



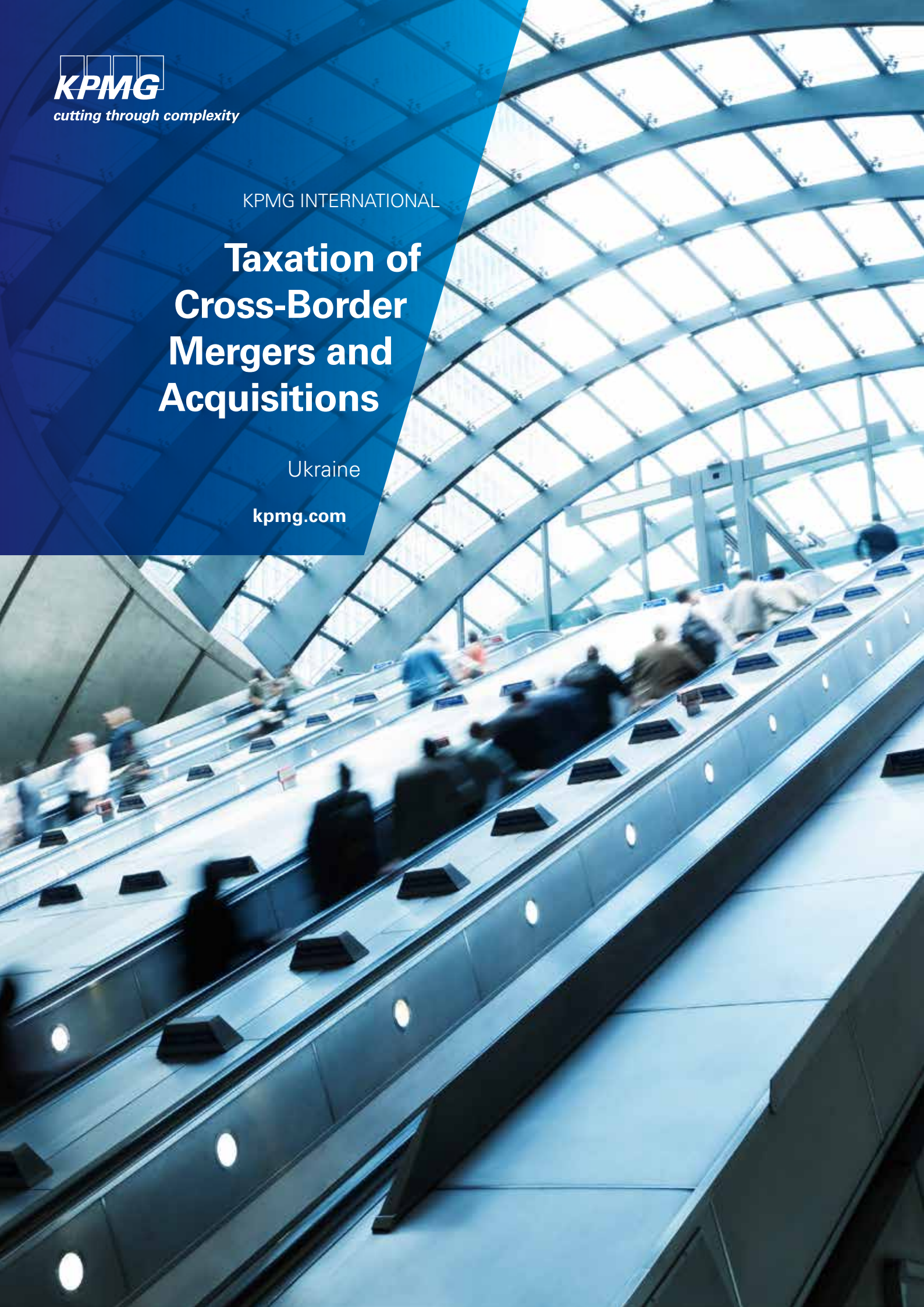
cutting through complexity

KPMG INTERNATIONAL

# Taxation of Cross-Border Mergers and Acquisitions

Ukraine

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# Ukraine

## Introduction

The Ukrainian tax environment is characterized by numerous tax filing requirements and frequent tax payments. Corporate and personal tax rates are moderate, but social security rates remain relatively high. Tax laws are often ambiguous and subject to numerous interpretations and frequent changes. Although Ukraine remains a document-driven jurisdiction where legal form still prevails over the economic substance of transactions, courts are starting to pay more attention to economic substance when considering tax disputes. There is often limited or inconsistent tax practice that gives rise to numerous disputes with the tax authorities. The local courts often do not have sufficient experience to consider complex tax disputes and can be biased against business in favor of the tax authorities.

These factors combine to complicate tax planning, related business decisions and tax due diligence of local businesses.

These factors also result in additional tax risks in Ukraine, which are often more significant than those typically found in jurisdictions with more mature and stable taxation systems. To some extent, the risks are mitigated by the tax authorities' usual entitlement to only assess additional tax liabilities within 3 years after the filing of the relevant tax returns.

Following a major tax reform in 2010, the government focused on enhancing the taxation system, fixing various controversies and ambiguities in new tax rules, and granting tax incentives to various industries.

Consolidation of four social security and pension charges into one unified social contribution, transition from quarterly to annual corporate income tax filings for profit-making businesses, and wider use of electronic tax filing contributed to improve Ukraine's 'paying taxes' rating in the World Bank's Doing Business survey.\* Overall, Ukraine's rating climbed from 181<sup>st</sup> place in 2012 to 164<sup>th</sup> place in 2014.

Although the Ukrainian tax system is moving in the right direction by reducing the number of taxes, keeping the tax rates moderate and improving tax filing and administration procedures, more efforts and reforms should be undertaken to overcome longstanding difficulties in administering taxes (including value added tax (VAT) refund procedures) and reducing the number of tax disputes.

Regarding the Ukrainian environment for mergers and acquisitions (M&A), high-profile acquisitions of Ukrainian businesses are usually structured as share deals by means of acquiring shares in foreign holding companies that hold shares in Ukrainian businesses. Asset deals and non-monetary acquisitions (including share-for-share exchanges) are relatively rare.

These and other important tax aspects of M&A transactions in Ukraine are discussed later in this chapter.

## Recent developments

In 2013, the Ukrainian tax environment underwent substantial change due to a number of substantial Tax Code amendments:

- The regular corporate income tax rate was decreased from 19 percent in 2013 to 18 percent in 2014.
- The initially scheduled decrease in the VAT rate from 20 percent to 17 percent was deferred until 2015.
- A special excise tax was introduced and applies to various transactions with certain types of securities.
- As of 2013, most profit-making businesses started paying monthly advance income tax installments and filing annual corporate income tax returns.
- Eligible information technology (IT) companies could qualify for a 5 percent corporate income tax rate on income from their eligible IT activities.
- The utilization of the capital losses realized in 2013 is denied in 2014.
- A new set of comprehensive transfer pricing rules and requirements was introduced in 2013.
- The list of VAT-exempt transactions was extended.

In addition, Ukraine has recently signed a number of double tax treaties, including treaties with Saudi Arabia, Malta and Ireland. Most importantly, Ukraine signed a new tax treaty with Cyprus, which took effect on 1 January 2014.

## Income tax

The corporate income tax rate decreased from 19 percent in 2013 to 18 percent in 2014. This rate is set to gradually reduce to 17 percent in 2015 and to 16 percent in 2016.

\*World Bank. 2013. Doing Business 2014: Understanding Regulations for Small and Medium-Size Enterprises. Washington, DC: World Bank Group. DOI: 10.1596/978-0-8213-9984-2. License: Creative Commons Attribution CC BY 3.0

As of 1 January 2013, qualifying (profit-making) Ukrainian businesses are required to pay monthly advance income tax installments that are basically computed as 1/12 of the prior-year's corporate income tax liabilities, subject to certain adjustments. Most businesses are also filing corporate income tax returns annually instead of quarterly.

Tax holidays have been introduced for eligible businesses operating in certain industries (including businesses that develop projects in so-called 'priority sectors of economy') as well as for certain newly created businesses. Special taxation regimes are prescribed for insurance companies and are available for eligible IT, agricultural and small and medium-size businesses.

#### Value added tax

The general 20 percent VAT rate is set to decline to 17 percent in 2015. Initially, it was contemplated that the 17 percent VAT rate would apply as of 1 January 2014. However, as expected, the Ukrainian Parliament decided to defer the decrease in the VAT rate until 2015 due to the significant budget deficit.

Finally, the VAT registration procedure was significantly simplified in 2013.

#### Unified social contribution

The unified social contribution (USC) rate for employers varies from 36.76 percent to 49.7 percent, depending on the class of professional risk prescribed for the relevant business.

The USC rate for employees is 3.6 percent. The USC does not apply to the portion of monthly wages and salaries that exceed the prescribed threshold (approximately 2,600 US dollars (USD) as of 1 January 2014).

#### Beneficial ownership concept

The 'beneficial ownership' concept was introduced in the Tax Code in 2011. This tax concept primarily applies to payments of interest, dividends and royalties paid by Ukrainian taxpayers to non-residents of Ukraine. Currently, to enjoy tax treaty benefits, an eligible foreign income recipient must be both:

- a tax resident in a jurisdiction with which Ukraine has an effective tax treaty
- the beneficial owner of the Ukrainian-sourced income.

Recently, the Ukrainian tax authorities started actively applying the beneficial ownership concept to deny tax treaty benefits in the context of cross-border IP sublicensing or subleasing structures, and financing arrangements where a foreign recipient of Ukraine-sourced income is viewed by the Ukrainian tax authorities as a financial intermediary.

As the beneficial ownership requirement is now part of the domestic taxation system, the Ukrainian tax authorities actively apply the beneficial ownership concept even where the relevant tax treaty does not include this special anti-avoidance rule.

#### Asset purchase or share purchase

Generally, an acquisition of a business can be structured by means of purchasing equity in or assets of a selected business or by means of business combination (reorganization).

Acquisitions of shares or business assets are the most common forms of purchasing business in Ukraine. There are many fundamental tax and legal differences between these two options. In practice, the choice between the asset and share deal depends on the findings of the due diligence assignment, pricing parameters, negotiations between the parties, timing, tax and legal considerations pertaining to each structuring alternative and other important factors.

Both share and asset deals can involve significant costs associated with financing, documenting and implementing the acquisition.

Generally, sellers usually prefer to sell shares while buyers usually prefer to acquire assets.

Asset deals tend to be more time-consuming and expensive than share deals as there are needs, for example, to assign/renew contracts, transfer employees, re-register legal title in land, real estate and certain other assets, and receive new licenses/permits. For regulated businesses (e.g. banking, insurance and telecommunications), an asset deal may not be feasible due to difficulties in obtaining the prescribed license for a new company.

Certain licenses and permits are not available to foreign companies or their branches in Ukraine. There could also be legal restrictions for foreign persons to directly own (control) Ukrainian businesses that are engaged in certain businesses or to own certain assets (e.g. land). Overall, share deals cause less disruption to the business as the target business typically continues to operate as it did before the acquisition.

Due to the specifics of the local tax and legal environment, share deals are more common in Ukraine. It is also typical for the Ukrainian M&A market to structure the acquisition of a Ukrainian business indirectly by means of purchasing shares in foreign holding companies that own the shares in the Ukrainian business. However, such approach causes foreign investors to perform due diligence of both a Ukrainian operating business and a foreign holding vehicle, which increases the acquisition costs.

The following sections discuss in greater detail the salient tax implications of purchasing shares in or assets of a Ukrainian business. The key advantages and disadvantages of asset and share deals are summarized at the end of this chapter.

### Purchase of assets

A purchase of assets generally results in an increase to the fair market value in the cost base of the acquired business assets for both accounting and tax purposes. This tax reality is favorable for the purchaser but affects the seller as income derived or capital gains (recapture of tax depreciation) realized on the disposition of assets is subject to income taxation for the selling business. Most asset sales also trigger VAT at a rate of 20 percent, which is an important consideration for the purchaser.

In most cases, asset deals prevent the purchaser from assuming the inherent tax liabilities, tax losses and/or tax attributes associated with the assets of the selling business.

Ukrainian business assets are typically purchased by a special-purpose Ukrainian company that is specifically set up by the purchaser to accommodate the transaction. In theory, most assets also can be purchased by a foreign company either directly or through a branch in Ukraine. In practice, these situations are rare, and there could be regulatory or other restrictions in terms of carrying on certain business activities or owning certain assets by foreign companies or their Ukrainian branches. Among other things, the Ukrainian tax authorities' view is that a foreign company that owns Ukrainian real estate should register a Ukrainian branch (permanent establishment) for purposes of renting out this real estate.

In kind contributions to the share capital of Ukrainian companies are possible and can bring additional fiscal benefits in terms of deferral of or exemption from customs duties on importing assets (e.g. machinery and equipment) to Ukraine.

### Purchase price

The seller and purchaser are free to negotiate the asset purchase price and to reasonably allocate the agreed price between the specific business assets.

Consideration should be given to signing two or more asset purchase agreements to separate supplies of business assets that are subject to VAT from supplies that are not. The same approach applies to purchases of assets that are subject to a notary deed, and, as a result, give rise to a state duty or notary fee.

After the recent enactment of comprehensive transfer pricing rules, the tax authorities can challenge and adjust the negotiated purchase price in the context of controlled transactions.

Unlike many other jurisdictions where transfer pricing rules apply to controlled transactions between the related persons only, the Ukrainian transfer pricing rules also apply to transactions of Ukrainian resident companies with unrelated persons that are resident in the prescribed low tax jurisdictions (see also the section on transfer pricing later in this chapter).

### Goodwill

The Tax Code defines goodwill as an intangible asset, the value of which is equal to the difference between the fair market value and balance sheet value of assets acquired as part of the purchase of a business as a going concern (so-called 'property complex'). Goodwill cannot be deducted or capitalized and amortized for corporate income tax purposes.

For statutory accounting purposes, positive goodwill should be allocated between the groups of assets that generate cash flows. Negative goodwill represents income.

### Depreciation

With the exception of land and natural resources, the cost of other fixed assets used in business activities is capitalized and depreciated for corporate income tax purposes. In certain instances, businesses are required to capitalize interest expenses for both accounting and tax purposes.

A fixed asset with a cost exceeding 2,500 Ukraine Hryvna (UAH) – approximately USD300 – and useful economic life exceeding one year is allocated to one of 16 classes of fixed assets. Each fixed asset is accounted for separately and depreciated monthly.

Businesses can determine the period of useful economic life of fixed assets in their internal accounting policies, provided 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).

A 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
- production method.

The cost of land and natural resources is added to classes 1 and 13, respectively, but cannot be depreciated. There are special tax 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 of fixed assets (including leasehold) are usually capitalized and depreciated. However, a portion of such costs is deductible where it does not exceed 10 percent of the aggregate book value of all fixed assets as of the beginning of the tax year.

Except for goodwill, intangible assets are allocated to one of six classes and are amortized using one of the above methods over the period of useful economic lifetime. The latter period cannot be less than the minimum period prescribed by the Tax Code and usually ranges from 2 years (for copyright and related rights) to 5 years (for patents and know-how, etc.).

The minimum period of useful economic life is not prescribed for many types of intangible assets and is determined with reference to the relevant legal documents. If the legal documents are silent on such period, it is deemed to be 10 years.

### Tax attributes

Tax losses, VAT receivables (credits/refunds) and other tax attributes are not transferred to the purchaser during an asset deal. Tax losses and attributes remain with the seller, which

can generally use them to shelter the taxable income, gains and VAT liabilities that can arise on the disposition of assets.

### Value added tax

Previously, no VAT exemption was available for a sale of a business as a going concern. As a result, a sale of business assets by a registered VAT payer is a supply of goods for VAT purposes. Supplies of goods are usually subject to VAT at a rate of 20 percent, unless the supply is VAT-exempt (e.g. supplies of securities, including shares, and equity interests).

In practice, foreign investors often set up a special-purpose Ukrainian company that purchases business assets from an operating Ukrainian business. As of 1 January 2014, the Tax Code provides a simplified procedure for applying for a VAT account number. Failure to obtain a VAT number before the asset transfer would prevent the newly created company from claiming a credit (refund) of VAT paid in connection with the purchase of assets.

The amount of VAT that a purchaser incurs on local acquisitions of assets can usually be credited against the VAT liabilities of the purchaser in computing the final VAT payable to (or refundable from) the budget, provided the purchaser is registered as a VAT payer before the asset purchase. The input VAT in excess of the VAT liabilities may be used to offset VAT liabilities in subsequent tax periods or refunded to the purchaser. Subject to certain exceptions, a company that does not have a 12-month VAT history is not eligible to apply for a refund of the input VAT. In practice, it is difficult even for eligible businesses with a long VAT history to obtain VAT refunds.

### Transfer taxes

There is no stamp duty, real estate transfer tax or similar transfer tax in Ukraine. However, the transfer of title in certain assets (i.e. land, real estate, vehicles, etc.) is usually subject to a notary deed and/or state registration. Notary deeds give rise to a state duty administered by public notaries or a notary fee administered by private notaries. A notary fee cannot be less than the state duty. The state duty rates depend on the type of arrangement (or deed) and are usually calculated as a percentage of the deed (transaction) value.

Specifically, the transfer of legal title in land and real estate is subject to a state duty of 1 percent of the purchase price.

In addition to the state duty, the purchaser may be required to pay the 1 percent pension fund duty on purchases of real estate. A pension fund duty of 3 percent to 5 percent of the vehicle's value applies to the purchases of vehicles that are subject to their first registration with the State Traffic Patrol Department in Ukraine (i.e. either new or imported vehicles).

### Purchase of shares

Most business acquisitions in Ukraine are structured as share deals. High-profile acquisitions of Ukrainian businesses are usually structured by means of purchasing shares in a foreign holding company that owns all or almost all shares or equity interests in Ukrainian companies. Traditionally, most share purchase agreements involving foreign investors have been governed by English law.

In a share deal, the purchaser of shares cannot pick and choose which assets of the target business to purchase, unless preliminary restructuring has been implemented to spin-off or dispose of 'redundant' assets before the contemplated share deal.

A share deal does not enable the purchaser to increase the tax base of the assets of the purchased Ukrainian business.

The purchaser can potentially benefit from available tax loss carry forwards of the acquired Ukrainian company (either directly or indirectly by merging the purchased Ukrainian company with a profitable Ukrainian group company). In Ukraine, there are no limitations that prevent the purchased company from utilizing tax loss carry forwards following the change of control. However, there are restrictions on tax losses carried forward in certain corporate reorganizations.

By acquiring shares in the target company, the purchaser effectively assumes inherent tax and other risks of the purchased company. To understand the tax position of the target business and the nature and quantum of the potential tax exposures, it has become a good business practice for purchasers to initiate pre-acquisition tax due diligence of the target Ukrainian business. Among other things, the tax findings help the purchaser to decide whether a share deal is viable and whether the identified tax exposures are tolerable and/or manageable.

The following approaches are often used by prospective purchasers to mitigate or manage the pre-acquisition tax exposures of the target companies:

- negotiating adjustments to the purchase price to factor in the identified tax exposures

- deferring the payment of the purchase price (either wholly or partially) or making such payment conditional on satisfaction of certain requirements
- incorporating protective provisions (so-called tax warranties and indemnities) in the share-purchase agreement.

The following sections discuss in more detail these and other important tax-related issues that sellers or buyers typically consider in the context of share deals.

### Tax indemnities and warranties

As discussed earlier, a purchaser inherits historical tax liabilities and potential tax penalties of the target business. Thus, it has become a normal business practice for purchasers to require the sellers to provide warranties on important tax matters and to indemnify any tax liabilities and penalties attributable to a period before closing (unless such tax liabilities and penalties are already factored into the purchase price).

Tax warranties and indemnities are usually extended to all businesses that are included in the deal perimeter. The specifics of indemnity coverage are an important aspect of negotiations between sellers and buyers of Ukrainian businesses.

### Tax losses

Generally, Ukrainian companies can carry forward business losses and capital losses (i.e. losses realized on transactions with securities and derivatives) indefinitely. However, from time to time, the Parliament restricts the utilization of tax losses carried forward.

Specifically, all unutilized business tax losses that arose in 2011 or prior years are divided in four equal parts, and each part can be utilized in 2012 through 2015 pursuant to a special procedure. Unutilized business tax losses can be utilized after 2015 without restriction.

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

All unutilized capital tax losses realized in 2012 or prior years were denied in 2013. Also, capital losses realized in 2013 on sales of securities cannot be utilized to shelter taxable losses in 2014. Arguably, the 2013 capital losses can be utilized in 2015 and later years.

No carry back of business or capital tax losses is allowed. Neither the change of control nor the related-party nature of the share deal affects a business's ability to carry over and utilize accumulated tax losses in subsequent tax periods.

The specifics of tax loss carry forwards in the context of reorganization transactions are outlined later in this chapter.

### Corporate profit tax

Capital gains realized by Ukrainian companies on the disposition of equity interests, other than securities, are subject to corporate income tax at a rate of 18 percent. The corporate income tax rate is set to gradually decline to 17 percent in 2015 and to 16 percent in 2016.

Gains realized on sales of securities and derivatives are subject to a reduced 10 percent corporate income tax.

No participation exemption applies to capital gains. There are special tax rules to calculate and account for capital gains or losses on transactions with securities and derivatives.

Capital gains realized by non-residents of Ukraine on the disposition of Ukrainian shares or equity interests are technically subject to withholding tax (WHT) at a rate of 15 percent. This WHT can be fully eliminated or partially mitigated under a tax treaty.

Sales of securities (other than shares) and derivatives may also be subject to a special excise tax.

### Value added tax

In Ukraine, acquisitions of shares or equity interests are not subject to VAT. Generally, share-for-share exchanges and similar transactions with shares (equity interests) are also not subject to VAT.

### Transfer taxes

There is neither a stamp duty nor a similar transfer tax applicable to transfers of Ukrainian shares or equity interests. Also, there are no capital or similar taxes applicable to or computed with reference to capital in general or share capital (increase in share capital) in particular.

A nominal registration charge applies to registering amendments to the corporate charter in connection with the change in ownership of equity interests. A state duty of 0.1 percent of the nominal value of shares issued (but not more than USD7,500 in 2014) applies to each issuance of securities (including shares and bonds).

### Crystallization of tax charges

The tax statute of limitations is 3 years (1,095 days) following the deadline for filing the relevant tax return or the date when the tax return is actually filed, whichever date is later.

The tax statute of limitations does not apply where:

- a company official is found guilty of tax evasion or criminal prosecution is terminated based on 'non-rehabilitation' grounds, or
- a return for a particular period is not filed.

Generally, tax underpayments identified after the tax statute of limitations has elapsed can no longer be enforced. Similarly, tax refunds can only be claimed within 3 years following the date of tax overpayment or tax refund entitlement.

Tax returns cannot be amended beyond the tax statute of limitations. Also, amending a filed tax return re-opens the statute of limitations in respect of such tax return.

### Tax clearance

No tax clearance (either advance or after-the-fact) is required from the tax authorities for a direct or indirect change in ownership of a Ukrainian business. However, the tax authorities can audit Ukrainian companies prior to a corporate reorganization.

In practice, purchasers often require sellers to provide recent tax reconciliation statements or similar tax documents on the tax position of the target business. Such documents are usually issued by the tax authorities each year to notify businesses of the status of tax payments, refunds and indebtedness as per the records of the tax authorities. However, some sellers manage to obtain such tax documents on or immediately before closing the share deal.

Note that these tax documents may not represent the actual status of tax payments, refunds and indebtedness. Thus, they cannot be fully relied on by the purchasers as evidence that the target business does not have any outstanding tax liabilities. Also, such tax documents cannot substitute tax due diligence of the target business. Subsequent tax audits can reveal additional tax liabilities and trigger additional tax arrears interest and penalties that are not reflected in these tax documents.

## Choice of acquisition vehicle

Foreign investors can acquire Ukrainian businesses either directly or indirectly using one of the acquisition vehicles discussed below. Tax, legal and regulatory considerations typically affect the choice of acquisition vehicle.

### Local holding company

Foreign investors often set up a Ukrainian acquisition company for the purposes of acquiring Ukrainian business assets.

For share deals, the use of a local holding company is somewhat limited due to the tax issues with implementing debt pushdown structures and certain other fiscal and corporate considerations. A local acquisition company (LLC) is usually chosen for share deals where a two-tier Ukrainian structure is required due to regulatory or other legal restrictions on direct ownership of Ukrainian assets or businesses by foreign investors. LLCs can also help avoid the quasi-thin capitalization restrictions on deducting interest paid or payable to related foreign lenders.

### Foreign parent company

Strategic investors often opt to invest in or acquire the Ukrainian shares, either directly or through regional acquisition vehicles. This can also be the case where a tax-efficient structure is already in place (i.e. where a Ukrainian business is acquired by the foreign parent company indirectly by means of purchasing the foreign holding company that owns the Ukrainian business).

Also, the Ukrainian privatization requirements can leave no option for strategic foreign investors but to acquire the Ukrainian business directly rather than through a special-purpose vehicle set up in a tax haven jurisdiction.

### Non-resident intermediate holding company

Foreign intermediate holding companies are common acquisition vehicles for share deals, especially where the Ukrainian shares are purchased directly. The choice of an intermediate holding company is primarily driven by the tax considerations to locate an acquisition vehicle in a jurisdiction that has a favorable tax treaty with Ukraine. Ukraine has a

broad network of tax treaties. Many of them exempt capital gains realized by foreign companies on dispositions of shares from taxation in Ukraine, provided the shares' value is not primarily derived from real property located in Ukraine. Tax treaties often exempt dividends, interest and royalties from Ukrainian income taxation or provide for beneficial WHT rates.

Although the use of an intermediate company in a treaty country can be fiscally beneficial, consideration should be given to treaty shopping and limitation on benefits provisions in tax treaties and to the beneficial ownership requirement that is now part of the domestic taxation system.

### Local branch

A local representative office (or branch) of a foreign company is subject to state and tax registration in Ukraine and is not commonly used for acquiring Ukrainian business assets or shares. The tax status of a local representative office depends on whether or not its activities give rise to a permanent establishment of the foreign company in Ukraine. Generally, taxation of a permanent establishment is similar to taxation of a regular Ukrainian company.

The key tax benefits of using a local branch are the absence of a branch tax and advance corporate income tax on distribution of Ukrainian after tax earnings. Ukrainian WHT may not apply to distributions of after-tax earnings based on a non-discrimination clause of the relevant tax treaty. But most of these tax benefits are of limited use as it is also possible to achieve a nil WHT on distribution of Ukrainian dividends under certain tax treaties. There are also certain tax and regulatory considerations that can make a local branch less attractive than a regular Ukrainian company.

A local branch can be a feasible solution where a foreign investor decides to purchase directly Ukrainian real estate that is then rented out to Ukrainian and foreign lessees.

### Joint venture

Where a foreign investor decides to invest in Ukraine together with Ukrainian and/or foreign business partners, such investments can be structured through a Ukrainian-incorporated vehicle or a contractual joint venture arrangement.



A Ukrainian LLC or, to a lesser extent, a joint stock company (JSC) is often chosen by foreign investors to incorporate a joint venture in Ukraine. The tax treatment and status of an incorporated joint venture is no different to that of a regular Ukrainian company.

A foreign investor can set up a contractual joint venture with a local partner by executing a joint venture agreement (formally referred to as 'a joint activity agreement', which can usually take the form of a classic joint venture agreement or a production sharing agreement).

A classic joint activity agreement should designate a partner (member) that is responsible for maintaining accounting records, filing tax returns and paying taxes for and on behalf of the joint venture. All joint activity agreements must be registered with the tax authorities.

The designated partner (member) calculates taxable income of the classic joint venture using the general rules applicable to companies (subject to some tax rules that are specific to joint activity agreements) and pays corporate income tax on a quarterly or annual basis depending on whether the joint venture is a payer of advance corporate tax. Tax losses generated by a contractual joint venture can be carried forward and utilized in subsequent tax periods. Technically, earnings distributed to the foreign partners (members) of the joint venture are subject to Ukrainian WHT at a rate of 15 percent. Consideration should be given as to whether this tax is eliminated under the relevant tax treaty.

Taxation of joint venture activities is not adequately addressed in the Tax Code, and the relevant tax rules lack detail and clarity. This situation can give rise to double taxation of earnings, first at the level of the joint venture and then at the level of the partners (members) of the joint venture when the earnings are distributed. As a result, joint venture agreements are rarely used by foreign investors to invest or do business in Ukraine. The use of a contractual joint venture is predominately limited to energy (oil and gas) and infrastructure projects (including private-public partnership projects).

## Choice of acquisition funding

A Ukrainian acquisition vehicle can usually be financed by means of debt, equity or, in theory, a hybrid instrument that has attributes of both. Non-monetary acquisitions (including share-for-share exchanges) are rare in Ukraine.

### Debt

Debt financing is more tax-efficient than equity financing as debt financing enables the borrower to deduct interest expense against taxable earnings and thus reduce corporate income tax payable.

In practice, Ukrainian acquisition vehicles often do not have sufficient earnings against which the interest on loans can be deducted. In many jurisdictions, various debt pushdown strategies are used to match business earnings of the purchased operating business with interest expense of the local acquisition vehicle. Unfortunately, the absence of tax consolidation and clear tax rules (rulings) on debt pushdown structures make such strategies risky from a Ukrainian tax perspective.

Debt financing of Ukrainian businesses is usually structured through interest-bearing or interest-free loans. Foreign exchange gains or losses that arise on such loans and accrued interest are usually taxable or tax-deductible, as the case may be, for corporate income tax purposes.

Subject to the quasi-thin capitalization requirements discussed later in this chapter, accrued interest expense is usually deductible for corporate income tax purposes.

Interest-free loans can give rise to adverse income tax implications both in Ukraine and abroad. Specifically, an interest-free loan received by a Ukrainian borrowing company from a foreign lender should be included in the taxable income of the Ukrainian borrower unless the loan is repaid by the end of the calendar quarter in which it was received. This period is extended to 365 days where an interest-free loan is provided by a shareholder of the Ukrainian borrowing company. A tax deduction can be claimed by the Ukrainian borrowing company in the tax period in which the interest-free loan is actually repaid to the foreign lender.

Where interest-free financing is provided by a Ukrainian company that is not a shareholder of the Ukrainian borrowing company, the borrower accrues deemed interest income on the interest-free loan that remains unpaid by the end of the calendar quarter in which the loan was received.

### Deductibility of interest

Generally, accrued interest expense is tax-deductible where the borrowed funds are used for business purposes and Ukraine's quasi-thin capitalization requirements are met.

The quasi-thin capitalization rules apply when a loan is received from a non-resident shareholder and/or a resident tax-exempt shareholder (or an entity related to such shareholders), where such shareholder owns or manages, directly or indirectly, at least 50 percent of the borrower's share capital. Where the quasi-thin capitalization rules apply, the interest deduction is limited to the sum of the borrower's interest income and 50 percent of the adjusted taxable earnings before interest and tax.

Many other jurisdictions compute the interest deduction with reference to the debt-to-equity ratio. However, in Ukraine, the debt-to-equity ratio is irrelevant for purposes of computing non-deductible interest expense. Interest expense that is not currently deductible can be carried forward and deducted in a subsequent tax period, provided that the prescribed limitations are met.

Back-to-back loans or two-tier Ukrainian corporate structures are typically used to avoid the quasi-thin capitalization restrictions.

### Withholding tax on debt and methods to reduce or eliminate it

Interest payments to non-resident lenders are subject to WHT at a general rate of 15 percent. However, such WHT can be mitigated or eliminated where the foreign lender is a tax resident in a jurisdiction with which Ukraine has an effective tax treaty and the foreign entity is the beneficial owner of the Ukrainian-sourced interest. A valid tax residency certificate of the foreign lender is usually required to enable the Ukrainian borrower to apply preferential WHT rates under the relevant treaty.

Where an intermediary financing vehicle is used, consideration should be given to the beneficial ownership requirements.

### Checklist for debt funding

Loans from non-residents of Ukraine must formally be registered with the National Bank of Ukraine before the borrowed funds can actually be received by Ukrainian corporate borrowers.

The effective currency control regulations establish certain limits (thresholds) on such borrowings. These limits depend on the type of currency and loan maturity. Currently, the maximum allowed interest rates (including commission fees and financial penalties) are as follows:

- short-term foreign loans (with maturity of less than 1 year) – maximum 9.8 percent
- mid-term foreign loans (with maturity from 1 to 3 years) – 10 percent
- long-term foreign loans (with maturity exceeding 3 years) – maximum 11 percent.

Consideration should be given to the reduction of the 15 percent WHT rate under the relevant double tax treaty.

Consideration also should be given to using back-to-back loans or two-tier Ukrainian corporate structures to deal with the quasi-thin capitalization restrictions.

### Equity

An acquisition of a Ukrainian business can also be financed by means of equity. Equity financing usually takes the form of cash or in kind contributions. Where a local company has retained earnings, the share capital can be increased by means of a stock dividend.

Foreign shareholders can register their capital contributions to share capital of Ukrainian subsidiaries as foreign investments to enhance state protection of investments, the ability to return investments and earned income. The state registration of foreign investments is also required to claim customs incentives in connection with in kind contributions.

All capital contributions to the registered share capital are exempt from corporate income tax. A share premium (i.e. capital contribution exceeding nominal registered share capital) is also exempt from corporate income tax. However, the tax authorities' view is that such tax exemption is available to joint stock companies only.

Dividend payments are not tax-deductible unless dividends are re-characterized as interest or salaries. Return of equity is exempt from corporate income tax and is not tax-deductible.

Foreign exchange gains or losses that can arise in connection with equity financing are neither taxable nor tax-deductible, for corporate income tax purposes.

The tax authorities' view is that a Ukrainian company does not have a tax cost base in the shares or equity interests that are contributed to that company's share in exchange of its own shares. Due to this tax position, transactions that involve share-for-share exchanges are not common in Ukraine.

Capital contributions in cash can be transferred either directly from a foreign bank account of the foreign shareholder or through a local currency investment account that a foreign shareholder can open in a Ukrainian bank.

In kind contributions are usually subject to VAT at a rate of 20 percent, unless the supplies of contributed assets are exempt from VAT. The import VAT is usually paid by the Ukrainian company on the customs clearance of contributed assets and can be claimed by the Ukrainian company as a VAT credit in the subsequent taxation period (month).

The tax cost of contributed assets can be depreciated (amortized) or deducted, as the case may be, for corporate income tax purposes.

Foreign investors can also benefit from a customs incentive available for in kind contributions of assets (typically, machinery and equipment). Specifically, no customs duties apply to the importation of assets that contribute to the share capital of a Ukrainian business. The business must own the contributed assets for the following three consecutive years; otherwise, the unpaid customs duties become due.

Dividends paid to foreign shareholders are subject to the 15 percent WHT unless this tax is fully or partially eliminated under a tax treaty. Consideration should be given to the beneficial ownership requirement that is now part of the Tax Code, which can prevent a foreign shareholder from enjoying preferential WHT rates for dividends.

Subject to certain exceptions, Ukrainian companies are usually required to accrue and remit to the budget an advance corporate income tax at a rate of 18 percent in 2014 before distributing dividends. The paid tax can be credited against the current or future corporate income tax liabilities of the Ukrainian dividend distributor.

### Tax-free reorganizations

Corporate reorganizations can take various legal forms, namely, a merger, acquisition (takeover), split-up, spin-off or transformation of a corporate body. Reorganization is

usually initiated by a resolution of the general shareholders' meeting. However, in certain instances (e.g. where a company is abusing its dominating position on the market), the Antimonopoly Committee of Ukraine may force the company to split up.

Generally, corporate reorganizations are performed on a tax-deferred basis provided a predecessor company ceases to exist as a result of the corporate reorganization. Thus, a spin-off reorganization that does not result in legal dissolution of a reorganized company does not formally qualify for tax deferral.

A tax-deferred rollover is also available for shareholders of companies involved in corporate reorganization. Specifically, the tax cost base of the shares that a shareholder receives in the successor company as a result of a merger, acquisition (takeover) or transformation is deemed to be equal to the tax cost-base of the shares in the dissolved predecessor company. With respect to split-up and spin-off transactions, the tax-cost base of the shares in the predecessor company should be allocated between the shares in the successor companies on a pro rata basis, depending on the portion of net assets retained by each successor company after reorganization.

Corporate reorganizations are not subject to VAT. As a result, a transfer of assets from a reorganized business to a successor company as part of a corporate reorganization should be exempt from VAT.

Tangible and intangible assets are usually recorded in the balance sheet of the successor company using the book values of the predecessor company.

Special rules apply on allocating and/or settling tax liabilities and/or overpayments (refunds) of reorganized companies. Consideration should be given to the VAT position of reorganized businesses. The tax authorities' view is that VAT refunds due to predecessor companies cannot be transferred to successor companies in the course of corporate reorganization (except for corporate transformation). The authorities claim that the VAT can only be claimed by and refunded to the predecessor company.

A carryover of business and capital losses is allowed only where the predecessor company(ies) and the successor company were related to each other for tax purposes more than 18 months before the end of the corporate reorganization. The ambiguous wording of this requirement can prevent the carry forward of tax losses for certain forms of corporate reorganization.

## Hybrids

Subject to certain exceptions that are discussed later in this chapter, determining whether a transaction or instrument is debt or equity for tax purposes depends primarily on the legal form of such transaction or instrument. The accounting treatment of a transaction or instrument can differ from the tax treatment.

The tax definition of interest and registration requirements for foreign loans make it difficult to successfully implement tax planning strategies that involve profit-sharing loans. A distribution of retained earnings is treated as a dividend payment, and the nature of such payment usually remains the same regardless of the type of the share (common or preferred) on which it is paid.

However, preferred stock dividends paid to individuals are deemed to be salaries for tax purposes and are deductible for corporate income tax purposes. Although there are tax benefits of using preferred stock for tax planning purposes (specifically in the cross-border context), local businesses rarely take these opportunities.

An interest payment on a loan or other debt obligation is treated as interest for tax purposes. It is important to ensure that all attributes of interest expense formally comply with the statutory definition of interest for tax purposes; otherwise, deductibility of interest can be denied (as could be the case with compound interest).

## Discounted securities

A discount on any kind of debenture or other security is effectively treated and taxed as interest. Thus, income derived by a non-resident of Ukraine in the form of a discount on transactions with securities should be subject to the 15 percent WHT unless this tax is eliminated or mitigated under a tax treaty.

## Deferred settlement

An acquisition of a business often involves an earn-out mechanism or other form of deferred settlements where a portion of consideration can be determined and/or paid only at some point in the future. No specific tax rules address the tax treatment of deferred consideration in the context of acquisition transactions. The actual tax consequences usually depend on the specifics of the agreed price determination, timing and payment mechanisms outlined in the share-

purchase agreement. Where the amount of deferred settlement is known as of the date of signing the share-purchase agreement, it is usually taxable to the seller.

## Other considerations

### Concerns of the seller

The tax consequences for the seller largely depend on the seller's residency status, form of the transaction (i.e. asset or share deal), specifics of the price arrangement and certain other important factors.

### Sale of assets

The seller would be primarily concerned with the possible income tax implications of the sale of assets, namely, recapture of tax depreciation where depreciable assets are sold and taxation of realized gains (income) on the disposition of other assets. Available business and/or capital losses can help to decrease the income tax liabilities.

The VAT, pension tax and various state duties that can potentially apply to sales of assets are usually paid by the purchaser. As a result, these taxes should not pose a concern for the seller.

The seller should also plan what to do and/or how to extract proceeds of disposition tax-efficiently. Distribution of such earnings as dividends may not be feasible due to the advance corporate income tax. The Ukrainian company may no longer have any meaningful business after the sale of assets and, accordingly, may not generate enough corporate income tax to offset the advance income tax paid.

### Sale of shares

The seller should primarily be concerned with the Ukrainian income tax and WHT implications of selling the shares or equity interests in Ukrainian companies, as discussed earlier in this chapter. Because sales of shares and equity interests are not subject to VAT, this tax should not be a concern for the seller.

The seller can consider whether it would be tax-efficient to sell a Ukrainian business directly or indirectly (i.e. at the level of the foreign holding company). An indirect sale often helps defer taxation of the realized capital gain unless and until the relevant proceeds are distributed to the ultimate beneficiary by the foreign holding company.

The seller should also pay attention to available tax shields (i.e., tax losses or attributes) that can be used to decrease the tax liabilities. A possibility to structure a disposition of the shares on a tax-deferred rollover basis can also be explored.

### Company law and accounting

In Ukraine, common corporate forms are LLCs and JSCs. Unlike an LLC, a JSC is entitled to issue shares which are subject to registration with the State Securities and Exchange Commission.

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

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

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

The minimum share capital of a JSC is set at 1,250 minimum monthly salaries as set by the state as of 1 January of each year (for 2014, this amount approximates USD180,000). Shareholders of a JSC shall pay their shares in full before the company's state registration.

An LLC shareholder (participant) may alienate its share (equity interest) in the LLC's capital to a third party, unless otherwise provided in the LLC's charter. In this case, other LLC participants are entitled to receive the first offer to purchase its share (equity interest).

Shareholders of a public JSC may sell their shares without any restrictions or commitments to other shareholders. Shareholders of a private JSC, however, may sell their shares subject to the right of first refusal granted to other shareholders.

The Ukrainian laws provide for other legal forms of doing business in Ukraine, including representative offices (branches) and joint activity agreements. However, these structures are rarely used to acquire a Ukrainian business.

Under Ukrainian law, International Financial reporting Standards (IFRS) is compulsory for banks, insurance

companies, other financial institutions and public JSCs. Other companies can choose to apply IFRS reporting.

### Group relief/consolidation

There is no tax consolidation in Ukraine, and each legal entity is taxed on a standalone basis. Payment of taxes by branches of a legal entity can be consolidated at the head office level. A tax bill on tax consolidation was drafted in 2013, but this tax bill has yet to be considered by the Parliament.

### Transfer pricing

In September 2013, a comprehensive set of transfer pricing rules and requirements took effect. The suggested amendments eliminated the 20 percent safe harbor rule and introduced additional guidelines for using transfer pricing methods and preparing transfer pricing documentation.

Based on the new rules, transactions are deemed to be controlled where the annual transaction volume (excluding VAT) between the two parties exceeds UAH50 million (approximately USD5.9 million) and the transactions are performed with:

- related resident persons that:
  - reported tax losses in the previous taxation year
  - use special tax regimes, are not registered as corporate income tax or VAT payers, or are taxed at privileged tax rates
- related non-resident persons
- unrelated persons resident in the listed low tax jurisdictions.

For purposes of determining whether or not two persons are related, a person is deemed to exercise control over the taxpayer if they hold, directly or indirectly, at least 20 percent of the corporate rights of the taxpayer or 20 percent of the voting rights. For an individual, the total holding is determined as the total sum of the corporate rights that belong to the individual or their family members and the legal entities controlled by the individual or family members.

Controlled transactions should be reported by 1 May of the year following the reporting year.

The law introduced severe penalties for failure to report or incomplete reporting of controlled transactions before the reporting deadline.

### Dual residency

Intentional dual residency is not used by Ukrainian companies. Under Ukrainian tax laws, the place of incorporation (state registration) determines a company's tax residency. However, where management of a foreign company is located in Ukraine, this could give rise to a permanent establishment of the foreign company in Ukraine.

### Foreign investments of a local target company

In Ukraine, there is no anti-avoidance legislation (controlled foreign company rules) with respect to controlled foreign affiliates of Ukrainian companies. As a result, income earned by foreign affiliates of Ukrainian companies is not subject to income taxation in Ukraine unless and until this income is actually distributed as dividends to the Ukrainian parent company. However, informational tax returns (forms) are still filed by parent Ukrainian companies in respect of their foreign affiliates.

Ukrainian tax laws provide for a partial participation exemption. Foreign dividends are exempt from income taxation in Ukraine for the Ukrainian parent company where the parent owns 20 percent or more of the share capital of the foreign affiliate. The participation exemption is not available for distribution of dividends by foreign companies located in tax haven jurisdictions. The participation exemption is partial as a capital gain realized on the disposition of the shares in the foreign affiliate is still subject to income taxation in Ukraine.

Special tax rules and restrictions can apply to transactions with foreign businesses that are located or have bank accounts in tax haven jurisdictions. The official list of such tax haven jurisdictions is periodically updated by the Ukrainian government.

## Comparison of asset and share purchases

### Advantages of asset purchases

- Possible to choose the required assets or acquire only part of the business.
- Purchaser does not usually assume tax liabilities and tax exposures of the target business.
- A loss-generating entity can acquire profit-generating assets to utilize tax losses.
- Possible to achieve a step-up in assets' cost bases for accounting and tax purposes.
- A portion of the purchase price can be depreciated or amortized for tax purposes.

### Disadvantages of asset purchases

- Asset deals are usually more time-consuming and expensive to implement.
- Asset sales may be taxable and less attractive to the seller, increasing the purchase price.
- VAT, state duty and pension charges may be payable, increasing the purchaser's costs.
- Tax losses remain with the seller, so the purchaser does not benefit from them.
- Acquisition of collateral assets can pose a problem.
- Transfer of licenses and permits to the purchaser is usually not possible.
- Deferred customs duties can be due on the sale of certain imported assets.

### Advantages of share purchases

- Capital gains realized by foreign shareholders can be exempt from taxation or taxed at preferential tax rates.
- Share deals can be exempt from income taxation in Ukraine (e.g. where the Ukrainian shares are owned by non-residents of Ukraine).
- Share deals are exempt from VAT and not subject to other material taxes in Ukraine.
- Transfer of licenses and permits to the purchaser is usually possible.
- Often more attractive to sellers, so the purchase price may be lower.
- Purchaser can benefit from available tax loss carry forwards of the acquired business.
- Less disruptive for the acquired business.

### Disadvantages of share purchases

- Purchaser is liable for any claims and liabilities of the acquired company.
- Difficult to implement where there are numerous minority shareholders.
- Purchaser is often not able to deduct the purchase price until the acquired shares are subsequently disposed of.
- Capital gains realized by the Ukrainian companies are subject to income taxation.

## Ukraine – Withholding tax rates

This table sets out reduced WHT rates that may be available for various types of payments to non-residents under Ukraine's tax treaties. This table is based on information available up to 17 January 2014.

Source: *International Bureau of Fiscal Documentation, 2014*

	Dividends		Interest <sup>1</sup> (%)	Royalties (%)
	Individuals, companies (%)	Qualifying companies <sup>2</sup> (%)		
<b>Domestic rates</b>				
<i>Companies:</i>	15	15	0/15	15
<i>Individuals:</i>	5	N/A	0/5	15/17
<b>Treaty rates</b>				
<i>Treaty with:</i>				
Algeria	15	5	0/10 <sup>3</sup>	10
Armenia	15	5	10	0
Austria	10	5 <sup>4</sup>	2/5 <sup>5</sup>	0/5 <sup>6</sup>
Azerbaijan	10	10	10	10
Belarus	15	15	10	15
Belgium	15	5 <sup>7</sup>	2/10	0/10
Brazil	15	10	15 <sup>8</sup>	15
Bulgaria	15	5	10	10
Canada	15	5	0/10 <sup>9</sup>	0/10 <sup>10</sup>
China (People's Rep.)	10	5	10	10
Croatia	10	5	10	10
Cyprus <sup>11</sup>	15	5 <sup>12</sup>	2	5 <sup>13</sup> /10
Czech Rep.	15	5	5	10
Denmark	15	5	0/10 <sup>14</sup>	0/10 <sup>15</sup>
Egypt	12	12	0/12	12
Estonia	15	5	10	10
Finland	15	0/5 <sup>16</sup>	5/10	0/5/10 <sup>17</sup>
France	15	0/5 <sup>18</sup>	2/10	0/10 <sup>19</sup>
Georgia	10	5	10	10
Germany	10	5	2/5	0/5
Greece	10	5	0/10	10
Hungary	15	5	10	5
Iceland	15	5	10	10
India	15	10	0/10 <sup>20</sup>	10
Indonesia	15	10	0/10	10

	Dividends		Interest <sup>1</sup> (%)	Royalties (%)
	Individuals, companies (%)	Qualifying companies <sup>2</sup> (%)		
Iran	10	10	10	10
Israel	15	5	5/10	10
Italy	15	5	0/10	7
Japan	15	15	10	0/10 <sup>21</sup>
Jordan	15	10	10	10
Kazakhstan	15	5	10	10
Korea (Rep.)	15	5	0/5	5
Kuwait	5	5	0	10
Kyrgyzstan	15	5 <sup>22</sup>	10	10
Latvia	15	5	10	10
Lebanon	15	5	0/10	10
Libya	15	5	10	10
Lithuania	15	5	10	10
Macedonia (FYR)	15	5	10	10
Malaysia	15	15	0/15	10/15
Mexico	15	5	10	10
Moldova	15	5	0/10	10
Mongolia	10	10	10	10
Montenegro <sup>23</sup>	10	5	0/10	10
Morocco	10	10	10	10
Netherlands	15	0/5 <sup>24</sup>	2/10	0/10
Norway	15	5	0/10 <sup>25</sup>	5/10
Poland	15	5	10	10
Portugal	15	10 <sup>26</sup>	0/10	10
Romania	15	10	10	10/15
Russia	15	5 <sup>27</sup>	10	10
Saudi Arabia	15	5	10	10
Serbia	10	5	0/10	10
Singapore	15	5	0/10	7.5
Slovak Rep.	10	10	10	10
Slovenia	15	5	5	5/10 <sup>28</sup>
South Africa	15	5	0/10	10
Spain	18	18	0	0/5 <sup>29</sup>
Sweden	10	0/5 <sup>30</sup>	10	0/10
Switzerland	15	5	0/10	0/10



	Dividends		Interest <sup>1</sup> (%)	Royalties (%)
	Individuals, companies (%)	Qualifying companies <sup>2</sup> (%)		
Syria	10	10	10	18
Tajikistan	10	10	10	10
Thailand	15	10	10/15 <sup>31</sup>	15
Turkey	15	10	10	10
Turkmenistan	10	10	10	10
United Arab Emirates	— <sup>32</sup>	5	0/3	0/10
United Kingdom	10	5	0	0
United States	15	5 <sup>33</sup>	0	10
Uzbekistan	10	10	10	10
Vietnam	10	10	10	10

**Notes:**

- Many treaties provide for an exemption for certain types of interest, e.g. interest paid to the state, local authorities, the central bank, export credit institutions or in relation to sales on credit. Such exemptions are not considered in this column.
- Unless otherwise indicated, the rates in this column apply if the holding is at least 25 percent of the Ukrainian company's capital or voting power, as the case may be.
- The lower rate applies to interest on government loans.
- The rate applies if the recipient company owns at least 10 percent of the capital in the Ukrainian company.
- The lower rate applies to interest paid on loans granted by banks or other financial institutions.
- The lower rate applies to industrial royalties in general.
- The rate applies if the recipient company owns at least 20 percent of the capital in the Ukrainian company.
- The rate applies if the recipient company owns at least 20 percent of the capital in the Ukrainian company.
- The zero rate applies to (i) interest paid by the government, a political subdivision or local authority, and to (ii) interest paid to a resident of the other contracting state which exclusively administer or provide benefits under one or more pension, retirement or other employee benefits plans, provided that the resident is exempt from tax in the other state and the interest is not derived from carrying on a trade or a business or from a related person.
- The lower rate applies to computer software.
- Effective from 1 January 2014.
- The rate applies if the holding is at least 20 percent of the Ukrainian company's capital, or at least EUR100,000 has been invested in the Ukrainian company's capital.
- The lower rate applies to copyrights of scientific work, any patent, trademark, secret formula, process or information concerning industrial, commercial or scientific experience.
- The lower rate applies to interest paid in relation to sales on credit.
- The lower rate applies to know-how.
- The 5 percent rate applies if the Finnish company holds at least 20 percent of the capital in the Ukrainian company. The 0 percent rate applies if the Finnish company's investment is guaranteed by the Finnish Guarantee Board or if the capital invested is at least USD1 million.
- The zero rate applies to patent royalties and royalties paid for the use of computer software; the 5 percent rate applies to secret formulas and know-how; the 10 percent rate applies to copyright royalties and trademarks.
- The 5 percent rate applies if the French company owns at least 20 percent of the capital in the Ukrainian company. The zero rate applies if it owns at least 50 percent and the value of the total investment is at least EUR762,245.
- The lower rate applies to industrial royalties and computer software.
- The zero rate applies if the transaction giving rise to the debt-claim has been approved by the government of Ukraine.
- The lower rate applies to copyright royalties, including films, etc.
- The rate applies if the Kyrgyz company owns at least 50 percent of the capital in the Ukrainian company.
- The treaty concluded between Ukraine and the former Yugoslavia (Fed. Rep.).
- The 5 percent rate applies if the Netherlands company owns directly at least 20 percent of the capital in the Ukrainian company; the zero rate applies if it owns directly at least 50 percent and the value of the holding is at least USD300,000.
- Exemption applies in respect of a bond, debenture or other similar obligation of the government or of a political subdivision or local authority, and in connection with sales on credit.
- The rate applies if the Portuguese company has owned directly at least 25 percent of the capital in the Ukrainian company for an uninterrupted period of 2 years prior to the payment of the dividends.
- The rate applies if the value of the holding is at least USD50,000.
- The higher rate applies to copyrights of literary or artistic works, including films, etc.
- The lower rate applies to copyrights on artistic works, excluding films, etc.
- The 5 percent rate applies if the Swedish company owns directly at least 20 percent of the capital in the Ukrainian company; the zero rate applies if it owns directly at least 25 percent of the voting power in the Ukrainian company and at least 50 percent of the voting power in the Swedish company is held by Swedish residents.
- The lower rate applies to interest paid on loans granted by banks or other financial institutions
- The domestic rate applies; there is no reduction under the treaty.
- The rate applies if the US company owns at least 20 percent of the voting stock (or, if the company does not have voting stock, at least 20 percent of the authorized capital) in the Ukrainian company.

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