



Corporate Tax News

Content

- ▶ **Verkhovna Rada of Ukraine has adopted laws to improve administration of taxes and levies**
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On 6 December 2012 the Verkhovna Rada of Ukraine adopted in second reading the laws registered as drafts No.11284 and No.11285. The laws are aimed at improving administration of taxes and levies and introduce amendments to the Tax Code of Ukraine and other regulatory legal acts. We expect that these laws will be submitted to the President of Ukraine for signing shortly.

If signed by the President of Ukraine, both laws should take effect on 1 January 2013. Provisions regarding the obligation to submit to the tax authorities copies of payment documents and fiscal reporting receipts or information about the volume of payment transactions / volume of foreign currency sale and purchase transactions should become effective on 1 January 2014.

Note that below list of changes is not exhaustive and is based on the text of draft laws prepared for the second reading. We cannot rule out that the text of the laws officially published after the President signs them could differ.

Excise tax on transactions involving alienation of securities and transactions with derivatives

Draft law No.11285 introduces an excise tax on transactions involving alienation of securities and transactions with derivatives.

The excise tax applies to sale, exchange or other alienation of securities; and transactions with derivatives, except for transactions carried out on the interbank derivatives market.

The following transactions are exempt from excise tax:

- ▶ Transactions with state and municipal securities and securities guaranteed by the state;

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- ▶ Transactions between issuer and tax payer involving purchase and resale, placement, redemption, or contribution to the charter capital;
- ▶ Transactions of issuer of securities of open joint investment institutions, in particular placement, redemption, buy-back and resale transactions;
- ▶ Transactions with securities and other financial instruments conducted by an entity engaged in clearing activity and executing the functions of a central counteragent;
- ▶ Transactions with securities and other financial instruments conducted by an entity engaged in clearing activity for fulfillment of obligations before clearing members;
- ▶ Transactions of the National Bank of Ukraine (NBU) on the over-the-counter market related to execution of the NBU's functions.

This tax must be paid by resident and non-resident individuals and legal entities that conduct transactions with derivatives or transactions involving selling, exchanging or alienating securities in any other way.

The taxable base is the contract value of securities or derivatives as defined in the primary accounting documents.

The tax rates are as follows:

- ▶ 0% of the transaction amount for sale of securities on stock exchange, provided that these securities are quoted according to the National Commission on Securities and the Stock Market's (NCSSM) rules;
- ▶ 0% of derivative transaction amount on stock exchange;
- ▶ 0.1% of the transaction amount for sale of securities outside the stock exchange, if these securities are on the trading list of a stock exchange;
- ▶ five non-taxable monthly individuals' incomes for any derivative (contract) which is not concluded via a stock exchange.

The tax is due when income from sale, exchange or other alienation of securities or derivatives is received.

The basic reporting tax period is a calendar quarter. The tax is payable within 10 calendar days after deadline for submission of tax return.

The obligation to pay the tax rests with the following tax agents:

- ▶ Securities traders, including banks - for stock and off-stock transactions involving sale, exchange or other alienation of securities; and transactions with derivatives, excluding transactions on the inter-bank derivatives market;
- ▶ Issuers - for transactions involving placement, redemption, buy-back, resale of securities of open joint investment institutions.

In addition, each party to the derivative (contract) must pay tax to the budget not later than the date of the contract's execution.

Corporate profit tax on transactions with securities and derivatives

According to draft law No.11285 the corporate profit tax rate on securities and derivatives transaction is 10%. This draft law also foresees changing the procedure for calculating the taxation object, in particular:

- ▶ Separate tax accounting (financial result) of transactions with securities that are traded on a stock exchange and for transactions with securities that are traded outside the stock exchange is introduced. Securities shall be deemed as being traded on a stock exchange if the following conditions are simultaneously met:
 - Securities are admitted for trading on at least one stock exchange;
 - Prices for securities on Ukrainian stock exchanges are calculated according to the requirements set by the NCSSM;
 - Information on the securities' prices is mandatorily published on the website of a stock exchange and in the public information database of the NCSSM.
- ▶ Financial results of transactions with securities are calculated according to the

Accounting Standard as profits reduced by the losses from the transactions with securities during the reporting period.

- Profit is calculated for each separate securities transaction and determined as positive difference between income from alienation of securities and expenses connected with purchase of these securities.
- For debt securities, income from alienation is reduced by the amount of accrued, but not received, interest while expenses associated with purchase of these securities are reduced by the amount of interest paid to the seller.
- Expenses from purchase of securities are recognized in the reporting period in which income from securities' alienation is recognized.
- ▶ Negative financial result from securities transactions is transferred to the subsequent reporting periods and reduces the total financial result from such transactions (within 1095 days).
- ▶ Profits received from transactions with securities that are traded on a stock exchange cannot be netted with the amount of losses from transactions with securities not traded on a stock exchange, and vice versa.
- ▶ Expenses for purchase of securities or derivatives of an issuer with fictitious features are not considered for calculation of the financial result.
- ▶ The above accounting procedure does not apply to the security emitters in relation to transactions involving placement, redemption, buy-back, conversion and resale.
- ▶ The financial results of REPO transactions and transactions with derivatives are calculated according to the Accounting Standards and are taxable under the general rules.
- ▶ A negative financial result as of 1 January 2013 is not considered in subsequent reporting periods.

- ▶ The costs of securities and derivatives that accrued before 1 January 2013 are considered upon further sale of these securities and derivatives, in the full amount.
- ▶ Profit from transactions with securities is taxable at 10% which implies that the tax should be paid irrespective of whether the taxpayer has losses calculated under the general rules.

Fictitious issuer features and their implications

- ▶ The fictitious features of the issuer shall be determined by the NCSSM in cooperation with the Ministry of Finance.
- ▶ If the fictitious features are assigned to the issuer, then NCSSM has a right to:
 - suspend issuer's securities circulation;
 - file a claim for termination of the legal entity;
 - based on the court decision cancel securities registration.

Financial bills

- ▶ Financial bills are treasury financial bills and banking financial bills.
- ▶ These bills can be used for settlement of tax liabilities, budget indebtedness and for budget financing.
- ▶ Issuance of a treasury financial bill shall qualify as provision of VAT refund (including an automatic one) to the tax payer.
- ▶ Provision of a financial bill to the state treasury authorities shall qualify as payment of the agreed monetary liability.

Use of registers of payment transactions

- ▶ The Law of Ukraine "On the Use of Registers of Payment Transactions in Trade, Catering and Services" shall apply not only to business entities and their business units but also to representatives (authorized entities) of business entities that carry out cash and/or noncash payment transactions.

- ▶ Entities using registers of payment transactions will be required to submit with the tax authorities copies of payment documents and fiscal reporting receipts or information about the volume of payment transactions / volume of transactions on purchase and sale of foreign currency.

Procedure for payment of levy for development of viticulture, horticulture and hops-growing

Temporarily (until 1 January 2018) establishes a 1.5% levy on the development of viticulture, horticulture and hops-growing. Effectively the payment procedure and use of this levy is stipulated in the Law of Ukraine "On Levy for Viticulture, Horticulture and Hops-growing," which is valid until 31 December 2014.

We will be happy to assist you with any further queries you may have on this matter.

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