NEWSLETTER

January 16, 2009

Re.: ***ratification of the Convention on Mutual Administrative Assistance in Tax Matters***

On December 17, 2008 Verkhovna Rada of Ukraine has approved the Law "On Ratification of the Convention on Mutual Administrative Assistance in Tax Matters" (further – the Convention). This Convention envisages the simplified mechanism of information exchange among tax authorities of different states and provides for the possibility for tax authorities of a state to perform the respective actions on recovery and enforcement of tax claims in another state.

Under the Convention the administrative assistance in tax matters shall comprise:

a) exchange of information, including simultaneous tax examinations and participation in tax examinations abroad;

b) assistance in recovery, including measures of conservancy; and

c) service of documents.

Ratifying the Convention, Verkhovna Rada of Ukraine has determined the group of taxes in respect of which the Convention shall be applied:

- corporate profit tax
- personal income tax
- charge for compulsory state pension insurance
- payment for land
- value added tax
- excise duty
- duty on development of viniculture, horticulture, hop-growing
- tax on owners of transport machines and other self-propelled vehicles and mechanisms
- uniform tax
- fixed agricultural tax
- state duty
- rent fees
- charge for special use of natural resources

As for information that the states may exchange within the administrative assistance the Convention stipulates that it may be any information that is foreseeably relevant to:
a) the assessment and collection of tax, and the recovery and enforcement of tax claims, and
b) the prosecution before an administrative authority or the initiation of prosecution before a judicial body.

As a result of ratification of the Convention the tax authorities of Ukraine have received the right to perform simultaneous tax examinations with the respective authorities of another state of the tax affairs of a person or persons in which they have a common or related interest. Besides this under the Convention the tax authorities of Ukraine have the right to perform the so called “tax examinations abroad” during which they will be allowed to participate in the appropriate part of a tax examination in another state.

It is important to mention that the Convention stipulates the opportunity for tax authorities to take the steps necessary to recover tax claims which shall be paid in other state on its request. Such steps may be taken only in respect of tax claims which form the subject of an instrument permitting their enforcement and which are not contested. Thus in case of forwarding the decision of tax authority on recovery of the tax claim of a person who is in another state and if such decision isn’t contested, it can be carried out in the state of this person’s present stay.

At the same time the Convention envisages that if the claim is against a person who is not a resident of the applicant state, the abovementioned necessary steps to recover tax claims shall apply in case if the claim may no longer be contested.

The provisions of the Convention are applied in the states which are its participants. In particular, as it is mentioned on the web-site of OECD on January 2008 the Convention is signed by the following states:

Belgium
Canada
Denmark
Finland
France
Iceland
Italy
Netherlands
Norway
Poland
Sweden
Great Britain
United States
Azerbaijan

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A foresaid information is a general overview for informational purpose; it should not be used in specific situations without professional legal advice.

Sincerely yours,
KM Partners

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