



## Tax and legal news

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- ▶ **State Tax Office of Ukraine (STOU) offers general clarifications on certain taxation aspects.**
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#### **STOU Order "On Approval of General Tax Consultation for Determining Forex Differences on Indebtedness that Originated before 1 April 2011" No.120 dated 15 February 2012**

The tax office has confirmed in a consultation that forex differences for indebtedness in foreign currency that originated before 1 April 2011 and that have remained outstanding are subject to recalculation in accordance with the national financial accounting standards, in particular No.21 "Influence of exchange rate changes."

For the purposes mentioned above the balance value of such indebtedness is determined based on the exchange rate of the National Bank of Ukraine as at 31 March 2011.

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#### **STOU Order "On Approval of General Tax Consultation for Formation of Expenses in Transactions with Private Entrepreneurs Who Pay Tax According to the Simplified Tax Regime" No.121 dated 15 February 2012**

This consultation states that starting 1 January 2012 legal entities that are CPT payers may deduct expenses incurred as cost of goods (works, services) and other tangible and intangible assets that were purchased from private entrepreneurs paying the unified tax (irrespective of the group to which the private entrepreneur was assigned) for the purposes of calculating tax base provided that the expenses are related to the business activity of the legal entities.

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## **STOU Order "On Approval of General Tax Consultation on Certain Corporate Profit Tax Issues upon Royalties Payout" No.122 dated 15 February 2012**

The STOU states here that if expenses on accrual of royalties may be directly allocated to the specific expense item, they should be accounted for in the cost of sales of the produced and sold goods, performed works and rendered services. The expenses should be recognized in the reporting period when the relevant revenue from the sale of goods, performed works or rendered services was recognized.

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## **STOU Order "On Approval of General Tax Consultation on Deduction of Marketing and Advertising Services" No.123 dated 15 February 2012**

The tax office points out that if a supply agreement or commission agreement between the producer (importer) of goods/trademark owner and the seller (distributor or retail trader) provides for payment for advertising or marketing services, including motivational payouts (premiums, bonuses and other incentives), the producer (importer) or trademark owner may deduct the incurred expenses for the services and payouts for the benefit of the distributor or retail trader. This deduction is subject to the general requirements for reflecting expenses in tax accounting.

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## **STOU Order "On Approval of General Tax Consultation for Certain Aspects of Taxation of Tour Operator and Tour Agency Activity" No.126 dated 16 February 2012**

In this consultation the STOU clarifies the procedure of taxation of tour operators' and tour agent's certain activities (in particular in terms of the VAT base and reflecting of VAT invoices received from suppliers of goods, services, works).

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## **STOU Order "On Approval of General Tax Consultation for Reflection of VAT Invoices Issued in the Previous Reporting Period and Formation of VAT Credit" No.127 dated 16 February 2012**

The STOU states that if a VAT invoice is issued, received and recorded in the tax payer's incoming VAT

invoices register in the reporting period but was not entered on the tax return for this period, it may still be reflected in the tax returns of the following reporting periods using an adjusted calculation submission.

A VAT invoice received in the reporting periods following its issue is included in the incoming VAT invoice register. An adjusted calculation is not prepared in this case.

STOU also mentions that the registration of a VAT invoice with mistakes in it in the Unified Register of VAT Invoices that results in differences between the Unified Register and the tax payer's VAT invoice register and evidences a potential violation of the tax law may serve as a basis (in certain conditions) for an unscheduled tax audit.

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## **STOU Order "On Approval of General Tax Consultation for Certain Aspects of Recognizing Changes in the Amounts of VAT Liabilities and VAT Credit in VAT Returns" No.128 dated 16 February 2012**

According to the consultation a VAT registered seller that used its right to VAT credit upon purchase of goods (services) that are in fact used in non VAT-able or VAT-exempt transactions (except for reorganization of a legal entity) has to recognize the conditional sale of such goods (services) and accrue VAT liabilities.

The same requirement applies if based on the changes introduced to the Tax Code that operations of such goods (services) supply become subject to VAT exemption or are non VAT-able.

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## **STOU Order "On Approval of General Tax Consultation on Certain Aspects of VAT Credit Allocation Provided that Purchased and/or Produced Goods/Services, Fixed Assets are partly Used in Taxable and Non-taxable Transactions" No.129 dated 16 February 2012**

Among a number of other questions, the STOU clarifies that the recalculation of a share of fixed assets use purchased before the enactment of the Tax Code in taxable and non-taxable transactions and for which the count of its 12, 24 or 36 months of use falls in the period after 1 January 2011 should be performed only with regard to fixed assets that started to be operated after 1 January 2011.

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**STOU Order “On Approval of General Tax Consultation on Certain Aspects Related to Registration of Individuals that Transition to the Simplified Tax Regime as VAT Payers and Their Repeated VAT Registration” No.131 dated 20 February 2012**

The tax office comments that payers of the unified tax of the third and fourth groups that pay tax at a 5% rate are not subject to mandatory VAT registration if the total volumes of goods (services) supplies for the last 12 calendar months have exceeded UAK 300k.

A tax payer that was excluded from the VAT payers' register and whose registration was annulled at the tax authorities' initiative may (and in certain cases is obliged to) repeatedly register as a VAT payer. The STOU mentions that the negative tax history of the tax payer for a past VAT registration period may not serve as a basis for the rejection of its VAT registration.

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**STOU Order “On Approval of General Tax Consultation on Application of the Simplified Tax Regime by Private Entrepreneurs that Rent Out Immovable Property” No.136 dated 20 February 2012**

STOU clarifies the procedure of applying the restriction of the right to use simplified tax regime towards individuals that rent out immovable property.

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**STOU Order “On Approval of General Tax Consultation on Assigning to the Specific Group (Second or Third) of Private Entrepreneurs Paying the Unified Tax and Providing Passenger Transportation Services” No.137 dated 20 February 2012**

The consultation provides clarifications of the correctness of the unified tax group choice made by private entrepreneurs that provide passenger transportation services.

We will keep you updated on the further course of events.

Should you have additional questions, we will be glad to assist you.