukrainian labor legislation also provides for different employee guarantees, such as:

- wages for time spent off work while performing a trade union mission, appearing in court, voting and fulfilling other state or social responsibilities
- the right to keep one's position when on a training program
- wages while hospitalized for medical examination (when such examination is prescribed by law)
- severance payment in certain cases.

Employees are entitled to organize trade unions and participate in the management of a company (although in practice this rule would not be strictly applied).

## Salaries

Employee's remuneration may not fall under the minimum salary threshold

Employee's remuneration may not fall under the minimum salary threshold.

Salaries cannot be lower than the minimum monthly salary as laid down in the law. Currently, this threshold is set at UAH 1,134 (circa USD142) as at December 2012. Salaries should be paid at least twice a month. The gap between installments should not exceed 16 days, and the salary must be paid within 7 calendar days after the end of the period to which it is attributable.

## Labor book

The Ukrainian labor legislation requires that a labor book be kept for each employee working for more than five days with the company. This is a basic document containing records on the employee's employment history.

## Termination of employment

Employment can be terminated but on the legal grounds prescribed in the Labor Code.

If an employee wishes to terminate her/his employment, s/he as a rule should give a two-week written notice to the employer.

Dismissing employees needs to be substantiated by reference to grounds prescribed in the Labor Code

Dismissing employees needs to be substantiated by reference to grounds prescribed in the Labor Code.

If the termination of employment is initiated by the employer, the latter should substantiate its decision by reference to one of the legal grounds for dismissal as stipulated in the Labor Code. The most common legal grounds for unilateral dismissal of employees are as follows:

- layoff of personnel
- liquidation of the employer or reorganization of the employer's corporate structure
- employee's incompatibility with the occupied position (e.g., due to insufficient qualifications or poor health conditions)
- systematic failure to perform employee's duties without a good reason, and provided that the employer has already applied disciplinary measures to the employee for such failure or
- absence from work without any good reason (including absence from work for more than 3 hours during a business day).

Termination of employment may also be executed upon mutual agreement between the employer and the employee, or upon circumstances which are independent of the parties' will.

## 2.3 Immigration regulations

### Visas and registration of foreign nationals

There are three types of entry visas for Ukraine (depending on the purpose of the visit) - long-term, short-term, and transit visas.

To stay in Ukraine for more than 90 days within a 180-day period, a long-term visa must be obtained.

To stay in Ukraine for more than 90 days within a 180-day period, a long-term visa must be obtained

Those foreigners who intend to work in Ukraine (either in a Ukrainian company or a RO of a foreign company) are required to apply for a long-term visa. This type of visa provides formal grounds for obtaining a temporary residence permit for Ukraine, i.e. a document that allows entering and staying in Ukraine without any restrictions during the period of the permit validity (usually 1 year).

Foreign individuals who do not need a visa to enter Ukraine (i.e. who originate from visa-exempt countries), or those who enter Ukraine on a short-term visa, may stay in the country for up to 90 calendar days (in the aggregate) within a 180-day period starting from the day of the first entry to Ukraine. Otherwise, they should register with the local immigration authorities.

A temporary residence certificate is obtained based on the permit to use labor of foreign citizens (work permit) issued to the employer by the State Employment Centre (or its local divisions). Foreign employees may then be registered at the place of temporary residence in Ukraine and obtain the residence certificate valid for the period of permit (usually 1 year).

### Obtaining a work permit

Prior to employment, a foreign national should be granted a work permit

A foreign national can be hired in Ukraine following receipt of a work permit. The full application package for a work permit shall be filed with the State Employment Centre of Ukraine and shall include a convincing statement of

reasons for a foreigner (as opposed to a Ukrainian national) to be employed with a Ukrainian company. It usually takes up to a calendar month to receive a work permit. Work permits are usually granted for a period of one year, but can be prolonged for another year on an annual basis.

Severe measures are envisaged for those who work without proper permits. A foreigner who is employed without a proper work permit can be immediately deported at the expense of his/her employer. In this case, the employer will be liable for a penalty of UAH 22,680 (circa USD 2,839) as at 1 December 2012.



### 3. Competition law

In brief, Ukrainian competition laws seek to regulate three crucial phenomena which pose threats to the fair market flow, namely: economic concentration, concerted actions, and unfair competition.

#### Economic concentration

In order to protect Ukrainian markets from monopolization and to avoid

Once certain limits are reached, restructuring transactions require approval from the Antimonopoly Committee of Ukraine

adverse effects of monopoly abuse, the Ukrainian antimonopoly laws require obtaining prior approval from the Antimonopoly Committee of Ukraine ("AMC") for a transaction which may or should lead to an "economic concentration" (merger/acquisition/obtaining control over an enterprise) in a specific segment of the Ukrainian market.

The AMC approval is required when all the three following conditions are met:

- the aggregate value of assets or the gross revenues of participants of concentration (including offshore transactions) exceed EUR 12,000,000 in the prior financial year (or the equivalent in any other currency) and
- the aggregate value of assets or the gross revenues of at least two participants of concentration (including offshore transactions) exceed EUR 1,000,000 in the prior financial year (or the equivalent in any other currency), and
- the aggregate value of assets (in Ukraine) or the gross Ukrainian revenues of at least one participant of concentration exceed EUR 1,000,000 in the prior financial year (or the equivalent in any other currency).

The AMC tends to interpret the notion of "participant of concentration" rather broadly and thus would apply the above-mentioned criteria with reference to all affiliated persons of the immediate parties to the transaction in question.

The AMC approval is also required whenever the share of any participant of concentration or the aggregate share of all participants of concentration in a particular market exceeds 35 per cent, and the concentration takes place in this or a related market. The AMC approval may also be required even where a transaction takes place between non-residents of Ukraine. Therefore, it is important to consider the potential anti-trust implications of any merger or acquisition transaction with substantial linkage to Ukraine.

A participant of concentration which completed the transaction without AMC

approval may be subject to a fine in the amount of up to 5% of its turnover of the prior financial year.

Concerted actions which are likely to adversely affect market competition are prohibited

### Concerted actions

“Concerted actions” include any covenants concluded between competitors or in any other way which may prejudice the market competition. In general, the Ukrainian law forbids any concerted actions which are likely to adversely affect market competition (*i.e.* arrangements concerning prices for goods and services, limitations of production, agreed allocation of goods, *etc.*). Thus, prior AMC or Cabinet of Ministers approval is necessary to commence any concerted actions. Financial sanctions for carrying out unauthorized concerted action amount to 10% of prior financial year’s turnover of parties undertaking the actions concerned.

The applicant for both “*economic concentration*” and “*concerted actions*” approvals should submit a package of documents as specified in the law. In practice, it may take up to several months to receive such approvals.

Under Ukrainian laws it is permitted for participants of both concentration and concerted actions to apply for the Cabinet of Ministers’ approval within 30 days after being refused of the AMC approval. In this case participants may be granted the approval of the Cabinet of Ministers if they manage to prove the actions have a positive impact on social interests which predominates over the consequences of the competition restriction.

### Unfair competition

“*Unfair competition*” encompasses all actions which contradict fair market principles in business and trade. Comparative advertisement, unlawful use of a company name, trademark, or advertising material, *etc.* should all be considered as unfair competition. If the actions of a business entity are recognized as unfair competition by the AMC, the business entity will be subject to a fine of up to 5% of its prior financial year’s turnover.



## 4. Licensing requirements

In Ukraine, certain types of business activities may be carried out only upon obtaining a license from the state licensing authorities. Notwithstanding recent governmental steps to lift the regulatory pressure on business, the following types of business activity remain subject to mandatory state

licensing:

Certain business activities (banking, telecommunications, trade in spirits, *etc.*) are subject to mandatory licensing by state authorities

- banking and financial services
- professional stock market activity
- construction
- certain types of cross-border business activity
- business activity in the sphere of intellectual property
- manufacturing and sale of ethanol, cognac and fruit

spirits, alcohol beverages and tobacco

- production and sale of ethanol, cognac and fruit spirits, alcohol beverages and tobacco
- production and sale of pharmaceuticals (starting 1 March 2013 – also import of pharmaceuticals)
- sale of crop protection products and agrochemicals
- business activities in telecommunications, TV and radio broadcasting
- cargo, passenger and baggage transportation
- medical and veterinarian practice
- customs broker activity
- transportation of oil and petroleum products via long-distance pipelines, transportation of natural, oil-well gas and methane via pipelines and their distribution and
- sale of biomass liquid fuel and biogas, *etc.*

To obtain a license, it is necessary to submit a standard application and other required documents to a relevant licensing authority, which will normally take a decision on whether or not to grant a license within 10 days (unless other deadlines are specifically provided in the law). Issuing a license is subject to a state duty generally amounting to one minimum monthly salary (UAH 1,134 as of December 2012, circa USD 142).

Licenses are issued for an indefinite period of validity unless a limited term is prescribed for a particular type of license. Generally, the term of the license should not be less than 5 years.

A license should be obtained for each particular type of licensed activity. No transfer of license is permitted. A license is terminated when a business winds up, or in case it is cancelled by the issuing authority as a result of violation of the licensing conditions.

Carrying out a licensed activity without an appropriate license is subject to administrative sanctions.

In addition to the above, starting an investment project may require special permits and/or authorizations (e.g., land allocation approvals, construction permits, fire safety permits, and permits for outdoor advertisement). For some types of activities, a declaration to certify the business' compliance with licensing requirements submitted to a responsible state authority should suffice to start operating the business. The principle of "implied consent" (when a business is deemed to have obtained a license after the deadline for deliberations of the relevant state authority has lapsed) also applies in Ukraine.



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## 5. Taxation

- Corporate Income Tax (5.1)
- Withholding Tax (5.2)
- Double Taxation Treaties (5.3)
- Value Added Tax (5.4)
- Transfer pricing (5.5)
- Property tax (5.6)
- Personal taxation (5.7)
- Social security contributions (5.8)
- Luxury tax (5.9)
- Administration of Taxes (5.10)

In Ukraine, taxes and statutory charges are levied in accordance with the Tax Code of Ukraine (effective as of 1 January 2011, except for Chapter III "Corporate profits tax" effective as of 1 April 2011) as subsequently amended. Most significant taxes are: corporate income tax ("CIT"), value added tax ("VAT") and personal income tax ("PIT").

### 5.1 Corporate Income Tax

#### Tax rates

Corporate income tax rate will decrease to 16% in 2014

As of 1 January 2012, a basic CIT rate is 21%. The basic CIT tax rate is set to decrease gradually to:

- 19% as of 1 January 2013
- 16% as of 1 January 2014.

Also, starting 1 January 2013 the CIT rate for the sale of securities and derivatives was decreased to 10 percent.

Agricultural businesses may qualify for a reduced CIT rate and are subject to a favourable tax regime. Special tax treatment also applies to insurance companies, which are taxable on the rates 0% and 3% (as of 1 January 2013).

In Ukraine, CIT administration is centralized, no additional corporate profits taxes are imposed at regional or local levels. CIT is calculated on a self-assessed and currently adjusted basis, for each reporting period. One quarter (three months) is a standard tax reporting period for CIT purposes.

CIT returns should be filed quarterly based on cumulative results, within 40 calendar days following the reporting quarter. The annual CIT tax return (for the whole financial year ending December 31) shall be filed by February 9 of the following year.

As of 1 January 2013 the obligation of advance installment of corporate income tax was introduced. These changes affect CIT taxpayers (except for newly created entities, agricultural producers and non-profit institutions (organizations)) whose income for last reporting tax period (year) exceed UAH 10 million. The advance payments should be filed on a monthly basis, within 20 calendar days following the last day of the reporting month in the amount of not less than 1/12 of the annual CIT paid for last reporting tax period without filing a declaration.

As part of the annual tax return the taxpayer should add the information about calculated monthly advance payments to be paid in the next twelve months. The 12-month period is deemed to start from the month which is following the last month for filling the annual declaration (e.g. March). During both previous months of 2013 - January and February, the companies which are subject to advance payments of the CIT should pay advance payments in the amount of 1/9 of the CIT accrued on tax accounts for 9 months in 2012. These payments should also be filed within 20 days after the last day of the reporting month.

However, if companies which are entitled for the advance income tax payments have not made profits, or in fact made losses, for the first quarter of the reporting period, they may file a tax return and financial statements for the first quarter and be exempt from advance income tax payments during the second, third and fourth reporting quarters.

## Tax holidays and incentives

There are number of tax incentives and tax holidays for different businesses, including for small companies. In particular, companies incorporated during

the period from 1 April 2011 to 1 January 2016 will be entitled (subject to certain limitations) to a zero CIT rate provided that their aggregated annual income does not exceed UAH 3 million, and the accrued monthly salary of each employee is not less than 2 minimum wages over the reporting period. Starting from 1 January 2011, 3-, 4-, and 5-star hotels are offered full CIT exemption for a period of 10 years. In addition, the same grace period for CIT

Profits of 3-, 4-, and 5-star hotels, of textile and some other industries can be exempt from CIT until 2021

purposes is granted to enterprises of consumer (textile, shoe) and ship and aircraft construction industries.

As of 1 January 2013, and during the next 5 years, the income of business entities gained from the realization of the investment projects in priority sectors of the economy (approved by the Cabinet of Ministers of Ukraine) is taxed at a 0% CIT rate.

There are also some incentives for the IT software industry companies which will be entitled to a reduced 5% CIT (from 1 January 2013 to 31 December 2023). Under the Tax Codes' definition, the IT software Industry companies shall be deemed as such if they meet the following requirements during the last 4 consecutive reporting (tax) periods in aggregate:

- The income share of the company from its economic activities (subject to certain limitations) is not less than 70% of total income from the selling of goods, execution of works and rendering of services
- The original value of fixed assets and / or intangible assets exceeds 50 minimum wages established by Law as of January 1 of the reporting (tax) year
- A company does not have a tax debt, and
- A company was not declared bankrupt pursuant to a court procedure.

Notably, supply of software is also exempt from VAT as long as it qualifies as the "result of programming".

In addition, a portion of profits (up to 80 per cent) received from the sale of certain energy saving industrial equipment, as well as from the implementation of certain energy saving technologies is subject to a reduced CIT rate.

## **Taxable base**

CIT is levied on the gross worldwide income of tax residents of Ukraine and on Ukraine-sourced income of non-residents of Ukraine. The taxable base for CIT is calculated as an adjusted gross worldwide income less deductible expenses, which account for tax depreciation allowances. The gross worldwide income includes any income from the sale of goods/works/services, capital gains, foreign exchange gains, free-of-charge transfers and other taxable receipts in cash, in kind, or in form of intangibles accrued within the reporting period.

For transactions with securities the prospective taxable base is levied on the income in cash or property value from sale/exchange/repurchase by securities issuer/paying off or in any other form of alienation of securities. The same is applicable to any corporate rights (other than securities). The value of any tangible/ intangible assets which a taxpayer receives as a result of abovementioned transactions and any debt repayment connected with it is also included to the taxable base.

Starting 1 January 2013 an excise tax has been introduced that is levied on the contract value of the securities/derivatives, rather than the income from the sale/exchange/repurchase. The excise tax applies at a rate of 1.5% rate applied to the amount of the transaction on securities exercised out of the stock exchange which are not registered with the stock exchange register.

Ukraine uses an accrual method for tax accounting. Income is realized in the tax period when the transfer of ownership title to goods (works/services) or the acts of services/works acceptance is signed, while deductible expenses (forming the cost of production) can be recognized on the date when the relevant goods/services/works were supplied.

### Income exempt from CIT

Profits from sale of certain energy saving equipment is only partially taxed

The following types of income are not included in the taxable profit:

- capital contributions in equity
- contributions in cash or in kind under contracts of
- joint activity to be conducted in Ukraine (without incorporation in Ukraine)
- share premiums realized by the issuer and
- dividends received from residents of Ukraine and non-residents under the recipient's control, etc.

In addition, a portion of profits (up to 80 per cent) received from the sale of certain energy saving industrial equipment, as well as from the implementation of certain energy saving technologies is subject to a reduced CIT rate.

## Interest-free loans

Refundable financial aid from a non-resident founder/shareholder will not be taxable within 365 days

Ukraine or the loan was not repaid until the end of the tax period when it was received.

Corporate profits tax is levied on the worldwide income of tax residents and on the Ukraine-source income of non-residents

If the financial aid is repaid subsequently, it will be tax deductible for the taxpayer.

Refundable financial aid obtained from the founder/shareholder (including a non-resident) will not trigger any tax implications for its recipient within 365 days following the date of its receipt.

## Allowable deductions

Except for land and natural resources, the cost of tangible assets is capitalized and depreciated

disallowed (e.g., contractual penalties, costs of receptions, celebrations and similar events, and expenses not connected with business activity).

## Tax depreciation and amortization

Tangible assets are allocated among 16 groups for tax accounting purposes

With the exception of land and natural resources, the cost of tangible assets used in business activities is capitalized and depreciated for corporate income tax purposes.

A tangible asset with the cost exceeding UAH2,500 and useful economic life exceeding one year is allocated to one of 16 classes of tangible assets. Each tangible asset is accounted for separately and depreciated on a monthly basis.

Businesses can determine the period of useful economic life of tangible assets in their internal accounting policies provided that this period is not less than the minimum period prescribed in the Tax Code.

The minimum statutory periods vary from 2 years (for computers and similar electronic devices) to 20 years (for real estate).

Business can usually choose one of the following five tax depreciation methods:

- Straight-line method
- Declining balance method
- Accelerated declining balance method (for machinery and vehicles only)
- Cumulative method, or
- Production method.

The cost of land and natural resources is added to classes 1 and 13, respectively, but cannot be depreciated. There are special rules to account for land, land improvements, and expenses incurred in connection with exploration, development and mining of natural resources.

The costs of repairing and enhancing fixed assets (including leasehold) are usually capitalized and depreciated. However, a portion of such costs may be expensed as deductible provided they do not exceed 10% of the aggregate book value of all fixed assets as at the beginning of the tax year.

Except for goodwill, intangible assets are allocated to one of 6 classes and are amortized using one of the abovementioned methods, over the period of their useful economic lifetime. The latter period cannot exceed the minimum period prescribed by the Tax Code, and usually ranges from 2 years (for copyright and related rights) to 5 years (for patents, know-how, etc.). It should be noted that the minimum period of useful economic life is not prescribed for many types of intangible assets, and shall be determined with reference to the relevant legal documents. If the legal documents are silent on such period, the latter is deemed to be 10 years.

Sellers recognize gains or losses (recapture of tax depreciation) on the disposition of assets.

## Anti-tax avoidance rules

To be eligible for the reduced tax rates prescribed by the DTT, *inter alia*, the beneficial ownership test needs to be passed. Under Ukrainian law the

beneficial owner of the income is a person who has the right to receive the relevant Ukrainian-source income, and is not an agent, nominee or intermediary (conduit). At the same time the Tax Code does not define agents, nominees or intermediaries (conduits). There is currently very limited interpretation of the beneficial ownership concept. Per the OECD Commentaries to the Model Tax Convention, if

Such jurisdictions as Cyprus, Malta and Singapore are not considered as tax havens in Ukraine

a person is the legal owner of income, but in fact has very limited powers in respect of such income received and acts as a mere fiduciary or administrator for the benefit of other interested parties, this person is treated as a conduit that is not entitled to treaty benefits.

A restriction on tax deductibility applies to fees paid to non-residents in deemed tax havens. Such payments, provided that they are in principle allowed for tax deduction, may only be deducted at 85 per cent of the total amount. Certain payments (for consulting, marketing, advertising services) made to non-residents located in tax havens may not be deducted at all. The list of tax havens is adopted by the Cabinet of Ministers of Ukraine. Currently, it includes, *inter alia*, the Jersey Island, the British Virgin Islands, the Cayman Islands, the Bermuda Islands, and the Isle of Man.

There are also some restrictions on tax deductibility of royalties in Ukraine. The Ukrainian Tax Code stipulates the cap for the deductible fees paid to non-residents (except PE, and broadcasting companies which are paying for the use of copyright, related rights for cinematographic foreign films, music and literary works) for paying the royalties. This cap is equal to 4% of revenue gained from the sale of products/works/services for the previous reporting year (except VAT and excise) or 4% of revenue from operating activities (excluding VAT) for the previous reporting year (applicable to banks).

## Interest

No usual “thin capitalization” rules apply in Ukraine

Ukraine does not have *stricto sensu* “thin capitalization” rules in force. Interest paid or payable is usually deductible for CIT purposes provided that the borrowed funds are used in the business activities of a Ukrainian company.

However, in certain instances the tax deductibility of interest can be limited (e.g., when paid or payable to non-resident shareholders which own or manage at least 50% of the taxpayer’s share capital). Interest expenses disallowed for tax deductibility can be carried forward to subsequent tax periods.

## Foreign tax credit

If a double taxation treaty is in place, investors are allowed to deduct taxes paid abroad

A tax credit system exists to avoid double taxation of income derived from abroad. A tax credit can be available for foreign taxes paid up to the amount of the Ukrainian tax due on such income provided that there is a double taxation treaty with the state from which income is paid (and the proof of the tax paid can be provided).

## Tax losses

Per a general rule, tax losses may be carried forward indefinitely

In Ukraine, tax losses may be carried forward for an indefinite period, but may not be carried back.

However, once in a while the parliament adopts restrictions on the amount of tax losses allowed for tax deduction in a particular tax period.

A new set of tax amendments have been introduced in respect of tax losses to be carried forward, which losses occurred before 1 January 2012 and (tax losses in 2010 inclusive). These changes affect companies with income that is equal to or exceeds UAH 1 million in 2011. Thus, the amount of all pre-2012 tax losses was divided into 4 equal parts (25% each) to be utilized from 2012 through 2015 pursuant to a special procedure.

There are no restrictions in respect of the carry-forward and deductibility of tax losses arising in 2012 or subsequent taxation years.

## 5.2 Withholding Tax

Ukrainian withholding tax, which applies to most of non-resident's income derived from Ukraine, can be avoided based on a relevant double taxation treaty

Any Ukrainian-sourced income received and paid to a non-resident company is subject to a withholding tax ("WHT") in Ukraine at a rate of 15 per cent. Such income includes, *inter alia*, dividends, interest, royalties, capital gains, lease payments, brokerage and agency commission, etc. Income received as consideration for goods/services/works provided to a resident is mostly WHT exempt. Different WHT rates apply to certain types of non-resident's income (e.g., freight, insurance premiums paid abroad and advertising fees).

## 5.3 Double Taxation Treaties

Use of double taxation treaty benefits is conditional upon the recipient's beneficial owner status

Ukraine has a moderately well-developed network of effective double taxation treaties. The rules incorporated in DTTs ratified by Verkhovna Rada of Ukraine ("VRU") prevail over those contained in the Ukrainian domestic tax legislation. Some of the treaties were concluded in the times of the USSR and remained effective till recently by virtue of state succession rules. Some of them are

currently under revision. Such as the Ukraine-Cyprus double taxation treaty, which was signed between Ukrainian and Cyprus governments in early November 2012 and is now under ratification of the VRU. There are also two new DTTs which have already been ratified by Ukraine: DTT with the United Mexican States and Saudi Arabia.

For the list of effective double taxation tax treaties, as well as the current WHT rates please see the Chart of withholding tax rates in Annex 1.

## 5.4 Value Added Tax

### Tax rates

VAT rate will decrease to 17% in 2014

20 per cent. Starting from 1 January 2014, the VAT rate will be reduced to 17 per cent.

Export of goods and related services is VAT zero-rated

Supplies of certain goods and services (e.g., charitable aid, financial services, etc.) are exempt from or not subject to VAT.

Export supplies of goods and related services, as well as other designated types of supply, are zero-rated.

### Registration for VAT purposes

VAT registration (i.e. registration as a VAT payer) is compulsory for all Ukrainian companies, individuals and permanent establishments of non-resident companies who qualify as VAT payers (i.e. whose volume of transactions subject to VAT exceeds UAH 300,000 (circa USD 37,500) for any preceding 12 months of operation).

Registered VAT payers may claim input VAT for offset or refund

Voluntary registration as a VAT payer is also possible under the current legislation and may be applied for by any prospective VAT payer.

## VAT mechanism

The amount of VAT which a registered VAT payer incurs on local purchases of goods and services (so-called input VAT or VAT credit) can be credited against the VAT liabilities of this taxpayer in computing the final VAT payable to (or refundable from) the budget. The input VAT amount in excess of the VAT liabilities may be used to offset VAT liabilities of subsequent tax periods or refunded in cash.

To credit the input VAT, purchased goods/ services must be used in transactions subject to VAT within the business activity of a taxpayer

VAT on import of services is collected through a reverse-charge mechanism. This mechanism implies self-assessment and payment of the 20 per cent VAT by the Ukrainian importer in (or for) the tax period (month) when services are imported to Ukraine. The paid VAT can usually be claimed by the Ukrainian importer as a VAT credit in the subsequent tax period (month). If the goods or services imported are used in transactions not subject to VAT, and outside the business activity of the Ukrainian importer, the "import" VAT becomes a cost to the Ukrainian importer. The reverse-charge mechanism does not apply if a non-resident service provider has a permanent establishment registered as a VAT payer in Ukraine. In this case, the representative office is in charge of assessing VAT liabilities, offsetting them against the input VAT, and transferring the positive difference to the state budget.

As of 1 January 2013 companies which implement investment projects in the priority sectors defined by the Cabinet of Ministers of Ukraine, temporarily, from 1 January 2013 to 31 December 2022 inclusive, may issue promissory notes to customs authorities, when importing to the customs territory of Ukraine equipment (hardware) and components to it, which are exempt from import duties, provided there has been registration of the requisite customs declarations. Debt recovery under such promissory notes due on the 60 day after its issuance.

## VAT reporting

For VAT purposes, the reporting period is a calendar month. VAT payers are required to file VAT returns within 20 days following the end of the reporting month. VAT payable, if any, should be remitted to the budget within 10 days following the filing deadline, i.e., within 30 days following the end of the reporting month.

## 5.5 Transfer pricing

More comprehensive and potentially stricter transfer pricing rules will be introduced as of 2013

Starting 1 January 2013 Article 39 of the Tax Code came into force introducing several new pricing methods for transactions between related parties, including the comparable uncontrolled price, profit split and transactional net margin methods.

Article 39 maintains the general premise that the contractual price is deemed to be the arm's length price unless the Tax Code clearly states otherwise and the tax authorities prove the discrepancy between the contractual price and the arm's length price.

The transfer pricing rules apply not only to transactions between the Ukrainian companies and persons related to such companies, but also to transactions of Ukrainian companies with persons who are not subject to (or exempt from) the corporate income tax, or pay corporate income tax at privileged tax rates. The latter implies that all transactions with non-residents of Ukraine, businesses that are subject to the special taxation regimes and even unrelated private businessmen should also fall within the ambit of the transfer pricing rules. The arm's length requirements also apply to barter transactions, transactions with tangible and intangible assets, land and real estate, distributions of dividends in kind, and transactions that involve receipt of goods or services for no consideration.

Article 39 in its current wording enables the tax authorities to challenge the pricing policies and assess the additional tax liabilities and penalties only if the price deviates from the arm's length price by more than 20%.

Moreover, large taxpayers will have the right to sign advance pricing arrangements with the tax authorities.

## 5.6 Property tax

Currently, there is no specific property tax applied in Ukraine. However, as of 1 January 2013 individuals and legal entities, including non-residents who own a real estate that exceeds (in case of a flat) 120 sq.m or 250 sq.m (in case of a house) will be subject to tax in the amount of not more than 1 per cent of one minimum monthly salary established on the 1 January of the reporting year PER 1 sq.m. The local authorities will decide on the precise applicable rate.

If the size of a residential property exceeds 240 sq.m or 500 sq.m for flats and houses respectively, the fixed rate of 2,7% of one minimum monthly salary shall apply. The tax base of residential property owned by individuals should be calculated by the state tax authorities on the basis of the State Register of property rights on immovable property. In case the residential property is owned by legal entities, such entities should calculate the tax base independently based on the size of the property.

Property tax returns should be filed annually by individuals within 60 days following the date of the tax assessment. Legal entities should file the tax return through advance payments on a quarterly basis before the 30th of the month following the reporting quarter, this information should also appear in their annual tax return.

Property owners, confirming the ownership with the proper documents may apply to the local tax authorities to verify the information regarding the applicable tax rate, taxable base and exemptions available.

There are also certain statutory charges which are levied on the sale/purchase of real estate (state duty and contribution to the State Pension Fund each at 1 per cent of the contract price).

## 5.7 Personal taxation

Personal income tax is levied at 15% and 17% depending on the level of income. These rates apply equally to residents and non-residents of Ukraine

In Ukraine, individuals are subject to PIT, regardless of whether they are tax residents or not. Individuals – tax residents of Ukraine are taxed on their worldwide income, while tax non-residents are taxed on their Ukraine-sourced income only. Ukrainian laws determine Ukraine-sourced income as income derived by an individual as a result of any business activity performed in Ukraine, which, *inter alia*, includes remuneration for the work performed in Ukraine, whether paid by a Ukrainian or a foreign company.

According to the Ukrainian law, an individual can be considered as a tax resident of Ukraine if he/she meets the Ukrainian tax residency criteria, which are as follows:

- An individual is considered a Ukrainian tax resident if he/she has a domicile in Ukraine
- If the individual also has a domicile in another country, the individual is deemed to be resident of Ukraine provided he/she has a permanent place of residence in Ukraine

- If the permanent place of residence is also available in another country, the individual is deemed to be resident of Ukraine provided his/her center of vital interests is situated in Ukraine
- If it is not possible to determine the actual center of vital interests, or if the individual does not have a permanent place of residence in any country, the individual is deemed to be tax resident of Ukraine if he/she stays in Ukraine in excess of 182 days during a tax (calendar) year
- If the permanent place of residence is also available in another country, the individual is deemed to be resident of Ukraine provided his/her center of vital interests is situated in Ukraine
- If it is not possible to determine the actual center of vital interests, or if the individual does not have a permanent place of residence in any country, the individual is deemed to be tax resident of Ukraine if he/she stays in Ukraine in excess of 182 days during a tax (calendar) year.

In Ukraine, both resident and non-resident individuals are taxable at the same tax rates, being 15% and 17%:

- the 15% rate applies to monthly income up to a threshold of 10 minimum wages per month (in 2012, UAH 10,730, circa USD 1,340)
- the 17% rate is applicable to monthly income in excess of a threshold of 10 minimum wages per month.

Generally, any benefit provided by the employer or any refund of employee's expenses is subject to tax in Ukraine, unless such benefit and/or reimbursement of expenses is provided by the Ukrainian employer and is connected with the employment duties of the employees according to the employment agreement or is prescribed in a collective agreement.

Individual tax return is due by 1 May each calendar year. No tax return needs to be submitted when all tax is withheld at source

Based on the Ukrainian law, income received from foreign sources or income from Ukrainian sources which was not taxed at source, is subject to taxation in Ukraine based on an annual tax return. The obligation to report this income in Ukraine and pay the tax rests with the individual. The tax return is filed with the district/city tax authorities' office at the place of the individual's domicile in Ukraine.

The annual tax return is due on 30 April of the year following the end of the reporting (calendar) year. The self-assessed tax is due on 31 July of the year following the end of the reporting (calendar) year. The tax can be paid in UAH only.

However, if the remuneration to an individual (either tax resident or non-resident) is paid through the payroll of a Ukrainian entity, the tax is withheld at source of payment. In this case, the individual is not required to submit any tax return in Ukraine.

It should be emphasized that if effective international treaties of Ukraine (i.e. double taxation treaties) provide for a tax treatment other than those provided in the Ukrainian laws, the rules of international treaties should prevail over domestic legislation.

## 5.8 Social security contributions

Employers and employees are obliged to pay unified social security contribution at the rates of 36.76-49.7% and 3.6% of employee's remuneration respectively

In addition to PIT, remuneration, allowances and similar payments made to employees (either Ukrainian or foreign nationals) through payroll of a Ukrainian entity or a local representative office are subject to the unified social security contribution ("USS"), which is due from both the employer and the employee. Only foreign individuals working in a foreign company's representative office are not subject to USS.

The taxable base for USS is capped. As of 1 December 2012, the cap is UAH 19,278. USS due from the employee

is withheld at source of income. The employees' contribution is 3.6% based on the gross remuneration/cap. USS due from the employer is payable at the time when the remuneration is paid. Employers' contribution ranges from 36.76%-49.7% of the gross income/cap, depending on the level of occupational risk.

## 5.9 Luxury tax

Currently, no luxury tax applies in Ukraine. However, the government has expressed its resolute intention to introduce this tax. As per the draft luxury tax legislation, luxury tax returns should be carried out as one-off and regular charges imposed on price of luxurious items (e.g., cars, helicopters; watches, clothes over a specified price level, etc.) or the number of sq.m in the total area of the real property. The tax rate will depend on the particular item from the list (from 2% of one minimum month salary for 1 sq.m of the total area of the property to 40% of the purchase price of every item). Luxury tax is intended to apply to legal entities and individuals, both residents and non-residents of Ukraine who holds the ownership title on the specified items. The tax period identified as 1 year for the taxes in relation to real property and 1 month in respect of the all other taxable items.

## 5.10 Administration of Taxes

### Tax assessment and reporting

Depending on the kind of tax and the type of taxpayer, tax returns are filed for a basic tax reporting period (mostly, a year, a quarter, or a month) within a specified time period (e.g., 40 days for quarterly tax return). As of 1 January 2013 advance monthly payments of CIT should be filed by particular tax payers (see Corporate Income Tax section, subsection – Tax Rates). Tax returns should be submitted to a local tax office and signed by a company director and a chief accountant. Certain tax returns can be filed electronically.

Along with the tax return, a CIT payer (companies and non-resident's representative offices) are usually required to submit quarterly or annual financial statements.

### Settlements with the budget

Consolidated payment method is available to corporate taxpayers

Self-assessed tax liabilities are due within 10 days after the deadline for the respective tax return submission. If such tax liabilities are challenged by a taxpayer via administrative or court appeal the obligation to settle the amount payable is postponed till the end of the administrative review or the court proceedings.

For CIT and VAT purposes, corporate payers may opt for a consolidated tax reporting and payment method. In case of CIT, a head office should allocate the amount of tax due from a particular sub-division, based on such sub-division's portion in the total pool of the taxpayer's expenses. The head office's tax liability should be decreased accordingly.

### Tax audits

As at 2012, there is no luxury tax in Ukraine

There are different types of tax audits in Ukraine, such as desk audits, documentary audits (scheduled and unscheduled; field and non-field), and ad hoc audits.

During a desk audit, only the data stated in taxpayer's tax returns is inspected. While a scheduled audit is conducted according to the approved schedule of audits, an unscheduled audit may be held at any time in case at least one of the circumstances prescribed in the Tax Code occurs. Field audits are carried out at the premises of the taxpayer. Ad hoc audits take place according to the procedure set out in the Tax Code, and other relevant laws of Ukraine.

Decisions of the tax authorities may be challenged via an administrative appeal procedure or in court

The duration of a scheduled field documentary audit ranges from 30 (large taxpayers) to 10 (small taxpayers) business days, subject to a maximum prolongation for 15 and 5 business days respectively.

The duration of an unscheduled field documentary audit ranges from 15 (large taxpayers), 5 (small taxpayers) to 3 (for individuals – entrepreneurs who have employees, subject to certain limitations) business days, subject to a maximum prolongation for 10 and 2 business days respectively.

The duration of an ad hoc audit may not exceed 10 business days. The audit may be prolonged for 5 business days.

### **Administrative and court appeal**

Decisions of tax authorities may be challenged via administrative or court appeal. A taxpayer may opt between the two procedures, but if a court appeal was submitted, administrative proceedings are no longer available.

Administrative appeal to a decision of local tax authorities must be submitted to a higher tax authority (regional tax offices or the State Tax Service of Ukraine) within 10 days after receipt of such decision. Once the 10-day period expires the taxpayer becomes liable for the tax liabilities assessed in the tax authorities' decision. Deliberations on administrative appeal can take from 20 to 60 days from the date of the appeal submission.

Decisions taken in the course of administrative appeal by the State Tax Service of Ukraine can be further contested in court. If preceded by administrative appeal, the law suit must be submitted not later than one month after the end of the administrative appeal procedure.

### **Tax pledge and tax debt collection**

If a taxpayer fails to settle its tax liabilities in due course, a tax pledge will ordinarily be executed over such taxpayer's property in the amount equal to the tax debt. To institute a tax pledge, an inventory act is to be compiled by the assigned tax official. Certain kinds of property (e.g., property held on

terms of lease) may not be subject to tax pledge. The taxpayer may continue to use the property subject to tax pledge, but it can alienate such property only with the permission of the respective tax office.

The law prescribes maximum duration (including maximum extension period) for tax audits

The tax pledge cannot be executed in case the total tax debt of the taxpayer does not exceed the amount of 20 tax-free minimum incomes of the Ukrainian

citizens (UAH 340, circa USD 43). Under certain circumstances listed in the Tax Code, the tax authorities may impose an administrative arrest on the taxpayer's property. In this case, the taxpayer would have to request the prior permission of the tax authorities for the exercise of its ownership rights (conditional arrest) or would be debarred of the right to use or disposal of the property (full arrest).

Once 60 days elapse from the date on which a taxpayer was notified by the tax authorities of its tax liabilities, the tax authorities may recover tax debt through forfeiture of the taxpayer's property placed under tax pledge or funds available on its bank accounts.



## 6. Financial reporting

- Ukrainian accounting principles (6.1)
- Statutory reporting requirements (6.2)
- Audit requirements (6.3)

With effect from 1 January 2000, Ukraine implemented the National Accounting Standards ("NAS"), which are primarily based on the International Financial Reporting Standards ("IFRS"), but with certain differences and omissions.

National Accounting Standards must be used for statutory accounting purposes in Ukraine

The principal features of NAS are as follows:

- financial statements, with itemized schedules, are prepared using state approved forms
- the chief accountant manages accounting and preparation of financial statements
- foreign-owned Ukrainian entities must adopt and follow the Ukrainian chart of accounts and accounting principles for statutory reporting (but simultaneously may use their own chart of accounts for management reporting purposes)
- the accounts must be prepared in compliance with the chart of accounts and directions for making entries according to NAS
- all "local" accounting material must be in Ukrainian language
- UAH is the basic accounting currency unit. Any transactions denominated in foreign currency must also be recorded separately in UAH (generally at the rate of exchange on the date of the transaction) for the statutory accounting and tax purposes and
- the financial year of a Ukrainian enterprise is a calendar year.

Manual accounting (journal sheets, memorandum sheets, ledger) is sometimes still in use, but most companies apply special accounting software, which enables completion of the forms and ledgers automatically.

## 6.1 Ukrainian accounting principles

The key Ukrainian accounting principles are:

- accounting is based on historical cost, and cost in the past has been subject to inflation adjustments
- the accounting directives are aimed at certain uniformity and continuity
- the prescribed form of the accounts is established in NAS
- the form of a transaction, rather than its substance, dictates its accounting
- accounting rules are defined by NAS.

### Comparison with IFRS

Using IFRS is allowed for certain taxpayers for certain tax purposes

Although there are still many differences between accounting under NAS and IFRS, the number of differences is reducing compared to previous years. Importantly, the Tax Code allows for the use of IFRS for certain tax purposes (e.g., for the definition of terms not specified in the Tax Code of Ukraine).

## 6.2 Statutory reporting requirements

Audit is not mandatory for most Ukrainian companies

Companies shall file their commercial financial statements with the tax authorities and the Ministry of Statistics on a quarterly basis, within 25 calendar days following the reporting quarter. In addition, stock issuers must provide annual reports to the Securities Commission by the end of September of the year following the reporting year.

## 6.3 Audit requirements

With the exception of financial institutions, security issuers and public joint stock companies, statutory audit reports are generally not required for Ukrainian companies. Qualified statutory auditors can be either an individual with the appropriate qualification, or a company or firm employing registered auditors. The list of such audit firms and auditors in individual practice is maintained by the Ukrainian Chamber of Auditors and is available at the Chamber's web-site.



## 7. Property rights

- Land (7.1)
- Real estate (other than land) (7.2)
- Intellectual property (7.3)

### 7.1 Land

In Ukraine, different regulations will apply to land relations depending on the type of land in question. The land is classified according to its designated purpose, which may be residential, industrial, recreational or agricultural. Each category has specific legal status (regime). Such categories include, *inter alia*: (i) agricultural land (ii) land for urban construction (iii) land for historical and cultural purposes (iv) land under water resources (v) land under forestry and (vi) land for industrial, transport, communications, energy, defense purposes.

#### Ownership title to land

The effective land laws and regulations stipulate a number of restrictions for foreign entities to acquire title to land in Ukraine. For instance, foreign companies and individuals are prohibited from owning agricultural land.

Foreign individuals and companies are not allowed to own agricultural land in Ukraine

Non-agricultural land may be acquired by foreign persons only when it is located under real estate owned by such foreigners. In urban areas foreign entities may acquire land for purposes of construction of business-related facilities.

In case of state-owned or municipal land, a foreign entity would be required to register a commercial RO in Ukraine.

Furthermore, the approval of the Cabinet of Ministers of Ukraine and/or the parliament may be required in such case.

A draft Law which is now under the Parliament's consideration and could be adopted in 2013 may possibly allow the transfer of rights on land (share) to the authorized capital of the companies and cancel the moratorium on sale the agricultural land.

#### Lease

Unlike in the case of ownership, foreign entities may hold a lease of both agricultural and non-agricultural land without significant limitations. Lease rights to land can be granted for up to 50 years. In general, the law governing leases of land in Ukraine grants rather broad rights to the lessee, in particular: (i) priority right to extend a lease (ii) priority right to purchase a land plot and

(iii) right to sell, contribute into share capital, and pledge the lease to private land plots. However, lease rights to state and municipal land are deemed to be non-transferable.

## 7.2 Real estate (other than land)

As of 2013, the Unified State Register of Immovable Property is expected to replace several state registers of rights in immovable property

Unlike in the case of land, foreign entities are generally allowed to acquire real estate other than land (buildings, installations) situated in Ukraine. The rights in real estate (e.g., ownership), as well as any encumbrances related to such property (e.g., mortgage), are subject to state registration. Currently, there are several state-run registers where rights in real estate are to be recorded. However, as of 1 January 2013 the Unified State Register of Immovable Property is to be introduced, which would incorporate information on real estate ownership, long-term lease, mortgages, liens and other related encumbrances.

Real estate can be acquired through an asset or share deal agreement. An asset deal agreement appears to be the most straightforward way of acquiring real estate in Ukraine. Such agreement would be subject to notarization and state registration. In addition to 20% Ukrainian VAT, a pension fund contribution and a state duty (each at 1% of the real estate contract price or appraised value, whichever is higher) will be due on such transaction. Once again, the investor's right to the purchased real estate should be registered in the respective state register.

Real estate can also be acquired by means of construction. Commencing a construction in Ukraine will be preceded by a rather time- and effort-consuming procedure that involves submission of an extensive list of necessary documents and engagement of external advisors. A title to a newly constructed real estate would appear upon completion of the construction, its commissioning, issuance of an ownership certificate by municipal authorities and its subsequent registration in the State Register of Immovable Property.

Naturally, real estate may also be held on lease. A written contract is deemed to be sufficient to establish a lease over the property. However, notarization is required if the lease term exceeds 3 years.

An enterprise as a going concern is recognized as an aggregate real estate object under the Ukrainian laws. However, the concept of an enterprise as a going concern is under-developed in Ukraine. Thus, acquisition of an operating business is usually structured via a share or asset deal agreement with respect to particular assets.

## 7.3 Intellectual property

International treaties concerning protection of intellectual property effective for Ukraine, prevail over national legislation

### Background

The Ukrainian system of intellectual property ("IP") safeguards combines both national (laws and by-laws) and international standards (more than 15 international treaties on IP protection of which Ukraine is a party to). To the extent that the effective international treaties conflict with the Ukrainian laws, provisions of such treaties shall prevail.

Ukraine has taken important steps towards harmonizing its national IP legislation with the EU and WTO standards, with a view to increasing the efficiency of the national IP protection system, and to eliminate IP piracy.

### Copyright and related rights

The Ukrainian copyright laws protect literary, dramatic, musical works, works of architecture, audio-visual and photographic works, computer software and databases, as well as other literary, artistic and scientific works from illegal copying, regardless of whether such works exist in a written or oral form.

Copyright protection arises by virtue of the creation of the work concerned, regardless of its formal registration.

The Ukrainian copyright laws recognize two types of copyright: non-proprietary and proprietary rights. Non-proprietary rights appertain to the author regardless of proprietary rights, and cannot be transferred to others or inherited. Non-proprietary rights are permanently protected and include:

- the right to claim authorship
- the right to prohibit revealing the author's name during public performances of the work if he/she wishes to remain anonymous
- the right to use a pseudonym instead of a real name and
- the right to claim the integrity and to object to any distortion, mutilation or other modification of the work. In addition, proprietary rights include:
  - an exclusive right of use over the work
  - an exclusive right of authorizing the reproduction of the work to others.

Proprietary rights may be transferred or licensed by the copyright owner to another person. Upon such transfer, a transferee becomes the owner of the proprietary rights. Upon licensing, the licensee obtains the rights of use over the work to the extent set forth in the license agreement (either exclusive or non-exclusive).

Under the copyright law, if a person creates a work as part of his job duties, he/she is considered to be the author of such work and should be entitled to non-proprietary rights arising out of it. However, exclusive property rights to such work would belong to the employer, unless otherwise provided in the employment agreement. The employee shall, nevertheless, be entitled to remuneration for the creation and further use of the work to the extent set forth in the employment agreement.

If a copyright object is created as part of employee's job duties, proprietary rights to such object would belong to the employer

Under the copyright law, the proprietary rights to a work of art shall remain in force for the life of the author and 70 years after his death.

### Trademark protection

Under the Ukrainian trademark law, legal protection is granted to any mark for goods or services not contravening the public order, principles of humanity and morals, regardless whether such mark was registered in Ukraine or in another jurisdiction by virtue of international trademark protection treaties, which Ukraine is a party to.

A certificate of trademark registration confirms the title to a trademark. Such certificate is issued for a period of 10 years and can be prolonged for another 10 years for an indefinite number of times.

A registered trademark owner is entitled to use such trademark, in particular, to:

A certificate of trademark registration is issued for 10 years and can be subsequently prolonged

- indicate a trademark on any goods for which it has been registered, on packaging, signboards, labels, or other objects attached to them, as well as to store goods bearing the trademark and offer them for sale, to sell, import and export such goods
- use a trademark in course of the service supply for which it has been registered and
- use a trademark in business documentation, for advertisement or over the Internet.

The certificate of trademark registration grants the owner a right to forbid any usage of the trademark by any parties without prior consent.

### Inventions, utility models and industrial design

In Ukraine, rights to inventions, utility models and industrial design are subject to patent registration with the State Intellectual Property Service. A

patent is a protective document confirming priority, authorship and title to invention, utility model or industrial design.

Per a general rule, an invention (a product or a process in any area of technology) may be registered subject to patent provided it is innovative, has an inventive level, and is suitable for industrial use. A utility model (a product or a process in any area of technology) may be registered subject to patent if it is innovative and suitable for industrial use. Rights to a design (a form, a drawing, a painting or their combination that defines the appearance of an industrial product and is assigned for meeting aesthetic and ergonomic needs) may be registered subject to patent in case the innovative condition is met. There are a number of objects that are exempt from patentability, specifically, new varieties of plants and breeds of animals, biological processes of reproduction of plants and animals, topography of integrated circuits and results of industrial design.

To receive a patent, an invention must meet certain qualification criteria

An invention patent should be valid for 20 years while a declarative patent for utility model is valid for 10 years.

A patent for design is issued for 10 years and may be extended for consecutive 5 years at the owner's written request.

A patent for invention or utility model entitles the owner to have exclusive use of such IP, to produce goods using such inventions or utility models, and to deploy the process protected by the patent. A patent for industrial design grants its owner the right to use the protected design.

Patent holders, *inter alia*, have the following rights: to produce goods with

the usage of objects protected by patents, offer for sale (including via the Internet), sale, import, export, transfer of such goods, prohibit usage of such IP objects by any person without authorization, and to assign such rights protected by the patent, or grant IP rights to any person under an exclusive or non-exclusive license agreement.

Patent grants the owner an exclusive right to use over the protected object and allows/prohibits its usage by other



## 8. Currency regulations

Ukraine has strict and somewhat administratively burdensome currency control rules. In recent times attempts have been made to lift excessive state regulation in this area. For instance, settlements between residents and non-residents of Ukraine in trade transactions were allowed in both hard currency and UAH.

However, there are still a broad range of administrative instruments which are called upon to govern the Ukrainian currency market.

On 16 November 2012 the NBU adopted several regulations, which obliged companies to sell foreign currency earnings and decreased the terms of payment under cross-border transactions by establishing the following rules:

- settlements under export/import of goods, works or services contracts must be made within the period not exceeding 90 calendar days (instead of 180). Otherwise a penalty for each day of delay will apply
- 50% of foreign currency proceeds received by residents under cross-border agreements must be sold on the Ukrainian inter-bank foreign exchange market. The foreign currency must be sold not later than the next business day after the relevant proceeds have been credited to the bank account
- any payment in foreign currency in the amount equal to or exceeding the equivalent of UAH 150,000 per month (approximately USD 18,773) received by individuals (both residents and non-residents) must be sold on the Ukrainian inter-bank foreign exchange market not later than the next business day after the relevant payment has been credited to the individual's bank account.

### Limitations on purchase of foreign currency

Foreign currency can be purchased for the following main purposes:

- payment to offshore suppliers for goods/works/services
- payment of dividends, interest and royalties abroad and
- repayment of foreign currency loans registered with the NBU, etc.

## Individual licensing of certain currency transactions

A Ukrainian company is required to obtain an individual NBU license in respect of the following transactions:

- making an investment abroad, including establishment of a subsidiary company in another country and transferring capital to finance its operation
- crediting funds to bank accounts opened abroad and
- purchasing shares of non-residents in cash, *etc.*

## “180-day” rule

Payments from Ukrainian companies to non-residents for imported goods/

In case of advance payment for goods/ services the actual import should be effected within 180 days following the payment

services, *etc.* usually do not require an individual NBU license. However, if a Ukrainian company makes an advance payment to a foreign company for account of future supplies, a Ukrainian company must effect the actual importation of the goods or services concerned within 180 days following the date of the advance payment.

The 180-day period may be extended only based on an individual permission granted by the Ministry of Economic Development and Trade. Failure to comply with the 180-day requirement may result in severe penalties for the Ukrainian company.

Price valuation statements are necessary to effect payments for services or IP rights abroad in excess of prescribed limits

According to the NBU Resolution dated 16 November 2012 No. 475, temporary, for the period of 6 months the 180-day period was reduced to 90-days. This rule is in force till 19 May 2013.

## Price valuation procedure

Pursuant to the effective currency regulations, if a Ukrainian entity intends to pay to its foreign counterpart for services, or use of IP rights in excess of EUR 100,000 (or its equivalent in another currency), such Ukrainian entity shall obtain a price evaluation statement from the State Information and Analytical Center for Monitoring of External Commodity Markets. Otherwise, the bank will disallow the transfer.

At the same time, no price valuation statement will be required when a payment is made for financial, travel, communication, freight and forwarding services supplied from abroad, provided that Ukrainian entities have respective licenses (permits) to carry out relevant business activities.

## Foreign borrowing interest cap

Loans from non-residents of Ukraine must be formally registered with the NBU before their receipt by Ukrainian borrowers. The effective currency regulations establish certain limits (thresholds) on such borrowings. These limitations depend on the type of currency and *the maximum interest rate allowed*.

Thus, currently the maximum allowed interest rate (including commission fees and financial penalties):

- on short-term foreign loans (with a maturity of less than 1 year) should not exceed 9.8%
- on long-term foreign loans (with maturity exceeding 3 years) should be less than 11%.



## 9. Customs regulations

One of the key acts regulating the legal treatment of goods moving through the customs border of Ukraine is the Customs Code of Ukraine. It establishes different types of customs regimes, namely:

Customs duties, VAT, as well as excise tax (if any) shall be paid at customs clearance

- import/export
- re-import/re-export
- transit
- temporary export/import

- processing of goods in/outside the customs territory of Ukraine
- bonded warehouse
- free customs zone
- duty-free trade stores
- destruction or damage of goods, and
- waiver of goods in favor of state.

As a general rule in order to declare the goods which are moved through Ukrainian customs border post, an importer/exporter of goods (or authorized person) is required to file a customs declaration and to submit it to the customs authorities. The customs declaration usually includes a description of the goods, including their specification, customs value (which may differ from stated in invoice), volume, customs procedure, etc. The Ukrainian customs authorities may introduce adjustments to the declared customs value of goods.

As a general rule, customs duties and charges are calculated and paid based on the data indicated in the submitted customs declaration. If the total customs value of goods crossing the customs border of Ukraine in hand luggage and/or in accompanied baggage by crossing the state border of Ukraine opened for air traffic does not exceed EUR1000 (or EUR500 for other means of transport) and their weight does not exceed 50 kg, no customs declaration needs not be filed.

Ukrainian customs authorities are often perceived by local businesses and foreign investors as one of the most challenging regulatory bodies in Ukraine. Computerization of the customs clearance process and harmonization of Ukrainian legislation with the EU standards remain the main priorities for the Ukrainian customs authorities.

A substantial step forward towards this goal has been made by enacting a new Customs Code of Ukraine. By virtue of the new Customs Code a new type of international corporate entity has been introduced - an Authorized Economic Operator (AEO). An AEO is a company set-up in accordance with the laws of Ukraine as an AEO with the ability to use special simplified customs procedures and/or safety and security procedures. The status of the AEO is granted by the Customs services office through issuing of a AEO Certificate and inclusion to the State Register of AEOs. To become an AEO a company should, inter alia, meet the following requirements:

- perform cross-border transactions for not less than 3 years prior to the request for the status of an AEO
- be free of unsettled customs duties and penalties and
- have no unsettled tax debts.

The Customs Code of Ukraine is the principal act regulating the legal treatment of goods moving through the customs border of Ukraine

The new Customs Code takes several steps in bringing Ukraine closer to fulfilling its commitments to the WTO by introducing the following important innovations:

- shorter maximum duration of customs clearance (up to four hours)
- longer period for adjustment of customs declarations (3 years)
- allowing importers to perform customs clearance at any customs, regardless of the importer's registration, and
- partial exemption from customs duties for goods subject to temporary import, etc.

## Customs duties and taxes

Importation of equipment, machinery, materials, and other goods is usually subject to Ukrainian import duties. No import duties apply if a foreign shareholder (investor) contributes equipment and machinery to the share capital of its Ukrainian subsidiary, provided that the Ukrainian company does not dispose of the contributed equipment and machinery within 3 years. In-kind capital contributions are however subject to Ukrainian VAT at a rate of 20%.

Customs duties and charges are calculated and paid based on data in the submitted customs declaration

Import (customs) duties are levied on the customs value of imported goods, and are calculated either *ad valorem* (i.e., as a percentage of the customs value of the imported goods), as a certain fixed amount per imported item, or as a combination of the two. Regular Ukrainian customs duty rates on import of specific goods are set out in the Law of Ukraine "On the Customs Tariff of Ukraine".

Standard customs duties rates can be reduced or mitigated based on the relevant certificate of origin (e.g., invoice or other transportation document identifying the country of origin).

Customs duties rates can be reduced or mitigated based on the relevant certificate of origin

Import of goods is subject to 20% VAT that is paid using a reverse-charge mechanism. The amount of VAT liabilities is assessed based on the customs value of the imported goods, plus import customs duties and excise duties.

Also, if excisable goods are imported in Ukraine (e.g., cigarettes, alcohol products, etc.), the importer is required to pay excise duty at the border.

Export of goods from Ukraine is generally subject to 0% Ukrainian VAT and is mostly exempt from customs duties.

## **Payment for customs clearance of goods**

Customs clearance of goods outside of customs authorities' offices or beyond their business hours is subject to special fees. Generally, payment for customs clearance of goods is relatively insignificant.

## 10. Winding-up

Winding-up a business in Ukraine can be made through either voluntary or forced liquidation.

Ukrainian laws stipulate several legal grounds for initiating liquidation procedures for a business, *inter alia*:

- in case of expiration of the period for which it was set up, or after achieving the objectives for which it was created
- by virtue of a decision of the highest decision-making body of the company and
- based on judgment of a Commercial court.

Voluntary liquidation is initiated by a decision of general meeting of shareholders (participants)

committee established by the company's owner(s). The liquidation committee

Voluntary liquidation may take from 6 months to 2 years to complete

### Voluntary liquidation

A company may be liquidated by a decision of its highest decision-making body (GMS in case of a JSC or general meeting of participants in case of an LLC).

The liquidation of a company is conducted by a liquidation committee established by the company's owner(s). The liquidation committee assumes the management and control over the company, prepares an interim liquidation balance sheet, estimates the asset value of the company, pays the company's creditors, and prepares the final liquidation balance sheet to be submitted to the owners.

The overall time of voluntary liquidation may take from 6 months to 2 years to complete. The liquidation procedure is rather complicated with many procedural actions required to complete this process.

New liquidation rules effective as of late 2011 should significantly simplify liquidation procedures

As of 19 December 2011, simplifications of the liquidation procedure became effective. A new principle of "implied consent" should eliminate groundless delays in the liquidation procedure.

Forced liquidation must be authorized by the court

### Forced liquidation

A company may also be liquidated by a court decision in case of insolvency, or in specific cases set forth in the Ukrainian legislation (*e.g.*, failure to comply with numerous requirements of Ukrainian regulatory authorities,

annulment of registration owing to irregularities in the registration procedures, etc.).

## **Bankruptcy**

Under Ukrainian laws, insolvency is defined as a failure of a legal entity or individual entrepreneur to meet, within a prescribed time period (three months), claims advanced by its creditors and/or to settle its tax liabilities. Plus, a potentially insolvent company should owe indisputable debts of no less than 300 minimum monthly salaries (UAH 340 200, circa USD 42,562, as of December 2012).

Bankruptcy proceedings may be initiated by submitting a written claim to the commercial court. Any creditor (including an individual) may initiate bankruptcy proceedings provided that its claims are uncontested (i.e. proved by a court ruling), and the indebted company fails to pay off debts within three months upon commencement of the enforcement proceeding. A debtor may bring an action to the commercial court at its own initiative if it is insolvent.

Bankruptcy cases are initiated exclusively against legal entities and individual entrepreneurs, rather than against separate structural units of a legal entity (such as representative offices, departments or branches).



## 11. Dispute resolution

### Litigation

In Ukraine, legal disputes, including civil, commercial, administrative, criminal and other law cases, are resolved by courts of general jurisdiction, which, alongside the Constitutional Court of Ukraine, form the Ukrainian judicial system.

National judicial system consists of courts of general jurisdiction (lower courts, appeal courts, three high specialized courts, the Supreme Court of Ukraine) and the Constitutional Court of Ukraine

Administrative courts are entrusted to resolve disputes with public administration (i.e. with state and municipal authorities). This includes, in particular, tax litigation and appeal against unlawful acts or omissions committed by the state officials.

Commercial courts resolve disputes of a commercial nature between legal entities and/or individual entrepreneurs. The exclusive jurisdiction of commercial courts extends to, *inter alia*:

- corporate disputes
- disputes related to the record of title to securities
- privatization disputes
- certain anti-trust disputes, and
- bankruptcy proceedings.

Companies willing to defend their rights in a court of law would normally file claims with local courts of general jurisdiction. Judgments of local courts may be appealed to courts of second instance (appeal courts). Rulings of the latter may be further contested before high specialized courts (the High Commercial Court, the High Administrative Court, and the High Court in Civil and Criminal Matters) in course of the cassation procedure. Ultimately, the law allows submitting a case to the Supreme Court of Ukraine in exceptional instances, such as:

- inconsistent application of similar laws/regulations or provisions of the law in the cassation procedure and
- a breach of Ukraine's international obligations by virtue of a decision of a Ukrainian court where such breach is established by an international judicial institution whose jurisdiction is recognized by Ukraine.

Following the 2010 judicial reform, the Supreme Court of Ukraine may be requested to review matters of law in a decision of a high specialized court only after the respective high specialized court consents to the institution of

Precedents are not recognized as source of law in Ukraine

proceedings before the Supreme Court of Ukraine.

In Ukraine, precedents are not recognized as a source of law. However, the current procedural laws provide for a concept similar to a judicial precedent, whereas rulings of the Supreme Court of Ukraine made upon consideration of cases on ground (i) above are binding on all state authorities and courts.

## Arbitration

Commercial disputes (except for disputes in which commercial courts of Ukraine hold exclusive jurisdiction) which arise between Ukrainian companies and do not involve a foreign element may be settled in local arbitration courts ("treteyski sudy") as an alternative to state courts. Resorting to international commercial arbitration (either in Ukraine or abroad) in disputes between local companies (except for "*companies with foreign investments*") is disallowed.

Certain disputes involving a foreign element may be adjudicated in arbitration courts, both in Ukraine and abroad

Commercial disputes involving both Ukrainian and foreign entities can be adjudicated by arbitration courts (institutional or ad hoc), either in Ukraine or abroad. Under the Ukrainian laws, disputes between "*companies with foreign investments*" and their shareholders, as well as between such companies and other Ukrainian entities, can be settled in international commercial arbitration courts in Ukraine.

In Ukraine, there are two major institutional arbitration courts: the International Arbitration Court of Ukraine and the Maritime Arbitration Commission. Both institutions act under the auspices of the Ukrainian Chamber of Commerce and Industry, and function under their own rules of procedure.

If a dispute goes beyond a mere breach of contractual obligations, and assault on the recognized status of a foreign investor, claims may be brought before an ICSID tribunal

As noted before (see Section "*Foreign investment treatment*"), as an alternative to international arbitration, foreign investors can choose to appeal actions of their Ukrainian counterparts before the ICSID, when a dispute does not arise out of a mere failure to abide by the party's contractual obligations, but amounts to an assault of the investor's rights by the State itself (acting through its organs or controlled persons).

## Recognition and Enforcement of Foreign Judicial Decisions and Foreign Arbitral Awards

Foreign court judgments can generally be recognized and enforced in Ukraine provided there is an effective international treaty on cooperation in civil and criminal matters between Ukraine and the foreign state. In absence of such

treaty, foreign court judgments can be enforced based on the reciprocity principle acknowledged between Ukraine and the other state.

Recognition of a foreign arbitral award may take place based on rules of the 1958 New York Convention or the 1961 European Convention on International Commercial Arbitration

In terms of recognition and enforcement of international arbitral awards, Ukraine acceded to both the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, and the 1961 European Convention on International Commercial Arbitration. Their rules should prevail over the domestic law on international commercial arbitration, in cases where a foreign arbitral award was rendered in a State party to one of the above conventions.

The Law of Ukraine *“On International Commercial Arbitration”* is generally consistent with the UNCITRAL Model Law on International Commercial Arbitration and provides for a series of grounds when recognition and enforcement of an arbitral award can be denied by a Ukrainian court (provided the judgment in question was delivered by a State not party to the 1958 New York Convention or the 1961 European Conventions). Such cases concern material defects of the award, of the procedure of its adoption (in particular, violations of the defendant’s right to present its position), and defects of the arbitration clause, as well as the award’s incompatibility with the Ukrainian

legal order, such as: (i) non-arbitrability of the dispute in question (e.g., corporate disputes, bankruptcy proceeding) and (ii) conflict with the public order of Ukraine (i.e. enforcement of judgement would threaten the interests of Ukraine). Ukrainian courts sometimes interpret the “public order” concept very broadly and employ this interpretation to deny the recognition and enforcement of arbitral awards in case of their inconsistency with Ukrainian laws.

ICSID awards are recognized automatically and do not require special procedure for recognition to be followed

Importantly, awards rendered by ICSID tribunals are not subject to special enforcement proceedings in Ukraine and are recognized automatically (by virtue of Ukraine’s international undertakings).



## Appendices

### Appendix 1. Chart of withholding tax rates

Double Tax Treaties/ Recipient residing in	Withholding tax rates (WHT)		
	Dividends, %	Interest, %	Royalties, %
Algeria	5 (25)/15	10	10
Armenia	5 (25)/15	10	0
Austria	5 (10)/10	2/5	5
Azerbaijan	10	10	10
Belarus	15	10	15
Belgium	5 (20)/15	2/5	5
Brazil	10 (25)/15	15	15
Bulgaria	5 (25)/15	10	10
Canada	5 (20)/15	10	10
China	5 (25)/10	10	10
Croatia	5 (25)/10	10	10
Cyprus*	0	0	0
Czech Republic	5 (25)/15	5	10
Denmark	5 (25)/15	10	10
Egypt	12	12	12
Estonia	5 (25)/15	10	10
Finland	5 (20)/15	5/10	5/10
France	5 (20/10)/15	2/10	10
Georgia	5 (25)/10	10	10
Germany	5 (20)/10	2/5	5
Hungary	5(25)/15	10	5
Iceland	5(25)/15	10	10
India	10(25)/15	10	10
Iran	10	10	10
Israel	5(25)/10/15	5/10	10
Italy	5(20)/15	10	7
Japan	15	10	10
Jordanien	10(20)/15	10	10
Kazakhstan	5(25)/15	10	10
Korea	5(20)/15	5	5
Kuwait	5	0	10
Kyrgyzstan	5(50)/15	10	10
Latvia	5(25)/15	10	10
Lebanon	5(20)/15	10	10

Libya	5 (25)/15	10	10
Lithuania	5(25)/15	10	10
Macedonia	5(25)/15	10	10
Malaysia	15	15	10/15
Marocco	10	10	10
Mexico	5 (25)/15	10/0	10
Pakistan	10(25)/15	10	10
Moldova	5(25)/15	10	10
Mongolia	10	10	10
Netherlands	5(20)/15	2/10	10
Norway	5(25)/15	10	10
Poland	5(25)/15	10	10
Portugal	10(25)/15	10	10
Republic of South Africa	5 (20)/15	10	10
Romania	10 (25)/15	10	10/15
Russia	5/15	10	10
Singapore	5(20)/15	10	7,5
Slovakia	10	10	10
Slovenia	5 (25)/15	5	10/5
Spain	18	0	5/0
Sweden	5 (20)/10	10	10
Switzerland	5 (20)/15	10	10
Syria	10	10	18
Tajikistan	10	10	10
Thailand	10 (25)/15	10/15	15
Turkey	10 (25)/15	10	10
Turkmenistan	10	10	10
United Arab Emirates	5 (10)	3	10
United Kingdom	5 (20)/10	0	0
USA	5 (20)/15	0	10
Uzbekistan	10	10	10
Vietnam	10	10	10
Yugoslavia (Serbia and Montenegro)	5 (25)/10	10	10

\* The following chart present a list of withholding tax rates which may be applicable to certain types of income derived from Ukraine by non-residents of Ukraine.

# **Appendix 2. About KPMG in Ukraine**

## **Our Values**

KPMG's values set out exactly what we stand for and determine the way we behave, both with our firms' clients and with one another. They describe who we are, what we do and how we do it. We aim to incorporate them into our relationships with our clients and colleagues so that they are clearly reflected in the work we do.

### **We lead by example**

At all levels acting in a way that exemplifies what we expect of each other and our firm's clients.

### **We work together**

Bringing out the best in each other and creating span and successful working relationships.

### **We respect the individual**

Respecting people for who they are and for their knowledge, skills and experience as individuals and team members.

### **We seek the facts and provide insight**

Challenging assumptions, pursuing facts and strengthening our reputation as trusted and objective business advisers.

### **We are open and honest in our communication**

Sharing information, insight and advice frequently and constructively and managing tough situations with courage and candor.

### **We are committed to our communities**

Acting as responsible corporate citizens and broadening our skills, experience and perspectives through work in our communities.

### **Above all, we act with integrity**

Constantly striving to uphold the highest professional standards, provide sound advice and rigorously maintain our independence.

KPMG is a global network of professional firms providing Audit, Tax and Advisory services. We have 152,000 outstanding professionals working together to deliver value in 156 countries worldwide.

KPMG has been working in Ukraine since 1992, and our goal has always been to use KPMG's global intellectual capital combined with the experience of Ukrainian professionals to assist leading Ukrainian companies and KPMG's multinational clients achieve their business aims. KPMG in Ukraine has its offices in Kyiv, Donetsk, and Lviv, employing together over 350 people. KPMG provides a supportive environment that helps inspire our people to develop their careers and reach their professional goals.

Two years in a row, business students from world leading universities rank KPMG among "World's Most Attractive Employers" (The Universum ranking 2010-2011).

We provide audit, tax, and advisory services to major Ukrainian and global companies and to a broad range of non-governmental organizations and financial institutions. We help our clients exploit new opportunities, improve performance, manage risk and enhance value.

In 2009 KPMG in Ukraine and the CIS joined KPMG Europe LLP. Being part of KPMG Europe LLP, the largest integrated accounting firm in Europe, we are able to meet fast changing needs, especially in these difficult economic times.

KPMG was recognized as No.1 'Accountancy Firm of the Year' at the European M&A Awards 2011 (Financial Times and Mergermarket).

KPMG leads competition on deals globally for a fifth year. Annual deal rankings sourced by Thomson Reuters show KPMG topped the competition in the year-end league tables for 2011 by volume of deals globally.

Our vision is simple - to turn knowledge into value for the benefit of our clients, people and our capital markets.

## Industry experience

Industry focus is fundamental to KPMG's approach. We invest continuously to build our knowledge of the industries we serve.

To provide higher quality services to our clients, we have developed specialized, industry-specific practice groups: Energy and Natural Resources; Agriculture; Financial Services (Banking and Insurance); Food, Drink and Consumer Goods; Funds and Private Equity; Pharmaceuticals; Automotive; Infrastructure, Construction and Real Estate; Telecommunications; Media; Technology; Transportation and Logistics.

## **Our Services**

(kpmg.ua/Services)

### **Audit Services**

- Financial Statement Audit
- Audit Based Services

### **Tax & Legal Services**

- Outsourcing and Tax Compliance Services
- Corporate Tax Services
- International Corporate Tax Services
- VAT Services
- Legal Services
- Tax Dispute Resolution
- Mergers and Acquisitions
- People Services
- Transfer Pricing Services
- Customs Procedures and Foreign Trade

### **Transactions & Restructuring**

- Transaction Services
- Restructuring
- Corporate Finance

### **Risk Consulting**

- Accounting Advisory
- Actuarial Services
- Forensic Services
- Internal Risk and Compliance
- Sustainability and Corporate Governance

### **Management Consulting**

- Business Process Efficiency
- IT Strategy and Performance

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