



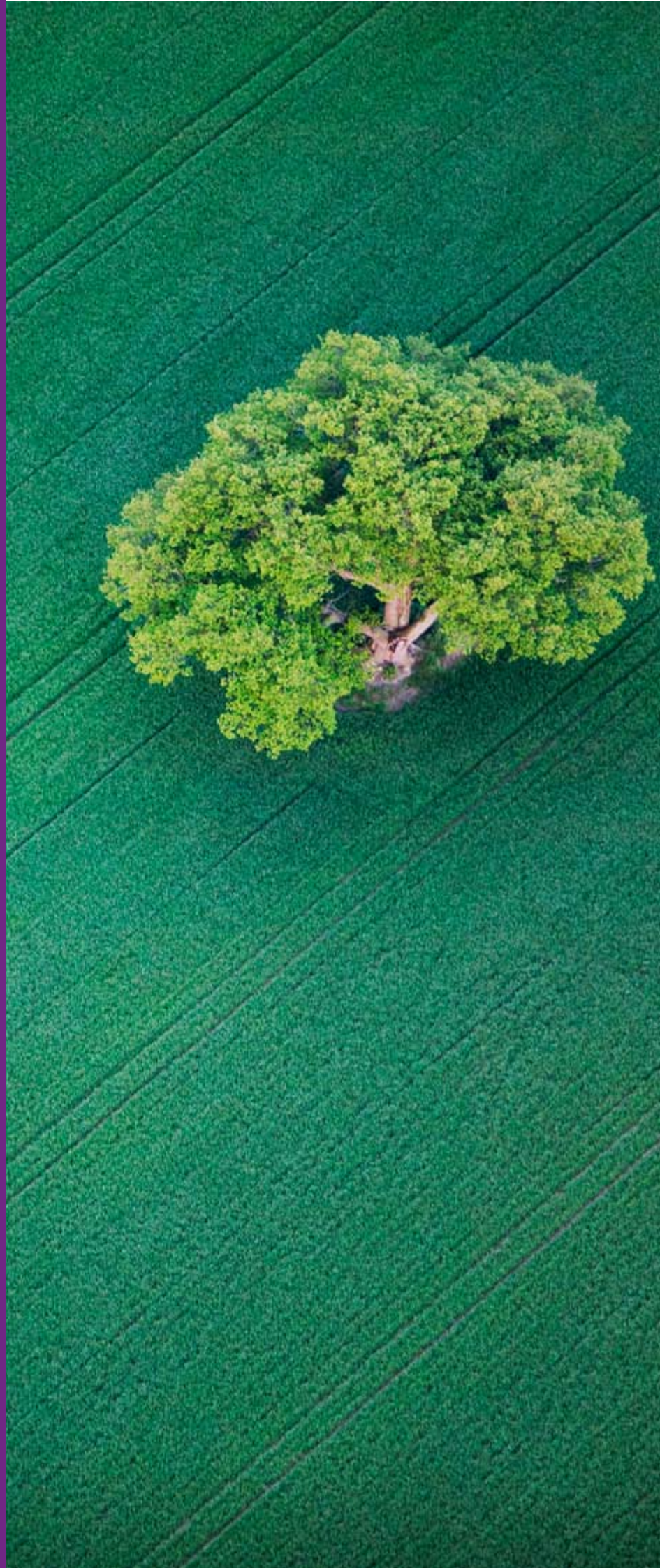
# Your Business in Ukraine

**Tax and Legal Guide**

May 2016

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



# Foreword

Your business in Ukraine will help you discover new opportunities in challenging Ukrainian legislation landscape. We could guide you into currency control restrictions, dealing with licensing permits, protecting minority investors and other issues to simplify your day-to-day business decisions.

Our practical guide provides insight into basics. It is a compass to all stages of your business in Ukraine: market entry strategies, your company registration, taxation and other relevant information.

Our industry expertise will help you to find effective practical solutions in Ukraine and abroad.

Welcome in our Kyiv and Lviv offices for face-to-face meetings, our workshops on topical issues and business events.



## **Sergey Popov**

Partner, Head of Tax and Legal Department

## Your Tax and Legal Contacts

### Tax



**Oksana Olekhova**  
Senior Manager,  
Tax Services

**T:** +380 95 277 7525  
**E:** [oolekhova@kpmg.ua](mailto:oolekhova@kpmg.ua)

### Legal



**Yuriy Katser**  
Senior Counsel,  
Legal Services

**T:** +380 50 355 3470  
**E:** [ykatser@kpmg.ua](mailto:ykatser@kpmg.ua)





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# 1. Doing business in Ukraine

## 1.1 Market entry strategies

### 1.1.1 Direct sales

### 1.1.2 Agency and commission arrangements

### 1.1.3 Joint venture with a Ukrainian partner

### 1.1.4 Registration of the representative office (commercial and non-commercial)

### 1.1.5 Registration of the Ukrainian subsidiary

Ukraine introduced series of legislative changes aimed at simplifying the start-up and conducting of business, in particular:

- establishment of a “one-stop shop” for corporate registration;
- registration could be performed by local councils, local state administrations and notaries;
- establishment of personal cabinet that allows to perform electronic submission of documents;
- online access to the Unified State Register of Legal Entities, Individual and Non-Government Organizations (“**USR**”) (country-wide list of business entities, individual entrepreneurs and non-government organizations) and the Unified License Register;
- abolishment of mandatory company seals for private companies, as well as the requirement to notarize copies of documents for registration purposes;
- abolishment of an annual confirmation of data about the legal entity;
- simplification of liquidation and restructuring procedures;
- enabling successors of legal entities, terminated by way of merger, accession or change of a legal form to carry out the economic activities during 3-month transitional period under the former license (i.e. issued for the entity which was terminated) until the new license is obtained by such successor.

Business registration procedure is simple

In addition, mandatory licensing or other state authorizations were abolished in many industry sectors through introduction of the ‘silent consent’ concept and declaratory principle (i.e., a company may undertake certain types of business upon making a relevant declaration to the state authorities).

## 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;
- registration of the representative office (commercial and non-commercial);
- registration of the Ukrainian subsidiary.

The choice made by foreign investors is usually motivated by the vision of business prospects, incorporation and maintenance costs, as well as legal and tax risks involved.



### 1.1.1 Direct sales

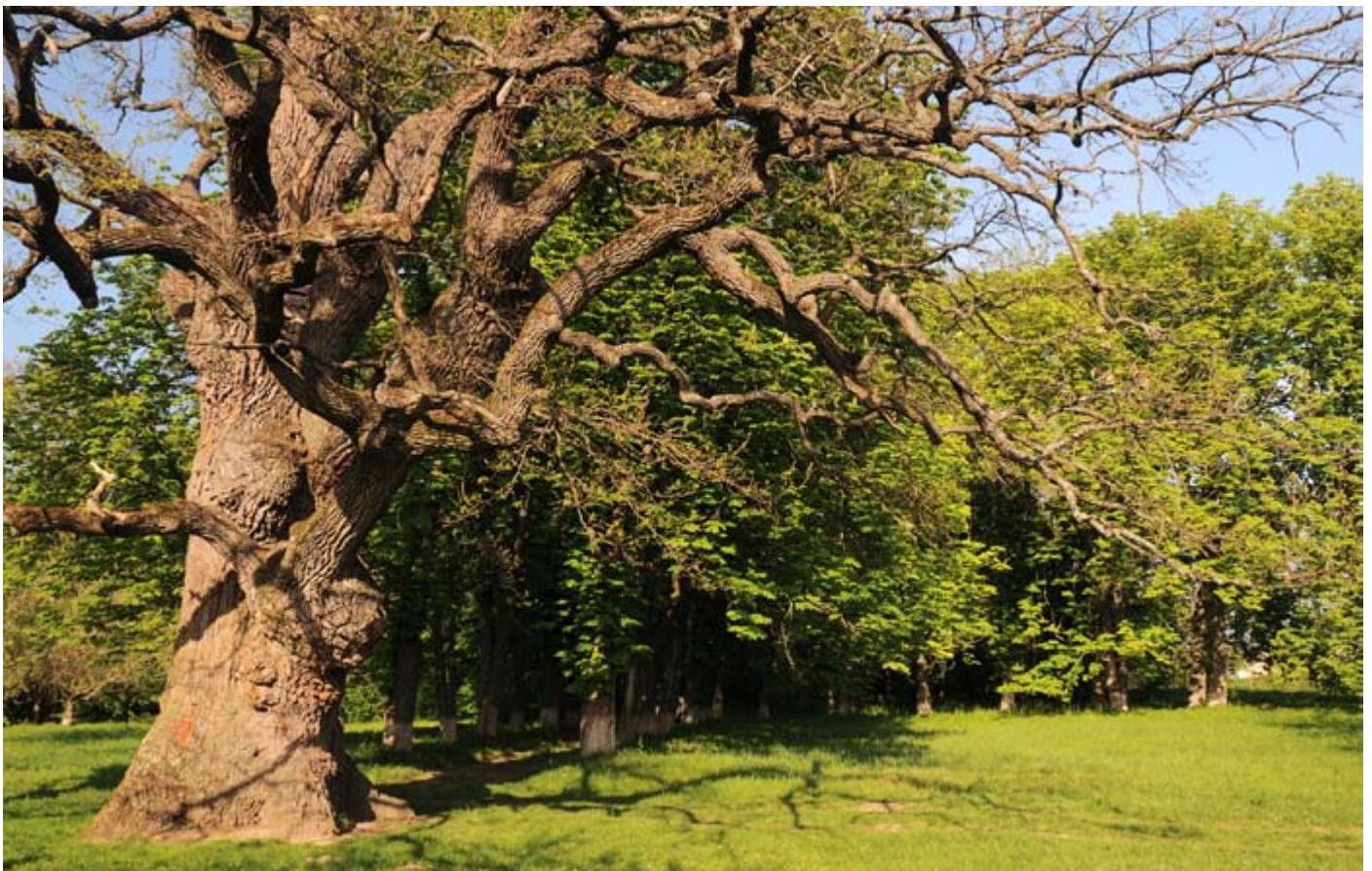
The simplest option to enter the Ukrainian market is to conclude direct sales contracts with the Ukrainian customers. Accordingly, a foreign legal entity which sells goods or services to customers (or distributors) in Ukraine directly from abroad would not be subject to Ukrainian taxes on income. Depending on the agreed terms of delivery, 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 properly drafted cross-border contract allows a foreign company to avoid taxation in Ukraine. The possibility to choose the foreign law to govern the contract makes direct sales a viable option for business. However, in choosing the foreign law, the public order rules and mandatory provisions of Ukrainian laws (e.g., currency control regulations, etc.), should be taken into account.

Direct sales contracts are the simplest way to start trade with Ukrainian companies

### 1.1.2 Agency and commission arrangements

Agency and commission contracts present another comfortable alternative for structuring 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 entity, employing personnel, complying with local accounting and reporting rules, as well as bearing the 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 services does not constitute its core business (as may be the case for securities, insurance brokers, etc.). 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 enterprise, 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 may be subject to state guarantees and should be registered with local state authorities of Ukraine.

### 1.1.4 Registration of the representative office (commercial and non-commercial)

Day-to-day business in Ukraine can also be carried out through a representative office (“**RO**”). A RO is not a legal entity but a subdivision 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 RO which carries out commercial activities in Ukraine is deemed to be a commercial RO and triggers a permanent establishment of the foreign company in Ukraine for tax purposes. This, in turn, implies that if the relevant double taxation treaty is in place between Ukraine and the jurisdiction of the foreign company’s tax residence, only a portion of the company’s profits

Representative office can be registered within 30 days

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 tax authorities, the State Statistics Service, and the State Pension Fund. A foreign bank’s RO shall be registered with the National Bank of Ukraine (“**NBU**”). However, the list of registration authorities may be expanded due to specific industry requirements. Registration takes up to 30 days following

submission of all necessary documents and payment of the state duties. The preparation of documents may take additional time as in many cases they would require approval, notarization, and/or legalization.

### 1.1.5 Registration of the 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 be engaged in any commercial activity envisaged in its charter (articles of incorporation). For more details on different forms of incorporation, see the Section “Company and Labor Law” below.

The Ukrainian subsidiary may be engaged in any commercial activity







## 2. Company and Labor Law

### 2.1 Company law

### 2.2 Labor regulations

### 2.3 Immigration regulations

In Ukraine, statutory corporate regulations have undergone positive changes in recent years. There is substantial simplification of the procedures for starting and winding-up a business, as well as changes in corporate governance sphere. Such changes should make Ukraine more attractive for investors.

### 2.1 Company law

#### Common corporate structures

In Ukraine, common corporate forms are a limited liability company ("**LLC**") and a joint stock company ("**JSC**").

#### General registration issues

A company in the form of LLC can be registered within 2-3 business days (including registration with fiscal, statistics and social security authorities, as well as opening a bank account). Submitting the documents to the State Registrar, consideration of the documents and registration with the State Registrar, fiscal authorities and pension fund should be accomplished within 24 hours. Following consideration of the documents, an applicant obtains an excerpt from the USR. Upon request of the applicant, the timing could be significantly reduced (i.e., up to 2 and 6 hours). In such case, the additional registration fee is to be paid.

A company can be established within 3 business days

Unlike LLC, JSC is entitled to issue shares, which are subject to registration with the National Securities and Exchange Commission. Keeping this in mind, the registration of JSC is more time-consuming process and usually takes up to 2-4 months.

In the majority of cases, foreign investors prefer to set up a company in form of LLC, rather than JSC. Similarly to JSC, liability of LLC's shareholders (participants) is limited to their investment in the share capital. In addition, requirements to the incorporation and operation of LLC are more straightforward than those of a JSC.

#### Number of shareholders

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 public JSC.

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

#### Disclosure of ultimate beneficiaries

Since 2014, all Ukrainian companies are obliged to disclose their ultimate beneficiaries in the course of the incorporation and then regularly update this information. This information is publicly available in the USR.

#### Minimum share capital

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

If at a later stage, LLC intends to raise capital through IPO, or the number of its participants exceeds 100, its reorganization into a public JSC will be required. The minimum share capital of JSC is set at 1,250 minimum monthly salaries as set by the state (UAH 1,722,500 as of 1 January 2016, UAH 1,850,500 as of 1 May 2016 and UAH 1,937,500 as of 1 December 2016). Shareholders of JSC shall pay their shares in full before the state registration.

There is no minimum share capital requirement for LLC

## Governing bodies

Both JSC and LLC are required to have three internal bodies, namely:

- general meeting of shareholders ("**GMS**");
- executive body (either board of directors or a sole director); and
- audit commission as a controlling body.

GMS is the principal decision-making body of LLC and JSC and has the ultimate authority to resolve issues arising in the course of the company's business. GMS may alter the company's charter and bylaws, change the amount of its share capital, elect members of the executive body (or sole director), approve annual reports (in a JSC), adopt decisions on reorganization or liquidation and perform other functions as well.

Under recent amendments, the quorum for GMS for LLC has been decreased. GMS of LLC adopts decisions if shareholders owning together more than 50 per cent of share capital are present at the meeting. However, the company is authorized to specify another quorum.

An executive body (i.e., a board of directors or a sole director), is responsible for day-to-day management of the company's business.

An executive body (either board of directors or a sole director) is responsible for day-to-day management of the company's business

JSC which is set up by 10 or more shareholders shall elect a supervisory board. It is responsible for monitoring activities of the executive body and protecting the shareholders' rights. Recent amendments to legislation introduced a notion of independent directors (independent member of supervisory board) in JSC.

In addition, JSC may decide to establish an audit committee or appoint an internal auditor within its corporate structure. Under recent legislative amendments, a supervisory board may establish an audit committee as its internal commission. LLC should also have an audit committee; however, no sanctions are prescribed for LLC for non-compliance with this requirement.

A public JSC should arrange for an annual external audit of its financial statements and file the audited financial reports with the National Securities and Exchange Commission. Any JSC can be required to arrange for an external audit upon request of the shareholder(s) holding at least 10% of its shares. Though an external audit is generally not mandatory for LLC, LLC's shareholders have the right to request performing of the audit of the company by an external audit firm.

A supervisory board of JSC has the right to appoint a corporate secretary, responsible for communication with shareholders and investors.



## Corporate rights

LLC's shareholder (participant) may alienate its shares in the LLC's capital to 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. A participant may be expelled from the company under a GMS' resolution if he (she) violates corporate obligations or prevents the company from achieving its goals.

Shareholders of a public JSC may alienate their shares without restrictions. Shareholders of a private JSC, however, may be restricted in this freedom by the right of the first refusal granted to other shareholders (if such right is formalized in the JSC's charter).

In addition, the Law of Ukraine "On Joint Stock Companies" contains a series of generally recognized legal instruments to protect rights of minority shareholders, namely:

Ukrainian law  
protects rights of  
minority shareholders

- cumulative voting rule for election of a supervisory board and an audit commission;
- selling of shares of a minority shareholder to the holder of a controlling stake at a fair market price;
- claiming buyout of shares by a company in case of material changes related to the company's business (e.g., reorganization, changes in share capital, etc.);
- compliance with special requirements to be met by the company (e.g., obligation to enter into material transactions and transactions with affiliated parties); and
- derivative lawsuit that minority shareholders can file to the benefit of the company.



## Reorganization

Reorganization under the Ukrainian law can be effected through merger, acquisition, split-up, spin-off or transformation of a corporate body. Reorganization is usually initiated by a resolution of GMS. In certain instances (e.g., when a company is abusing its monopoly position), the Antimonopoly Committee of Ukraine may require 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.

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

## 2.2 Labor regulations

The main legislative act regulating employment relations in Ukraine is the Labor Code of Ukraine ("**Labor Code**").

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 to which Ukraine is a party.

### Employment agreements

Employment can be formalized through an employment agreement or an employment contract which should be concluded in a written form only.

### 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 triple rates.

Employees are entitled to an annual leave of at least 24 calendar days

Employees are entitled to an annual leave of at least 24 calendar days (unless a longer term is established by the 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 (in rare cases up to the age of six) with the payment of financial aid as provided by the law for this period.

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 the law) several 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.

Salaries cannot be lower than the minimum monthly salary as laid down in the law. This threshold is set at UAH 1,450 as of May 2016, UAH 1,550 as of December 2016. 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.

Minimal salary threshold amounts to UAH 1,550 (circa EUR 54)

## Labor book

The Ukrainian labor legislation requires that a labor book should 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. In late 2015, the Parliament abolished a duty to maintain labor books at the companies. Thus, Social Security Register (which already exists for several years) will become the primary source of employment information. It is expected that changes will become effective in the third quarter of 2016.

## Termination of employment

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

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

Dismissal of employees should at all times be substantiated by reference to grounds for termination 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 provided that the employer has already applied disciplinary measures to the employee for such a failure;
- absence from work without any reasonable reason (including absence from work for more than 3 hours during a business day); or
- dismissal of employer's officials.

A two-week written notice should be provided by the employee prior to the termination of the employment

In some cases a company has to pay a compensation to the dismissed employee (namely, if the company dismisses its official (e.g. director), it shall pay compensation in the amount not less than 6 month's salary to the dismissed employee).

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

## Liability under labor laws

An employer may be subject to financial penalties (from 1 to 30 minimal salaries, amounting to UAH 1,450 – UAH 43,500 or circa EUR 50 – EUR 1,400) for violation of labor laws. The highest penalties (30 minimal salaries for every case of violation) are prescribed for a permit of an employee to work without the formalized employment agreement.

As per the general rule, an employee is not responsible for financial losses of the company and can be ordered to compensate only direct damages incurred to company in the amount not exceeding the average monthly salary of this employee. However, in accordance with the recent changes to the Labor Code, management of the company can be liable for financial performance of the company.

Management of the company can be liable for financial performance of the company





## 2.3 Immigration regulations

### Registration and visas requirements for foreigners entering Ukraine

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

Foreigners who wish to stay in Ukraine for more than 90 days within a 180-day period need to obtain a long-term visa.

Those foreigners who intend to work in Ukraine (either in a Ukrainian company or in 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 in 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

If you intend to work in Ukraine, you should apply for a long-term visa

from visa-exempt countries) or those who enter Ukraine on a short-term visa may stay in the country during up to 90 calendar days (in the aggregate) within a 180-day period starting from the day of the first entry into Ukraine. Otherwise, they should register with the local immigration authorities.

A temporary residence permit is obtained on the basis of the permit to use labor of foreign citizens (a 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 permit valid for the period of permit (usually 1 year).

Currently, citizens of the following states are not required to obtain any visa to enter the territory of Ukraine: member states of the European Union, the USA, Switzerland, Norway, Canada, Japan, Israel, Turkey, Panama, Serbia, San-Marino, etc.

### Obtaining 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. However, the statement of reasons is not necessary if the foreigner is a founder and is going to hold a managing position at such Ukrainian company or has graduated from one of the world Top-100 universities.

Work permit for a foreign national is granted within 15 days

It usually takes up to 15 days to receive a work permit. Work permits are usually granted for a period of one year but can be prolonged for another year on the annual basis. The number of prolongations is unlimited.

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 29,000 as of 1 May 2016.







### 3. Competition Law

In brief, Ukrainian competition laws are mainly aligned with the global regulations in the field. They seek to oppose such anti-competitive phenomena as economic concentration, concerted actions, unfair competition, and – in future – state aid.

#### Economic concentration

In order to protect Ukrainian markets from monopolization and avoid adverse effects of abuse of dominance, the Ukrainian antimonopoly laws require obtaining a prior approval from the Antimonopoly Committee of Ukraine (the “AMC”) for the transaction which may or should lead to an “economic concentration” (direct (indirect) acquisition of shares which ensures the purchaser with achievement or excess of either 25% or 50% of the voting rights in a company; or acquisition of control through any other means) .

As of 18 May 2016 the amendments to the Law of Ukraine on Protection of Economic Competition introducing new financial thresholds officially came into force and the AMC approval is now required when the following conditions are met (two steps appraisal procedure):

- the aggregate value of assets or the gross revenues of participants of concentration (including offshore transactions) exceed EUR 30,000,000 (or an equivalent in any other currency) in the previous financial year and at the same time aggregate value of assets (in Ukraine) or the gross Ukrainian revenues of at least two participant of concentration exceed EUR 4,000,000 (or the equivalent in any other currency) in the previous financial year; or
- the aggregate value of assets (in Ukraine) or the gross Ukrainian revenues of a target (or owner of assets to be acquired, or founder of a JV) taking into account control relations exceed EUR 8,000,000 (or the equivalent in any other currency) in the previous financial year and at the same time gross revenues of at least one another participant of concentration (including offshore transactions) exceed EUR 150,000,000 (or an equivalent in any other currency) in the previous financial year.

For the purposes of calculating the above, the aggregate value of revenues or assets of the entire target/purchaser group shall be considered. Entire group of a participant includes all legal entities/ individuals connected by relations of control with the respective participant, i.e. with the target (including the seller) or with the purchaser.

The new amendments to the Law of Ukraine on Protection of Economic Competition also establishes that simplified procedure may be applied and clearance issued within 25 days following the registration of the clearance application with the AMCU provided that:

- only one concentration participant operates on the territory of Ukraine; or
- aggregate market share of all the participants of concentration on one and the same product market does not exceed 15%; or
- shares or aggregate shares of the participants of concentration do not exceed 20% on product markets, on which an output (products, works, services) is sold in the case when economic activities of any other participant is not possible without sale or purchase of such an output.

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 antitrust implications of any merger/acquisition transaction with substantial linkage to Ukraine.

A participant of concentration which completed the transaction without the AMC approval may be subject to a fine in the amount of up to 5% of its turnover in the previous financial year (please also refer to the fines policy section below).

## 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, the previous AMC or the Cabinet of Ministers of Ukraine approval is necessary to commence any concerted actions. Financial sanctions for carrying out unauthorized concerted actions amount to 10% of the previous financial year’s turnover of parties involved (please also refer to the fines policy section below). 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 obtain such approvals.

An approval of the AMC or the Cabinet of Ministers of Ukraine approval is required prior to commencement of any concerted actions

Under the 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 the AMC approval. In this case, participants may be granted the approval of the Cabinet of Ministers if they manage to prove that the actions in question have a positive countervailing impact on social interests, which outweighs the consequences of the restriction of competition.



## Unfair competition

“Unfair competition” encompasses all actions that contradict fair market principles in business and trade. Comparative advertisement, unlawful use of a company name, trademark, or advertising material, etc. should be considered as unfair competition practices. If 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 previous financial year’s turnover.

Unfair competition practices include comparative advertisement, unlawful use of a company name, a trademark, or an advertising material

## Fines policy and Quasi-Amnesty Procedure

On 15 September 2015, the AMC adopted recommendations on calculation of fines for violation of competition legislation (amended as of 16 February 2016):

- The basis for the fine is limited to Ukrainian turnover (or other income) received from activities on the relevant or adjacent market(s) in connection with the violation for the period from its commencement to termination or the AMC fining decision (but no longer than the applicable statute of limitations);
- The maximum amount of fine is established at, in particular (in each case within the relevant general mandatory limit of 10%/5% of group-wide global annual turnover, as applicable):
  - 45% for (i) hard-core horizontal concerted practices, including bid rigging, and (ii) abuse of dominance resulting in prevention, elimination or substantial restriction of competition;
  - 30% for (i) other anticompetitive concerted practices, (ii) other cases of abuse of dominance, (iii) failure to implement the AMC decision, (iv) implementation of a concentration resulting in monopolization or substantial restriction of competition, and (v) failure to implement undertakings applied in merger and concerted practices cases;
  - 5% for implementation of non-problematic concentrations;
- Please note that certain aggravating (repeat offence, its lasting nature, failure to co-operate throughout the AMC investigation, etc.) and attenuating (voluntary termination of violation or compensation of damages, co-operation, etc.) factors may significantly increase or decrease the fine;
- The fine for the failure to obtain merger clearances when it was necessary in the past shall be limited to approx. EUR 790 provided that a “post-closing” filing is made within the 6-month period following 15 September 2015 (or to approx. EUR 3,950 if such filing is made within the subsequent 6 months). The document also recommends that the AMC shall satisfy confidentiality requests from such quasi-amnesty applicants with respect to fining decisions;
- Maximum fines envisaged by the law (with reference to global turnover or that achieved at a non-relevant market) may be imposed only under exceptional circumstances to achieve a deterrence effect.





## 4. Licensing requirements

### Economic activities subject to licensing

In 2015, in course of deregulation initiatives of the government, a new law on licensing was enacted. The list of business activities, subject to licensing was reduced from about 60 to 30 items. Licenses are still required for the following business:

- financial services (including insurance);
- medical and veterinarian practice;
- tourism services;
- cargo, passenger and baggage transportation;
- educational activity;
- transportation of oil and petroleum products via long-distance pipelines, transportation of natural, oil-well gas and methane via pipelines and their distribution etc.

Certain business activities are subject to mandatory licensing

Licensing procedures for some business activities are governed by special laws; such business activities include the following:

- banking;
- professional stock market activity;
- business activities in telecommunications, TV and radio broadcasting;
- manufacturing and sale of ethanol, cognac and fruit spirits, alcohol beverages and tobacco;
- construction activity (for complex objects);
- certain types of cross-border business activity; and
- production, import and sale of pharmaceuticals etc.

The new law enables companies to lodge documents for obtaining a license via electronic means. The licensing authority is prohibited to require documents other than those prescribed by legal acts and original copies of documents except for those prepared by the applicant. A license may be issued both in electronic and hard copy. In addition, information about a license should also be included into the Unified State Register, which is open to public.

A license should be obtained for each particular type of licensed activity

Unless the special law provides otherwise, in order to obtain a license a standard application and other required documents are to be submitted to the relevant licensing authority, which will normally take a decision within 10 days. Issuing a license is subject to a state duty (i.e., generally amounting to one minimum monthly salary (UAH 1,378 as at January 2016, UAH 1,450 as of May 2016, UAH 1,550 as of December 2016).

A license should be obtained for each particular type of licensed activity. Transfer of license is prohibited. A license terminates

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, 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.







## 5. Taxation

- 5.1 Corporate income tax
- 5.2 Withholding tax
- 5.3 Double taxation treaties
- 5.4 Value added tax
- 5.5 Transfer pricing rules
- 5.6 Property tax
- 5.7 Personal income tax
- 5.8 Unified social security charge
- 5.9 Administration of taxes

In Ukraine, taxes and statutory charges are levied in accordance with the Tax Code of Ukraine ("**TCU**") (entered into force as of 1 January 2011, except for Chapter "Corporate Income Tax" effective as of 1 April 2011, as subsequently amended). Currently, the government of Ukraine is contemplating a comprehensive tax reform aimed at reduction of the number of taxes and simplification of tax accounting.

The main taxes are: corporate income tax ("**CIT**"), value added tax ("**VAT**") and personal income tax ("**PIT**"), property tax, unified social security charge.

### 5.1 Corporate income tax

#### Tax rates

As of 1 January 2016, the basic CIT rate is 18%.

In Ukraine, the CIT administration is centralized, no additional corporate profits taxes are imposed at regional or local levels. The taxable base for CIT purposes is calculated based on the taxpayer's financial statements subject to adjustments and limitations provided by the TCU.

The basic corporate income tax rate is 18%

As of 1 January 2016, a new mechanism of payment of CIT installments was introduced. Taxpayers are obliged to pay 2/9 of its tax liabilities due accrued during Q1-Q3 of 2016 till 31 December 2016. Taxpayers distributing dividends should also pay advance installments on dividends.

#### Taxable base

The taxable base for CIT is calculated based on the taxpayer's financial statements subject to adjustments and limitations provided by the TCU. The gross worldwide income includes any income from the sale of goods/works/services, capital gains, foreign exchange gains etc.

Ukraine uses an accrual method for accounting. Income is realized in the period when the transfer of the title to goods takes place or when acts of acceptance of services/works are executed. Once the income is realized, the cost of sales may be reported for the accounting purposes. Other expenses may be reported in the period in which they occur.

## Tax depreciation and amortization

With the exception of land and natural resources, the cost of fixed assets used in business activities is capitalized and depreciated for CIT purposes. A fixed asset with the cost exceeding UAH 6,000 and useful economic life exceeding one year is allocated to one of 16 groups of fixed assets. Each fixed asset is accounted for separately and depreciated on a monthly basis.

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

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:

Businesses can determine the period of useful economic life of fixed assets

- 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 groups 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.

Except for goodwill, intangible assets are allocated to one of 6 groups 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 TCU, and usually ranges from at least 2 years (for the copyright and related rights) to maximum 10 years (for patents, know-how, etc.). The minimum period of useful economic life is not prescribed for many types of intangible assets, and shall be determined with the 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.

## Interest

Ukraine applies the so-called earning stripping approach to thin capitalization rules. Specifically, interest paid or payable is usually deductible for CIT purposes.

However, in certain instances tax deductibility of the interest may be limited (e.g. tax deductibility of interest payable by the Ukrainian resident to the related non-resident should be limited to 50% of the resident's financial result before tax, financial expenses and depreciation deductions provided that outstanding loan exceeds the net assets of the resident multiplied by 3.5). Non-deductible interest exceeding the prescribed limit can be carried forward and deducted in a subsequent tax period subject to the same limitation. Carried forward non-deductible interest is annually decreased by 5%.

Tax deductibility of the interest paid or payable may be limited



## Foreign tax credit

A tax credit system exists in Ukraine to avoid double taxation of income derived from abroad. A tax credit may be applied in respect of 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 is provided).

## Tax losses

In Ukraine, tax losses may be carried forward for an indefinite period (except for losses from transactions with non-listed securities, which can be carried forward within 1095 days following the period in which the losses were incurred) 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.

Specific rules apply to tax losses occurred before 1 January 2012 (tax losses of 2010 inclusively).

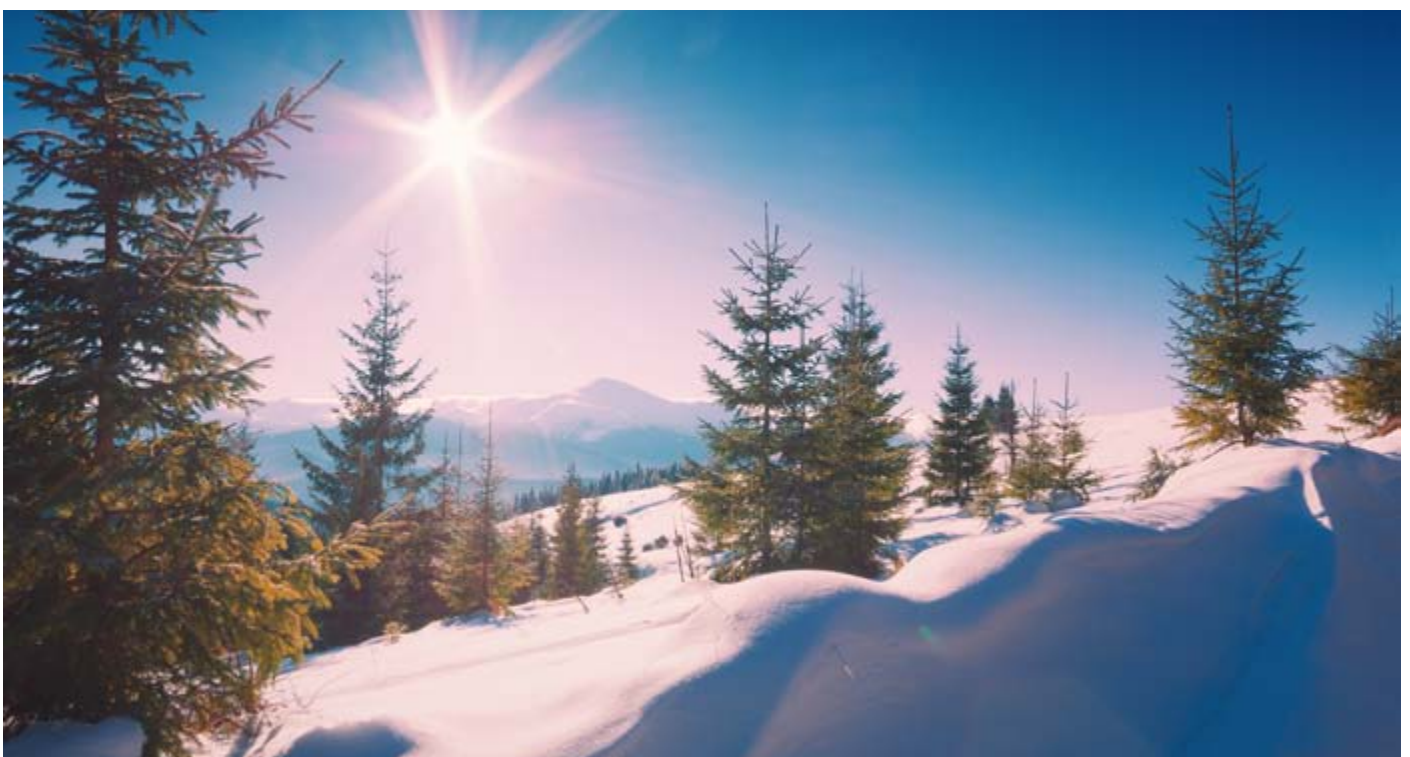
## 5.2 Withholding tax

Any Ukraine-sourced income of a non-resident company is subject to a withholding tax ("**WHT**") in Ukraine at a rate of 15%. Such income includes, inter alia, dividends, interest, royalties, capital gains, lease payments, brokerage and agency commission, etc. Income received as a 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).

Ukraine-sourced income of a non-resident company is subject to a withholding tax in Ukraine at a rate of 15%

## 5.3 Double Taxation Treaties

Ukraine has a moderately well developed network of effective double taxation treaties ("**DTT**"). Rules incorporated in DTTs ratified by the Verkhovna Rada of Ukraine prevail over those contained in the Ukrainian domestic tax legislation. Some DTTs were concluded in the USSR times and still



remain effective by virtue of state succession rules (particularly DTTs with Spain, Japan, Malaysia). However, the majority of DTTs has already been replaced or is currently under revision. The most recent DTTs include the Ukraine-Ireland DTT (2015), the Ukraine-United Mexican States DTT (2013) and the Ukraine-Kingdom of Saudi Arabia DTT (2013).

For the list of effective DTTs, as well as of current WHT rates, please see the Chart in Annex 1.

### Anti-tax avoidance rules

To avail of benefits contained in double taxation treaties to which Ukraine is a party, a non-resident recipient of Ukraine-sourced income must, inter alia, comply with the beneficial ownership test. Under the TCU, the beneficial owner is a person who has the right to receive the relevant Ukraine-sourced income and is not an agent, nominee or intermediary (conduit). At the same time, the TCU does not define agents, nominees or intermediaries (conduits). There is currently very limited practice regarding interpretation of the concept of beneficial ownership. Per the OECD Commentaries to the OECD Model Tax Convention, if a person is the legal owner of income but in fact has very limited powers in respect of such income and acts as a mere fiduciary or administrator for the benefit of other interested parties, this person is treated as a conduit not entitled to treaty benefits.

Tax deductibility of certain fees can be subject to limitations

A 70% restriction on tax deductibility applies to fees for goods/services/works paid to non-residents in tax havens (the list of which is adopted by the Cabinet of Ministers of Ukraine; currently, it includes, inter alia, Andorra, Gibraltar, the Jersey Island, the British Virgin Islands, the Cayman Islands, the Bermuda Islands, the Isle of Man, Seychelles, the Cook Islands, and the Maldives, etc.) provided that the respective transactions deemed not to be controlled for the Ukrainian transfer pricing purposes.

Royalty payments made to non-residents may be also subject to 4% and full limitation. The respective limitation should not apply if the market level of royalty payments is in accordance with the transfer pricing rules (even if the respective transactions are not deemed to be controlled for the Ukrainian transfer pricing purposes).

## 5.4 Value Added Tax

### Tax rates

VAT is levied on the supply of goods and services into the customs territory of Ukraine and on the importation of goods and services to Ukraine at a rate of 20%

In general terms, VAT is levied on the supply of goods and services in the customs territory of Ukraine and on the importation of goods and services to Ukraine at a rate of 20%. VAT at a rate of 7% applies to the import and subsequent supply of the list of pharmaceuticals specified by the Cabinet of Ministers of Ukraine.

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

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

From 1 January 2013 till 1 January 2023, supply of software products is VAT exempt.

### 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 the VATable transactions of



which exceed UAH 1 million for any preceding 12 months of operation.

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

### VAT mechanism

As of 1 January 2015, a new mechanism of VAT administration was introduced. Currently, a VAT payer may credit input VAT up to the amount recorded in the respective VAT invoice provided that it is duly registered in the Electronic register of VAT invoices. In order to issue and register a VAT invoice a VAT payer should have sufficient amount of money on its electronic VAT account, otherwise it should transfer the amount of VAT liabilities due on the electronic VAT account from its current bank account. Subsequently, the input VAT amount in excess of VAT liabilities may be offset against VAT liabilities due, refunded from the state budget or offset against future VAT liabilities.

Electronic VAT system is applied

Services acquired from non-residents through a reverse-charge mechanism. This mechanism implies self-assessment and payment of the 20% 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 same tax period (month). If imported goods or services are used in transactions not subject to VAT or 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.

### VAT reporting

As of 1 January 2015, VAT reporting is submitted in the electronic form only. Within several days after registration as a VAT payer each VAT payer is automatically assigned a VAT account used for settlements with the state budget.

As of 1 January 2016, the tax authorities are prohibited to cancel VAT credit based on formalistic grounds (namely, minor deficiencies in VAT invoices). Currently, only identification of an incorrect tax number of the customer or supplier in the VAT invoice leads to cancellation of VAT credit.

VAT reporting is submitted in the electronic form only

### VAT refund

Positive VAT difference incurred upon sales-purchase transaction of products in Ukraine should be subject to VAT refund only provided that the company is registered as a VAT payer in Ukraine. Respective VAT refund may be obtained through:

- offset of the positive VAT difference against VAT liabilities due; or
- cash refund from the state budget provided that the company has submitted to the Ukrainian tax authorities duly executed VAT refund application and does not have VAT liabilities due; or
- offset of the positive VAT difference against future VAT liabilities.

## 5.5 Transfer pricing rules

As of 1 September 2013, transfer pricing ("TP") rules apply in Ukraine. The rules laid down in Article 39 of the TCU employ the concept of "controlled transactions", which must be performed

at the arm's length principle and are subject to control by the tax authorities.

As of now, the following business transactions carried out by Ukrainian taxpayers are deemed to be controlled:

- transactions with non-resident related parties;
- international transactions on sale of goods through non-resident agents;
- transactions with non-residents (both related and unrelated parties) registered in a jurisdiction listed by the Cabinet of Ministers of Ukraine, i.e.:
  - state (territory) where the income tax rate is lower than in Ukraine by 5 and more percentage points;
  - state which does not publicly disclose information on legal entity ownership;
  - state which is not a party to international agreements with Ukraine containing provisions on information exchange.

Only business transactions with non-residents are deemed to be controlled

The abovementioned transactions are deemed to be controlled if both of the following conditions are met:

- 1) annual income of a taxpayer from any activities, defined in accordance with the accounting standards, exceeds UAH 50 million (net of indirect taxes) for the reporting year;
- 2) volume of such transactions of the taxpayer with one counterparty, as defined under the accounting standards, exceeds UAH 5 million (net of indirect taxes) for the reporting year.

Similar to the OECD rules, Ukrainian TP rules provide for five methods to determine whether the conditions of commercial and financial relations between related parties satisfy the arm's length principle, such as:

- comparable uncontrolled price method (the primary method);
- resale price method;
- "cost plus" method;
- transactional net margin method;
- profit split method.

A combination of two or more of the above-mentioned methods can be used to substantiate the price used in a controlled transaction.

The Ukrainian tax authorities are authorized to audit compliance with TP rules

An option of concluding an advance pricing agreement ("**APA**") with the Ukrainian tax authorities is available to large taxpayers, whereby approach to pricing in controlled transactions can be agreed with the tax authorities in advance. An APA is an instrument aimed at resolving potential TP disputes in a proactive and cooperative manner. Opting for an APA should guarantee that the tax authorities accept the selected transfer pricing methodology for controlled transactions.

To monitor taxpayer's compliance with TP rules, Ukrainian tax authorities are authorized to conduct specialized TP audits. Such audits may last for a period of 18 months and may be further prolonged for another 12 months in separate cases.

All taxpayers are required to report their controlled transactions to the tax authorities before May 1st of the year following the tax (reporting) year and prepare and keep transfer pricing



documentation with regard to specific transactions and submit it at request of the Ukrainian tax authorities within one month. Ukrainian tax authorities are also authorized to request additional information regarding discrepancies between the market price and the price in controlled

All taxpayers are required to report their controlled transactions to the tax authorities before May 1st of the year following the tax (reporting) year

transaction as well as on omissions in TP documentation. The relevant taxpayer is required to submit such additional information no later than 30 days upon receipt of the respective request.

Failure to report controlled transactions to the tax authorities can result in a tax penalty of 300 minimum wages established on 1 May of the relevant tax year (UAH 435,000 in 2016). An undeclared controlled transaction in a report on controlled transactions will cause a tax penalty of 1% of the controlled transaction's value (but no more than 300 minimum wages for all undeclared transactions); Failure to submit a transfer pricing documentation will cause a tax penalty of 3% of a controlled transaction's value (but no more than 200 minimal wages for all controlled transactions).

## 5.6 Property tax

Property tax includes the following:

- real estate tax;
- transport tax;
- land tax.

The real estate tax is levied in respect of residential property held by individuals or legal entities. The tax rate is established by municipal authorities as a percentage of a minimum monthly salary established on 1 May of the tax year (UAH 1,450 in 2016) per 1 sq.m.

If the property is owned by an individual (both resident and non-resident of Ukraine) and its size exceeds 60 sq.m (in case of an apartment) or 120 sq.m (in case of a house), each exceeding sq. m. will be subject to the real estate tax at a rate up to 3% of a minimum monthly salary (this will also be the case of the individual holding more than one property item the total size of which exceeds 180 sq.m). In addition, owners of apartments exceeding 300 sq.m or houses exceeding 500 sq.m. should pay additionally UAH 25,000 on an annual basis.

Individuals should file real estate tax returns within 60 days following the date of the tax assessment made by the tax assessment authorities. Legal entities should file tax returns on a quarterly basis.

In addition to real estate tax, there are also certain statutory charges levied on the sale/ purchase of real estate (state duty and contribution to the State Pension Fund, each at 1% of the contract price).

The transport tax is levied in respect of cars with the market value exceeding 750 minimum monthly salaries established on 1 January of the tax year (UAH 1,450 in 2016) which are less than 5 years old held by individuals (both residents and non-residents of Ukraine).

The amount of tax is UAH 25,000 per each car.

The land tax is levied in respect of land plots owned or used by individuals or legal entities in the form of land tax or lease payments. The taxable base is the registered value of the land or the size of the land plot if the valuation of the respective land plot was not valued. The tax rate depends on the location and use of the land plot and may vary. Usually it does not exceed 3% from the value of the land plot.

Individuals should file real estate tax returns within 60 days following the date of the tax assessment made by the tax assessment authorities.

## 5.7 Personal income tax

In Ukraine, individuals are subject to PIT, regardless of whether they are tax residents in Ukraine or not. Tax resident individuals are taxed on their worldwide income, while non-residents are taxed on their Ukraine-sourced income only. The TCU determines 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 may be considered a tax resident of Ukraine if he/she meets the following Ukrainian tax residence criteria:

- 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, he/ she is deemed to be resident in Ukraine for tax purposes if 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 a tax resident of Ukraine provided his/ her center of vital interests (a family, an employer etc.) 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 a tax resident of Ukraine if he/ she stays in Ukraine for at least 183 days during a tax (calendar) year.

Both resident and non-resident individuals are taxable at the same flat personal income tax rate – 18%

Since 1 January, 2016 both resident and non-resident individuals are taxable at the same flat tax rate – 18%.





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.

Based on the TCU, income received from foreign sources or income originated from Ukraine, which was not taxed at source, is subject to taxation in Ukraine based on an annual tax return. The

Income received from foreign sources or income originated from Ukraine, which was not taxed at source, is subject to taxation in Ukraine based on an annual tax return.

obligation to report this income in Ukraine and pay the tax rests with the individual. The tax return is filed with local tax authorities 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 tax (calendar) year. The self-assessed tax is due on 31 July of the year following the end of the tax (calendar) year. PIT 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 the source of payment. In this case, the individual is not required to submit any tax returns in Ukraine. If effective international treaties of Ukraine (i.e. double taxation treaties) provide a tax treatment other than the one established by the TCU, the rules of international treaties should prevail over domestic legislation.

Currently, salaries and other forms of individuals' income are subject to the temporary military tax at the rate of 1.5%.

## 5.8 Unified social security charge

In addition to PIT, remuneration, 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 charge ("**USSC**"), which is due from the employer. Only foreign individuals working in a foreign company's representative office or in the Ukrainian company are not subject to USSC.

The taxable base for USSC is capped by 25 monthly minimum subsistence; as of 1 May 2016, the cap is UAH 36,250. USSC is payable at the time when the remuneration is paid at a rate of 22% of the gross income/cap.

Foreign individuals employed by the Ukrainian employer are not subject to unified social security charge

## 5.9 Administration of taxes

### Tax assessment and reporting

Depending on the kind of tax and the type of a taxpayer, tax returns are filed for a basic tax period yearly/quarterly/monthly within a specified time period (e.g., 40 days for a quarterly tax return). Certain tax returns can be filed electronically.

Along with the tax return, CIT payers (companies and non-resident's permanent establishments) are usually required to submit quarterly financial statements.

### Settlements with the budget

Self-assessed tax liabilities are due within 10 days following the respective filing deadline (except for specific cases). 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.

## Tax audits

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

During a desktop audit, only the data stated in the taxpayer's tax returns, in the Electronic system of VAT administration, in the Unified register of excise duty invoices, as well as in the electronic system monitoring sale of fuel are audited. 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 TCU is present. Field audits are carried out at the premises of the taxpayer. Ad hoc audits are carried out at the taxpayer's premises. All types of audits are carried out according to the procedure set out in the TCU.

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

The duration of an unscheduled field documentary audit ranges from 15 (in case of a large taxpayer) to 5 (in case of a small taxpayer) and 3 (in case of certain individual entrepreneurs) business days, subject to a maximum prolongation for up to 10 business days.

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

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

## Administrative and court appeal

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

Administrative appeal of a decision of local tax authorities shall be submitted to the higher tax authority (oblast'/region tax offices) within 10 days after receipt of such a decision. Once the 10-day period expires, the taxpayer becomes liable for the tax liabilities assessed by 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 principal tax authorities' office can be further contested in the court. If preceded by administrative appeal, the lawsuit must be submitted no later than one month after the end of the administrative appeal procedure.

Decisions of the Ukrainian tax authorities may be challenged via administrative or court appeal

## 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 may alienate such property only with the permission of the respective tax office.

The tax pledge may not be executed if the total tax debt of the taxpayer does not exceed the amount of 20 tax-free minimum incomes of individuals (UAH 340). Under the certain circumstances listed in the TCU, the tax authorities may impose an administrative arrest on the



taxpayer's property. In this case, the taxpayer would have to request a 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 dispose the property (full arrest).

The taxpayer may continue to use the property subject to tax pledge

Once 60 days lapse from the date when a taxpayer was notified about its tax liabilities, by liabilities, by the tax authorities 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

### 6.1 Ukrainian accounting principles

### 6.2 Statutory reporting requirements

### 6.3 Audit requirements

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.

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);
- 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 the 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;
- the financial year of a Ukrainian enterprise is a calendar year.

A financial year is equal to 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 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

Although there are still many differences between accounting under NAS and IFRS, the number of differences is reducing compared to the previous years. Importantly, the TCU allows for the use of IFRS for certain tax purposes (e.g., for the definition of terms not specified in the TCU). Financial reporting under the IFRS is mandatory for public joint-stock companies, banks, insurers and certain other companies.



## 6.2 Statutory reporting requirements

Companies 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 should provide annual reports to the National Securities and Exchange 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.

Audit report is required for financial institutions, security issuers and public joint stock companies



## 7. Property rights

### 7.1 Land

### 7.2 Real estate (other than land)

### 7.3 Intellectual property

#### 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:

- (i) agricultural land;
- (ii) land for residential and urban construction;
- (iii) nature reserves and other lands with nature-oriented purpose;
- (iv) land with sanatory purposes;
- (v) recreational land;
- (vi) land for historical and cultural purposes;
- (vii) land under water resources;
- (viii) land under forestry; and
- (ix) land for industrial, transport, communications, energy, defense purposes.

The land is classified according to its designated purpose, which may be residential, industrial, recreational or agricultural

#### The 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 companies and individuals are prohibited from owning agricultural land

Non-agricultural land may be acquired by foreign persons only within inhabited areas, or outside inhabited areas when the land is located under real estate owned by such foreigners. In urban areas foreign entities may acquire land for purposes of acquisition or construction of business-related facilities. These rules also apply to joint ventures with foreign persons or entities.

In case of purchase of state-owned or municipal land, a foreign entity would be required to register a commercial representative office in Ukraine. Furthermore, the approval of the Parliament of Ukraine for state-owned land or the Cabinet of Ministers of Ukraine for municipal land will be required in such a case.

Until 1 January 2017, share capital contribution in kind may not be made in the form of rights to agricultural land. On the same date, the moratorium on sale of agricultural land in Ukraine expires.

#### 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. The minimum period of 7 years is set for the lease of agricultural land for the purposes of manufacturing agricultural goods, farming and holding personal agricultural estate.

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 private land plots in lease.

Foreign entities may hold a lease of both agricultural and non-agricultural land without significant limitations

However, lease rights to state and municipal land are not transferable.

Moreover, list of material clauses, in absence of which the agreement cannot be registered and therefore enter into force, was decreased to description of a land plot, term of agreement and the amount of lease payment. All other clauses may be added as parties agree. State registration of title to agricultural land was simplified and can be now provided also by a notary.

## 7.2 Real estate (other than land)

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 to real estate (e.g., ownership), as well as any encumbrances related to such property (e.g., mortgage), are subject to state registration. The Unified State Register of Immovable Property incorporates information on real estate ownership, long-term lease, mortgages, liens and other related encumbrances. The registration of immovable property rights can be executed either by the state registrar through the center of administrative services (hereinafter "front-office") or by the notary (depending on the circumstances). The information from the register may be provided in the form of a paper excerpt by the notary, state registrar, front-office or electronically by web-portal of the Ministry of Justice.

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. The arising rights in connection with this agreement shall be registered in the State Register of Proprietary Rights to Immovable Property. In addition to 20% Ukrainian VAT, USSC and a state duty (each at 1% of the 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 the necessary documents and engagement of external advisors. A title to a newly constructed real estate would appear upon completion of the construction, its commissioning, and its subsequent registration in the State Register of Proprietary Rights to 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 and state registration of lease rights is required if the lease term is equal to or 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 and may require authorization of the Ukrainian competition authorities.

Acquisition of an operating business is usually structured via a share or asset deal agreement and may requires authorization of the Ukrainian competition authorities



## 7.3 Intellectual property

### 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 to which Ukraine is a party). To the extent that 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 the WTO standards, with a view to increasing efficiency of the national IP protection system and to eliminate IP piracy.

Ukraine is a party to more than 15 international treaties on IP protection

### 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 the 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;
- the right to claim the work's integrity and to object to any distortion, mutilation or other modification of the work.



In addition, proprietary rights include:

- the exclusive right of use over the work;
- the 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.

The proprietary rights of the author are protected within his/her life and 70 years after his/her death.

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 of whether such mark was registered in Ukraine or in another jurisdiction by virtue of international trademark protection treaties to which Ukraine is a party.

A certificate of trademark registration confirms the title to a trademark. Such certificate is issued for the 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 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 a 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 the general rule, an invention (a product or a process in any area of technology) is patentable provided it is innovative, has an inventive step, and is suitable for industrial use. A utility model (a product or a process in any area of technology) is patentable 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 of esthetic and ergonomic needs) are patentable in case the innovative condition is met. There are a number of objects exempt from patentability (e.g., new varieties of plants and breeds of animals, biological

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

processes of reproduction of plants and animals, topography of integrated circuits and results of industrial design). 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 use of objects protected by patents, offer for sale (including via the Internet), sale, import, export, transfer 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.







## 8. Currency regulations

Ukraine has strict administratively burdensome currency control rules. In recent years, attempts to lift excessive state regulation have been made 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 currency control restrictions, namely:

- settlements under export/import of goods/works/services contracts should be made within the period not exceeding 90 calendar days (instead of a standard term of 180 days); otherwise, a penalty for each day of delay will apply;
- 75% (as of 04 December 2015) of foreign currency proceeds received by residents under cross-border agreements should be sold on the Ukrainian inter-bank foreign exchange market; the foreign currency should be sold no later than the next business day after the relevant proceeds have been credited to the bank account;
- prohibition to withdraw control over export operations of the authorized banks' customers based on the documents on cessation of obligations by set off counter claims (i) in foreign currency of the 1st group of the Classifier/Russian roubles (regardless of the transaction amount); (ii) if the total amount of obligations terminated by set-off within a single contract for the export of goods exceeds the equivalent of USD 500,000. The above restriction does not apply to other foreign currencies if the obligation amount is up to USD 500,000.
- prohibition for the residents to early repay credits and loans (including financial aid) in foreign currency under contracts with non-residents is prolonged. Such prohibition does not apply to repayment of credits and loans if (i) the repaid funds are allocated to increase the share capital of the authorized borrowing bank, or (ii) the credit or loan are repaid with the funds received under another credit/loan agreement with non-resident with the later expiry date;
- prohibition to purchase/transfer foreign currency to return abroad to foreign investors (i) the funds received from the sale of securities of Ukrainian issuers; (ii) the funds received from the sale of corporate rights other than shares, reduction of the authorized capital, termination of participation in business companies; (iii) the dividends.

Settlements under export/import of goods/works/services contracts should be made within the period not exceeding 90 calendar days

The NBU lifts these restrictions gradually.

### Limitations on purchase of foreign currency

Foreign currency can be purchased for the following main purposes:

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

Due to the effective temporary restrictions imposed by the NBU, the authorized banks are permitted to buy foreign currency for resident legal entities provided that (i) the total sum of funds in the foreign currency on the current and deposit accounts of such entities does not exceed USD 25,000, or that (ii) the client's funds on the current and deposit accounts are in the currency of the 3rd group of the Classifier (even if the total sum in such currency exceeds USD 25,000).

The authorized banks can buy the foreign currency no earlier than the 4th banking day following



the date when they receive the relevant clients' instructions to buy the foreign currency.

### Individual licensing of certain currency transactions

A Ukrainian company is required to obtain an individual license from the NBU 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; transferring funds for representative office maintenance according to its cost estimate is not considered as investment. The NBU licenses are not required if settlements for purchasing any tangible and intangible assets are made in UAH within Ukraine.
- crediting funds to bank accounts opened abroad;
- purchasing shares of non-residents in cash, etc.

### 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 50,000 (or its equivalent in another currency), such Ukrainian entity shall obtain a price valuation statement from the State Information and Analytical Center for Monitoring of External Commodity Markets. Otherwise, the bank will disallow the transfer of funds.

At the same time, no price valuation statement will be required when 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 should be formally registered with the NBU before their receipt by Ukrainian borrowers. The effective currency regulations establish certain limits (thresholds) on such borrowings.

Currently maximum interest rates on foreign borrowings (inclusive of commission fees and financial penalties) are set as follows:

Type of Loans	Maturity	Interest rates, %
Short-term foreign loans	< 1 year	9.8
Medium term foreign loans	1-3 years	10
Long-term foreign loans	> 3 years	11

Pursuant to the Civil Code of Ukraine, loan agreements should contain a mandatory provision in respect of maximum possible increase in the interest rate. The NBU clarified that the requirement on setting out the maximum increase of the interest rate should be complied with and the relevant provision should be included in a loan arrangement even if this loan arrangement provided for a floating interest rate (e.g., based on LIBOR, EURIBOR). Also, the NBU is of the view that this requirement of the Ukrainian Civil Code is of imperative nature and thus should be observed by the parties to the loan arrangement regardless of whether the arrangement is governed by the Ukrainian or foreign laws.

In addition, the aforementioned limitations of interest rates do not apply to borrowings under agreements on production sharing.

A price evaluation statement is required to make payments for services or using of IP rights exceeding EUR 50,000 (or its equivalents)







## 9. Customs regulations

One of the key acts regulating 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:

- 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

In order to declare goods moving through the Ukrainian customs border post, an importer/exporter of goods (or an authorized person) is generally required to file a customs declaration with customs authorities. The customs declaration usually includes a description of goods, including their specification, customs value (which may differ from that stated in the relevant invoice), volume of goods, customs procedure, etc.

Ukrainian customs authorities may make adjustments to the declared customs value of goods.

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

If total value of goods crossing the customs border of Ukraine as

hand luggage and/or as accompanied baggage does not exceed a specified amount (EUR 1,000 for travel by air, and EUR 500 for other means of transport) and their weight does not exceed 50 kg, no customs declaration is required and no customs duties need to be paid.

- |                                                                                                                                                                                    |   |                                      |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|--------------------------------------|
| <ul style="list-style-type: none"> <li>• Hand luggage does not exceed</li> <li>• EUR 1,000 (by plane)</li> <li>• EUR 500 (other transport)</li> <li>• Weight &gt; 50 kg</li> </ul> | } | no customs duties and no declaration |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|--------------------------------------|

In June 2014, Ukraine and the EU finally signed the Association Agreement ("**the Agreement**"). In accordance with the Agreement, Ukraine undertook to bring its legislation in compliance with the EU acquis, as well as to carry out institutional reforms in various sectors of economy and public governance. The Agreement contains the following commitments:

- parties to the Agreement shall reduce or cancel import duties in relation to goods originating from the other party in accordance with the Schedules of the Agreement (a 10-year period is provided for transition to a fully-fledged free trade zone);
- the parties should abstain from maintaining existing or introducing new duties, taxes, or any other measures having equivalent effect in connection with export/import of goods to/from the other party;
- goods originating from the EU/ Ukraine upon their import into Ukraine/ the EU will be subject to the treatment established in the Agreement provided one of the following documents is produced:

- a movement certificate EUR.1; or
- in certain cases, an invoice declaration;

## Customs duties and taxes

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

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 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 20% rate .

Import (customs) duties are levied on customs value of imported goods and are calculated as a percentage of customs value of the imported goods (ad valorem duty), as a certain fixed amount per imported item (specific duty), or as a combination of the two

(mixed duty). 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 duty rates can be reduced or mitigated based on the relevant certificate of origin (or invoice, or other transportation document identifying the country 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 customs value of the imported goods, plus import customs duties and excise duties. 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, payments for customs clearance of goods are relatively insignificant.









## 10. Winding-up/ Liquidation

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 it was created for;
- by virtue of a decision of the highest decision-making body of the company; or
- based on a court judgment.

### 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). Liquidation of a company is conducted by a liquidation committee established by the company's owner(s).

The liquidation committee takes over governance and control over the company, prepares an interim liquidation balance sheet, estimates the asset value of the company, pays to the company's creditors, and prepares the final liquidation balance sheet to be submitted to the owners.

The 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.

Since 2011, simplifications of the liquidation procedure became effective. A principle of "implied consent" should eliminate unreasonable delays in the liquidation procedure.

The voluntary liquidation may take from 6 months to 2 years to complete.

### Bankruptcy

Under Ukrainian laws, insolvency is defined as a failure of a legal entity or an individual entrepreneur to meet, within a prescribed time period (i.e. three months), claims advanced by its creditors and/or to settle its tax liabilities. In addition, a potentially insolvent company should owe undisputable debts of no less than 300 minimum monthly salaries (UAH 413,400 as of 1 January 2016).

Potentially insolvent company should owe undisputable debts of no less than UAH 435,000 (circa EUR 14,570)

Bankruptcy proceedings may be initiated through 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 proceedings. 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 or individual entrepreneurs, rather than against separate structural units of a legal entity (such as representative offices, departments, or branches).

### Forced liquidation

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







## 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.

Administrative courts are endowed with powers to resolve disputes with public administrative agencies (i.e. with state and municipal authorities). This includes, in particular, appeals against unlawful acts or omissions committed by 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.

Precedents are not recognized as a source of law

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 in high specialized courts (the High Commercial Court, the High Administrative Court, and the High Court in Civil and Criminal Matters) in the course of 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;
- an inconsistency of the cassation ruling with the legal position of the Supreme Court of Ukraine expressed in the similar case;
- a breach of Ukraine's international obligations by virtue of a decision of a Ukrainian court where such a breach is established by an international judicial institution whose jurisdiction is recognized by Ukraine.

Following the 2015 judicial reform, the Supreme Court of Ukraine may be requested to review matters of law in a decision of a high specialized court without any consent of high specialized court based on respective claim submitted directly to the Supreme Court of Ukraine.

In Ukraine, precedents are not recognized as a source of law. However, effective 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 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 prohibited.

Commercial disputes involving both Ukrainian and foreign entities can be adjudicated by arbitration courts (institutional or ad hoc), either in Ukraine or abroad. Under 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 operate under their own rules of procedure.

As noted before, 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 acting through its agencies 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 a treaty, foreign court judgments can be enforced based on the reciprocity principle acknowledged by Ukraine and the other state.

In recognition and enforcement of international arbitral awards, Ukraine acceded to both the 1958

In Ukraine, there are two major institutional arbitration courts: the International Arbitration Court of Ukraine and the Maritime Arbitration Commission.

New York Convention on the Recognition and Enforcement on International of Foreign Arbitral Awards and the 1961 European Convention on International Commercial Arbitration. Their rules shall prevail over domestic law on international commercial arbitration in cases where a foreign arbitral award is rendered in a State Party to any 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 its adoption procedure (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 proceedings) and (ii) conflict with the public order of Ukraine (i.e. enforcement of judgment would threaten the interests of Ukraine). Ukrainian courts sometimes interpret the "public order" concept very broadly and employ this interpretation to deny recognition and enforcement of arbitral awards in case of their inconsistency with Ukrainian laws.

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).





## Appendix 1. Chart of withholding tax rates

The following chart presents a list of withholding tax rates as applicable to certain types of Ukraine-sourced income derived by non-residents of Ukraine.

### Notes:

(1) Figures in the brackets in column “Dividends” indicate the minimum share of a foreign shareholder in a Ukrainian company for the reduced WHT rate to be applied (provided such shareholder is the beneficial owner of such dividends). In the chart, reduced WHT rates on dividends paid in respect of investments with a specific connection to either of the contracting parties to the respective Double Taxation Treaty (including to any of its public bodies or agencies) are omitted.

(2) Figures in the table below separated by a back-slash (/) suggest that different WHT rates may apply to a particular type of income under the relevant double taxation treaty.

Double Taxation 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	0/5
Azerbaijan	10	10	10
Belarus	15	10	15
Belgium	5 (20)/15	2/5	0/5
Brazil	10 (25)/15	15	15
Bulgaria	5 (25)/15	10	10
Canada	5 (20)/15	10	10
China	5 (25)/10	10	0/10
Croatia	5 (25)/10	10	10
Cyprus	5(20) <sup>1</sup> /15	2	5/10
Czech Republic	5 (25)/15	5	10
Denmark	5 (25)/15	0/10	0/10
Egypt	12	12	12
Estonia	5 (25)/15	10	10
Finland	0 <sup>2</sup> /5 (20)/15	5/10	0/5/10
France	0 <sup>3</sup> /5 (20/10)/15	2/10	0/10
Georgia	5 (25)/10	10	10
Germany	5 (20)/10	2/5	0/5
Greece	5(25)/10	10	10
Hungary	5(25)/15	10	5
Iceland	5(25)/15	10	10
India	10(25)/15	10	10
Indonesia	10 (20)/15	10	10
Iran	10	10	10
Ireland	5 (25)/15	5/10	5/10
Israel	5(25)/10(10)/15	5/10	10
Italy	5(20)/15	10	7



Japan	15	10	0/10
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
Mexico	5 (25)/15	10/0	10
Moldova	5(25)/15	10	10
Mongolia	10	10	10
Montenegro	5(25)/10	10	10
Morocco	10	10	10
Netherlands	0(50) <sup>4</sup> /5(20)/15	2/10	0/10
Norway	5(25)/15	0/10	5/10
Pakistan	10(25)/15	10	10
Poland	5(25)/15	10	10
Portugal	10(25)/15	10	10
Romania	10(25)/15	10	10/15
Russia	5/15	10	10
Saudi Arabia	5(20)/15	10	10
Serbia	5 (25)/10	10	10
Singapore	5(20)/15	10	7,5
Slovakia	10	10	10
Slovenia	5 (25)/15	5	5/10
South Africa	5 (20)/15	10	10
Spain	18	0	5/0
Sweden	5 (20)/10	0/10	0/10
Switzerland	5 (20)/15	0/10	0/10
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)/15	3	0/10
United Kingdom	5 (20)/10	0	0
USA	5 (20)/15	0	10
Uzbekistan	10	10	10
Vietnam	10	10	10

<sup>1</sup> if the beneficiary owner holds at least 20% or the direct investment is EUR 100,000

<sup>2</sup> if the capital invested is no less than USD 1,000,000 or its equivalent in Finnish markkas and the recipient holds at least 50% of the equity capital of the company

<sup>3</sup> if the beneficiary owner holds directly or indirectly at least 50% of the company's equity and total amount of the investment in that company is no less than EUR 762,245,086 or the equivalent in Ukrainian currency

<sup>4</sup> if the beneficiary owner holds at least 50% of the capital of the company paying dividends and provided that the investment amounts to at least USD 300,000 or its equivalent in the national currencies







## Appendix 2. About KPMG in Ukraine

KPMG is a global network of professional firms providing Audit, Tax and Advisory services. We have 155,000 outstanding professionals working together to deliver value in 155 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 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. 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.

KPMG was recognized as No.1 'Accountancy Firm of the Year' at the European M&A Awards 2014 (Finance monthly).

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.

KPMG was recognized as 'National Transfer Pricing Firm of the Year' (International Tax Review, 2013).

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.

## KPMG in Ukraine

### Kyiv

Business center "Senator"  
32/2 Moskovska Street,  
01010, Kyiv  
Ukraine  
T: +380 44 490 5507  
F: +380 44 490 5508  
E: [info@kpmg.ua](mailto:info@kpmg.ua)

### Lviv

Business City Technopark  
72 Heroiiv UPA Street,  
building No. 40,  
79015, Lviv  
Ukraine  
T: +380 32 229 5905  
E: [lviv@kpmg.ua](mailto:lviv@kpmg.ua)

## Tax and Legal Contacts

### Oksana Olekhova

Senior Manager,  
Tax Services

T: +380 95 277 7525  
E: [oolekhova@kpmg.ua](mailto:oolekhova@kpmg.ua)

### Yuriy Katser

Senior Counsel,  
Legal Services

T: +380 50 355 3470  
E: [ykatser@kpmg.ua](mailto:ykatser@kpmg.ua)

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The views and opinions expressed herein are those of the survey authors and do not necessarily represent the views and opinions of KPMG-Ukraine Ltd.



Authors of photography: 3 – Yuriy-mr; 4 – Stanislav Rico; 6, 22 – Серпій Криниця (Haidamac); 8, 20, 57 – Roksana Bashyrova; 11 – Анна Стрижекин; 14, 58 – Мокрицький Павло; 18 – Жовтенко Всеволод; 23 – Larisa Uhryn; 26, 37, 46 – Vian; 31 – Zybikok; 34 – Михайло Пецкович; 35 – Bonna Mistress; 40 – Sak Anastasiya; 16, 42, 43 – Q-lieb-in; 48 – Вишнеvsька Антоніна; 49 – Krasnickaja Katya; 51 – Dolnikov Denys.

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