Tax on corporate transactions in Ukraine: overview

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A Q&A guide to tax on corporate transactions in the Ukraine.

This Q&A provides a high level overview of tax in the Ukraine and looks at key practical issues including, for example, the main taxes, reliefs and structures used in share and asset sales, dividends, mergers, joint ventures, reorganisations, share buybacks, private equity deals and restructuring and insolvency.

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Tax authorities

1. What are the main authorities responsible for enforcing taxes on corporate transactions in your jurisdiction?

The State Fiscal Service of Ukraine, which has been so far the main authority responsible for state tax and state customs policy, is currently in the process of being transformed into two separate bodies:

- The State Tax Service of Ukraine, which will be responsible for enforcing taxes, including taxes on corporate and finance transactions.
- The State Customs Service of Ukraine, which will be responsible for enforcing customs duties.

In practice, these new authorities have already acquired the powers of the State Fiscal Service of Ukraine. However, the Tax Code of Ukraine, which is the only legislative act establishing taxes for individuals and legal entities in Ukraine, still refers to the State Fiscal Service of Ukraine as the controlling authority for taxation purposes.

This discrepancy was meant to be resolved by Draft Law 1210 amending the Tax Code of Ukraine, but this Draft Law has not yet been signed by the President (*see Question 36*). This means that the State Fiscal Service of Ukraine remains legally the main authority responsible for enforcing taxes on corporate and finance transactions, but its functions are in practice performed by the State Tax Service of Ukraine (*https://tax.gov.ua/en*), which has no powers to enforce taxes.

Pre-completion clearances and guidance

2. Is it possible to apply for tax clearances or obtain guidance from the tax authorities before completing a corporate transaction?

Tax authorities must provide individual tax rulings (guidance) clarifying the correct application of tax legislation (*Article 52, Tax Code*). It is not compulsory to obtain individual tax rulings before completing a corporate transaction.

Individual tax rulings are issued in written, oral or electronic form on request from a taxpayer in which it:

- Presents its view on the case to the tax authority.
- Verifies the application of particular provisions of the tax legislation.
- Outlines the practical necessity for the request.

Individual tax rulings issued in writing are also anonymously published on the official website of the State Tax Service of Ukraine (*https://cabinet.sfs.gov.ua/registers/ipk*).

The taxpayer and its officials can still be charged with additional tax assessments, penalties and fines even if they act in accordance with the individual tax ruling. If the taxpayer does not agree with the conclusions of the individual tax ruling, it can appeal it to an administrative court. If the individual tax ruling is cancelled by the court, the taxpayer can request a new individual tax ruling in which the tax authority must consider arguments made by the court justifying the unlawfulness of the previous ruling.

Disclosure of corporate transactions

3. Is it necessary to disclose the existence of any corporate transactions to the tax authorities?

Circumstances where disclosure is required

There are no direct requirements for disclosure of corporate transactions to the tax authorities under the Tax Code. However, taxpayers can voluntarily disclose, if necessary, any additional information in the reports submitted to the tax authorities.

In general, the results of corporate transactions have an impact on the profits of the parties involved in the transaction. Profits are subject to corporate profit tax (CPT), paid by resident companies and permanent establishments of non-resident companies that calculate their profit in accordance with accounting rules and disclose information in their reports.

Some transactions, such as acquisitions and disposals of bonds or corporate transactions that are subject to withholding tax (WHT), are declared in the corporate profit tax return separately from general profit taxable by CPT.

The general profit taxable by CPT, as well as other separate transactions, is declared in the CPT reports/general financial statements all together, without separation for every particular transaction.

In addition, some corporate transactions are subject to value added tax (VAT), personal income tax (PIT) and military tax.

Some corporate transactions are also be subject to transfer pricing regulations, depending on the type of transaction. Under Article 39 of the Tax Code, taxpayers must report on tax resulting from transactions deemed to be "controlled" for transfer pricing purposes. On request from the tax authorities, the taxpayer must provide additional documents confirming that the disclosed transactions were conducted at arm's length.

The following transactions are deemed to be "controlled":

- Those with related non-resident companies.
- Those with non-resident companies incorporated in a low tax jurisdiction.
- Those with non-resident companies whose organisational form is fiscally transparent.

In addition, corporate transactions must meet the following criteria to be recognised as "controlled" for transfer pricing purposes:

- The total income of the taxpayer in Ukraine must exceed approximately EUR4.87 million.
- The annual cost of transactions with particular non-resident companies must exceed EUR325,000.

Manner and timing of disclosure

Resident taxpayers must disclose their profits in CPT reports by attaching financial reports on a quarterly basis, 40 days after the quarter ends (or 60 days after year end for the annual report). The same rules apply to disclosure by permanent establishments of non-resident companies.

When VAT is owed, a VAT report must be filed on a monthly basis within 20 days of the end of the reporting month.

Natural persons who earn income from corporate transactions must disclose it individually in their annual PIT report before 1 May of the following year, provided that the income has not been taxed by the tax agent that is party to the corporate transaction. The same rules apply to natural persons who are non-resident with regard to income originating in Ukraine.

If a natural person acts through an independent securities trader in a corporate transaction, the trader will be treated as a tax agent for PIT purposes and the agent must disclose payment and withhold the PIT.

If an entity makes payment to a natural person in a corporate transaction (for example, when the entity acquires corporate rights from the natural person), the entity must report on the payment without withholding the PIT.

A report on controlled corporate transactions under transfer pricing rules must be filed by 1 October in the year following the year during which the payments were made.

Main taxes on corporate transactions

Transfer taxes and notaries' fees

4. What are the main transfer taxes and/or notaries' fees potentially payable on corporate transactions?

Transfer taxes

Ukrainian legislation does not contain any specific transfer taxes on corporate transactions.

Notaries' fees

Key characteristics. In general, there are no direct requirements in Ukrainian legislation to notarise agreements (or other documents) concluded during corporate transactions.

Triggering event. Notarisation is required in rare circumstances, including:

- Where the signatures of shareholders in a company charter change, or there is a new charter for a limited or additional liability company as a result of reorganisation (*Article 11, Law on Limited and Additional Liability Companies*).
- Where there is a change of signature in a document indicating a shareholder's willingness to vote *in absentia* at the general meeting (*Article 35, Law on Limited and Additional Liability Companies*).
- Agreements for the sale or purchase of real estate (*Article 657, Civil Code*).
- Other agreements that the parties agree to have notarised.

Liable party/parties. In most cases, parties voluntarily agree who is liable for the notary fee. When purchasing real estate, the notary fee is payable by the buyer.

Applicable rate(s). The amount of the notary fee can vary depending on the particular notary office chosen by parties. Typically, notarisation of a signature for a shareholder (or other natural person) in a charter or other document will be approximately EUR5 for notarisation of a contract or 1% of the transaction cost.

State duty

Key characteristics. Some changes arising from corporate transactions require disclosure in the Unified State Register of Entities (USR).

Triggering event. These changes include varying shareholders as the result of a sale or purchase of corporate rights, or certain elements of reorganisation.

Liable party/parties. The state duty is payable by the entity requiring the changes in the USR. Generally, the party that purchased the business is liable for any relevant actions.

Applicable rate(s). The state duty fee depends on the type of transaction and the terms of maintenance of the registration, and range from EUR19 to EUR95 in 2020.

Pension fee on purchasing real estate

Key characteristics. Under the Law on Fees for Obligatory State Pension Insurance, the purchase of real estate property by entities is subject to a pension fee.

Triggering event. The fact of purchasing real estate property triggers the obligation to pay the pension fee.

Liable party/parties. The party that purchases real estate property is liable to pay the pension fee.

Applicable rate(s). The rate is 1% charged on the price paid for the purchased property.

Corporate and capital gains taxes

5. What are the main corporate and/or capital gains taxes potentially payable on corporate transactions?

Corporate profit tax (CPT)

Key characteristics. CPT is the main tax payable by all resident companies and permanent establishments of non-resident companies.

The following are exempt from CPT:

- Non-commercial structures (state-funded organisations, charity organisations and political parties).
- Entities that chose a simplified tax regime (with an annual transaction income of under around EUR162,000).
- Manufacturers of agricultural products.

The basis for CPT is calculated in accordance with either local Ukrainian Accounting Standards (UAS) or International Financial Reporting Standards (IFRS) and is adjusted under the Tax Code.

UAS differ from IFRS on specific rules applicable to corporate transactions. Typically, legal entities are free to choose which accounting rules apply, except in some cases when IFRS must apply, including for:

- Entities of public interest, including:
  - issuers of securities listed on the stock exchange;
  - banks;
  - insurance companies;
  - private pension funds;
  - other financial institutions; and
  - big enterprises (with assets exceeding EUR20 million, annual income exceeding EUR20 million and the average number of employees exceeding 250 persons).
- Public joint stock companies.
- Entities conducting activities in extraction (mining) industries.
- Other entities specified by regulatory acts adopted by the Ukrainian Cabinet of Ministers.

Therefore, which corporate transactions will be subject to CPT will depend on the specific accounting rules (either UAS or IFRS) applicable to the particular transaction.

Triggering event. The event triggering taxation will depend on the rules in the accounting standards. For corporate transactions requiring disclosure in the USR, registration triggers the obligation on the taxpayer to record the transaction in its accounts and disclose it in the CPT report.

Other transactions that do not require disclosure in the USR are recorded in the accounts and disclosed when the income is received from the transaction.

The amount of accrued CPT is payable within ten days from the final date for its disclosure in the CPT report (*paragraph 57.1, Tax Code*).

Liable party/parties. CPT is payable by all resident entities and permanent establishments of non-resident entities.

The rules on recognising permanent establishments are similar to those laid out in double tax treaties. They include where there is continued commercial activity through a:

- Place of management.
- Branch office.
- Facility.
- Workshop.
- Installation or facility for exploration of natural resources.
- Warehouse.
- Server.

Applicable rate(s). The CPT rate applicable to corporate transactions is 18% (*paragraph 136.1, Tax Code*).

Withholding tax (WHT)

Key characteristics. Income received by a non-resident entity but sourced in Ukraine is subject to WHT (*paragraph 141.4.1, Tax Code*).

Ukrainian source income includes:

- Interest payable under loans and other debt obligations issued by non-resident companies.
- Gains from a disposal or other transfer of ownership of shares, derivative securities or any other corporate rights.
- Royalties.
- Gains from joint ventures' activity in Ukraine.

Income sourced in Ukraine in the form of gains from the disposal of shares or corporate rights relate only to those issued by Ukrainian companies (*paragraph 14.1.54, Tax Code*). Therefore, a disposal of shares or corporate rights issued by non-resident companies is not currently subject to WHT in Ukraine (*see Question 36*).

Triggering event. WHT is triggered by paying Ukrainian source income to a non-resident. The party charging the WHT discloses the payment in its CPT report (WHT is defined as a component of CPT under the Tax Code).

Liable party/parties. A resident entity or permanent establishment of a non-resident entity is liable to withhold tax when paying Ukrainian source income to a non-resident (*paragraph 141.4.2, Tax Code*).

Applicable rate(s). The basic rate of WHT for corporate transactions is 15% (*paragraph 141.4.1, Tax Code*). A special rate of 18% applies on gains earned by non-resident companies from interest-free (discounted) treasury bonds (*paragraph 141.4.3, Tax Code*).

It is also possible to apply lower, or zero, WHT rates under applicable double tax treaties.

Personal income tax (PIT)

Key characteristics. Personal income tax (PIT) is payable by any natural person (either resident or non-resident) on receipt of taxable income.

Income for PIT purposes includes income obtained from transactions with investment assets. The definition of an "investment asset" covers corporate rights, shares issued by joint stock companies and derivative securities.

Non-residents are also subject to PIT on receipt of Ukrainian source income, including gains from the disposal of shares and corporate rights issued by Ukrainian companies (*paragraph 14.1.54, Tax Code*).

Triggering event. Receipt of taxable income triggers PIT. The taxpayer must file a PIT report by 1 May in the year following the income year and pay any PIT indicated in the report by 1 August.

Liable party/parties. Natural persons in receipt of income from corporate transactions.

Applicable rate(s). The basic PIT rate applicable to transactions with investment assets is 18%. It is also possible to apply lower or zero rates of PIT under applicable international double tax treaties.

Military tax

Key characteristics. Military tax was introduced by the Tax Code for the financing of the military forces of Ukraine. The tax base for the calculation of military tax is the same as for PIT. Therefore, transactions that are subject to PIT (*see above, Personal income tax (PIT)*) are also subject to military tax, including transactions involving investment assets (*paragraph 161, subchapter 10 of Chapter XX, Tax Code*).

Triggering event. Receipt of taxable income triggers an obligation to pay military tax in accordance with the same procedure as for PIT. The taxpayer must indicate its taxable income in its PIT report.

Liable party/parties. Natural persons in receipt of income from corporate transactions.

Applicable rate(s). The basic military tax rate is 1.5%.

Value added and sales taxes

6. What are the main value added and/or sales taxes potentially payable on corporate transactions?

Value added tax (VAT)

Key characteristics. Transactions for supplying or importing goods/services in the customs territory of Ukraine are subject to VAT (*paragraph 185.1, Tax Code*).

Residents or permanent establishments of non-residents can voluntarily become VAT payers by submitting an application to the tax authority. Registration for paying VAT is mandatory when the total annual cost of supplying/importing the goods and services exceeds EUR32,500.

In general, corporate transactions (sale or purchase of corporate rights, shares issued by joint stock companies, reorganisations) are exempt from VAT, except when payment is made in non-monetary form (in exchange for goods/services).

Triggering event. VAT is chargeable on receipt of payment for the goods/services, or on the date of supply (disposal) of the asset.

VAT is calculated every month as the difference between the VAT obligation and amount of incoming VAT. A positive difference is payable to the state budget and a negative difference will be refunded from the budget when certain Tax Code requirements are met. VAT calculations are disclosed by the taxpayer in its monthly VAT report, filed within 20 days of the month end.

New VAT payers have their tax transferred automatically from their VAT account according to their filed VAT report. The VAT payer must issue and provide a VAT invoice electronically to its contact and register it in the Unified Register of Tax Invoices.

Liable party/parties. Resident companies and permanent establishments of non-resident companies that are registered to pay VAT.

Applicable rate(s). The basic rate of VAT is 20% (*paragraph 193.1, Tax Code*). The Tax Code also sets VAT at a rate of 7% for supplying medical commodities and equipment. A 0% VAT rate applies to exports resulting in a VAT refund.

Sales tax

There are no sales taxes in Ukraine.

Other taxes on corporate transactions

7. Are any other taxes potentially payable on corporate transactions?

There are no other taxes on corporate transactions apart from those outlined in *Question 4* to *Question 6*.

Taxes applicable to foreign companies

8. In what circumstances will the taxes identified in *Question 4* to *Question 7* be applicable to foreign companies (in other words, what "presence" is required to give rise to tax liability)?

Transfer taxes and notary fees

State duties and notary fees are payable on concluding and registering corporate transactions in Ukraine.

Corporate profit tax (CPT)

Non-resident companies will be liable to CPT only through a permanent establishment established in Ukraine. The definition of "permanent establishment" in the Tax Code sets out that a non-resident entity generally conducting corporate transactions will not trigger recognition of a permanent establishment in Ukraine. However, a non-resident entity that disposes of assets in Ukraine may be considered a permanent establishment.

Withholding tax (WHT)

Profits made from disposal or transfer of ownership of shares, derivative securities or any other corporate rights issued by Ukrainian companies will be subject to WHT.

Value added tax (VAT)

Non-residents may be subject to VAT through permanent establishments that are registered for VAT.

Dividends

9. Is there a requirement to withhold tax on dividends or other distributions?

Withholding tax (WHT)

Income received by a non-resident in the form of dividends is subject to WHT (*paragraph 141.4.1, Tax Code*).

The Tax Code does not set out specific rules for treating other types of profit distribution (including interest and royalties) as dividends. However, these provisions are likely to be included in the future (*see Question 36*).

The rate of WHT for dividends is 15%. It is also possible to apply lower or zero withholding tax rates under applicable international double tax treaties.

Advance payment of corporate profit tax

CPT paid on dividends must be paid in advance. The advance payment is calculated by applying the 18% base rate to the difference between the sum of the distributable dividends and the sum of the taxable income in the year in which the dividends are distributed and on which CPT was paid. Where there is a negative difference, no advance payment is subject to tax.

Distribution of dividends to natural persons

The distribution of dividends to natural persons (both residents and non-residents) is subject to personal income tax, at the rate of 5% (if distributed by a resident CPT taxpayer) and at the rate of 9% (if distributed by a resident non-CPT taxpayer or non-resident).

Share acquisitions and disposals

Taxes potentially payable

10. What taxes are potentially payable on a share acquisition/share disposal?

Corporate profit tax (CPT)

The Tax Code distinguishes between two different models of CPT for the taxation of share transactions:

- Tax on corporate rights.
- Tax on securities.

CPT on transactions resulting from a resident's disposal of corporate rights issued by a Ukrainian entity is calculated as received income, minus purchase costs, including all costs relating to registration of the transaction. Some differences in calculation may vary depending on the applicable accounting standards.

The acquisition and disposal of securities are also subject to CPT, with a special procedure applied by the individual taxpayer for calculating the tax (*paragraph 141.2, Tax Code*).

Withholding tax (WHT)

WHT is only payable on gains received from the disposal of corporate rights/securities issued by a Ukrainian entity.

Value added tax (VAT)

Transactions with shares are subject to VAT only where the shares are acquired in exchange for goods or services provided by VAT taxpayers, not when shares are bought for cash.

Personal income tax (PIT) and military tax

Capital gains made from the disposal of shares by natural persons are subject to PIT and military tax (*see Question 5*).

Exemptions and reliefs

11. Are any exemptions or reliefs available to the liable party?

Withholding tax relief

There is no withholding tax on gains when disposing of shares issued by non-resident entities.

VAT relief

No VAT is payable on the acquisition or disposal of shares in exchange for money or other shares.

Tax advantages/disadvantages for the buyer

12. Please set out the tax advantages and disadvantages of a share acquisition for the buyer.

Advantages

Acquisition and disposal of shares are the most common types of corporate transactions for quick and secure sale and purchase of businesses. It is difficult to outline advantages or disadvantages due to the numerous legislative peculiarities that can apply. It is preferable to analyse any planned transaction by engaging a tax consultant before doing a deal.

One of the main advantages of purchasing shares is an exemption from VAT when they are paid for with money.

If both parties are non-resident, or the buyer is not resident and the seller is, a disposal of shares will not be subject to withholding tax.

Disadvantages

The VAT exemption does not apply where shares are acquired in exchange for goods and services.

If a share purchaser is resident in Ukraine and the seller is not resident, the buyer will be liable to withholding tax.

Tax advantages/disadvantages for the seller

13. Please set out the tax advantages and disadvantages of a share disposal for the seller.

Advantages

The seller enjoys the same advantages and disadvantages as the buyer. The tax implications for non-resident buyers depend on the jurisdiction of incorporation.

Disadvantages

Where the disposal of securities results in a loss, it can only be offset against future potential corporate profit tax.

Transaction structures to minimise the tax burden

14. What transaction structures (if any) are commonly used to minimise the tax burden?

The acquisition and disposal of shares in Ukrainian entities between non-resident companies evades Ukrainian legislation and makes it impossible to collect taxes. However, it is likely that the Ukrainian Government will try to prevent this abuse by implementing base erosion and profit shifting mechanisms into the Tax Code in the future (*see Question 36*).

Asset acquisitions and disposals

Taxes potentially payable

15. What taxes are potentially payable on an asset acquisition/asset disposal?

Corporate profit tax (CPT)

Acquisition and disposal of assets (both movable and immovable) influence company financial results, which can result in CPT.

Estimating financial results from acquiring and disposing of assets depends on the intentions of the buyer. For example, if a taxpayer purchases an asset that is expected to be sold within 12 months from the date of purchase, the taxable income will be calculated as income received from selling the asset, minus the purchase costs, including all costs of registering the transaction.

If a taxpayer purchases an asset that is expected to be used in its commercial activity, the value of the asset will depreciate during the period of use (*Article 138, Tax Code*). The financial result from sale of the asset will be calculated as sales revenue minus the depreciated (amortised) value of the asset, including all costs of registering the transaction.

Taxation specifics can vary depending on the applicable accounting rules.

Non-resident companies are also liable to CPT on the disposal of assets. Disposal by a non-resident company of an asset in Ukraine creates a permanent establishment (*paragraph 14.1.193, Tax Code*). Some exceptions apply, including:

- Supply (disposal) of assets in Ukraine from a bonded warehouse.
- Supply (disposal) of assets in Ukraine through an independent agent (committee or consignee).

There are two ways to calculate the taxable profit of a permanent establishment:

- Attributing profit to a permanent establishment based on a separate financial statement, if the permanent establishment keeps its records in an individual balance sheet.
- Applying a 0.7 co-efficient to its total income, if the permanent establishment does not keep its records in an individual balance sheet.

Withholding tax

Gains earned from the sale of real estate by a non-resident entity are taxable at a rate of 15% (*paragraph 141.4.1, Tax Code*). The rate may be different if an applicable double tax treaty is in place.

Value added tax (VAT)

Asset acquisitions and disposals (both movable and immovable) are subject to VAT in Ukraine if carried out by a VAT taxpayer.

Personal income tax (PIT) and military tax

Profit made on a disposal of assets by natural persons is subject to PIT and military tax.

Exemptions and reliefs

16. Are any exemptions or reliefs available to the liable party?

The Tax Code sets out some reliefs or lower tax rates on CPT, VAT and PIT, for example:

- Supplying software (which is not treated as a royalty) is exempt from VAT at least until 2023.
- Supplying medical devices is subject to a lower rate of VAT (7%).
- Importing vehicles equipped with electric motors or wind turbine towers is exempt from VAT at least until the end of 2022.

It is advisable to examine the law in relation to the particular transaction to see if any reliefs apply.

Tax advantages/disadvantages for the buyer

17. Please set out the tax advantages and disadvantages of an asset acquisition for the buyer.

Advantages

Advantages and disadvantages of asset acquisition depend largely on the particular circumstances of the transaction.

If the main business activity of a resident buyer is manufacturing, incoming VAT can be offset against tax liabilities charged during supply of the manufactured product in the future.

Disadvantages

If assets are purchased by a non-resident company and the seller is liable to VAT, the cost of the purchase will include VAT that cannot be refunded to the non-resident in the future.

It is likely that Ukrainian tax legislation will be amended in the near future to tighten the requirements for the acquisition of real estate by non-residents (*see Question 36*).

Tax advantages/disadvantages for the seller

18. Please set out the tax advantages and disadvantages of an asset disposal for the seller.

Advantages

Income earned from the supply of movable assets by non-resident companies is exempt from WHT.

Disadvantages

A supply of assets in Ukraine by a non-resident company triggers the existence of a permanent establishment, which is liable to CPT and VAT.

Where there is a disposal of real estate, there is an additional WHT burden on the seller.

Transaction structures to minimise the tax burden

19. What transaction structures (if any) are commonly used to minimise the tax burden?

There are no specific transaction structures that can be used to minimise the tax burden.

Legal mergers

Taxes potentially payable

20. What taxes are potentially payable on a legal merger?

The Tax Code does not set out any specific rules for CPT on merger transactions. Therefore, merger transactions will be taxed in accordance with the relevant accounting rules.

Typically, merging entities put their balance sheets together and no additional profit arises, except in some cases, for example, where the absorbing company takes over the absorbed company, which has an overstated value on its balance sheet.

Some difficulties relating to the taxation of mergers can arise when transferring accrued tax losses (with regard to CPT and VAT), thereby decreasing the tax obligation of the absorbed company in the future. This particular situation is not addressed in the Tax Code, which could lead in practice to cancellation of the tax losses if they are disallowed by the tax authorities.

Exemptions and reliefs

21. Are any exemptions or reliefs available to the liable party?

The Tax Code does not set out any provisions on WHT in relation to mergers.

The supply of assets in a merger transaction is exempt from VAT (*paragraph 196.1.7, Tax Code*).

Transaction structures to minimise the tax burden

22. What transaction structures (if any) are commonly used to minimise the tax burden?

There are no specific transaction structures that can be used to minimise the tax burden.

Joint ventures

Taxes potentially payable

23. What taxes are potentially payable on establishing a joint venture company (JVC)?

Corporate profit tax (CPT)

It is possible under Ukrainian law for two or more parties to carry out a business activity based on a preliminary agreement between them in the form of a joint venture without incorporating a separate legal entity/JVC (*Chapter 77, Civil Code*).

One of the participants in the joint venture must be liable for keeping record of the venture's activities, as well as complying with the relevant accounting rules (*Article 1134, Civil Code*).

Agreements for joint ventures are generally not subject to registration with the tax authorities, except where required in the Tax Code. Therefore, income received or losses made by resident entities involved in a joint venture will subject to CPT as general investment income of the parties. Taxation of a non-resident participant will depend on the rules in the jurisdiction of its incorporation.

Carrying out a commercial activity through a joint venture does not necessarily constitute a permanent establishment in Ukraine for tax purposes. However, if certain criteria are fulfilled, a permanent establishment may be found to exist and be taxed accordingly (*see Question 5*).

Withholding tax (WHT)

Gains from joint venture activities earned by non-residents in Ukraine are subject to WHT at 15% (*paragraph 141.4.1, Tax Code*).

However, there is no clear practical mechanism for paying WHT in these cases because only residents or permanent establishments of non-residents are liable to withhold tax paid in favour of a non-resident.

Joint ventures are not considered as separate residents for CPT purposes, and also do not directly constitute a permanent establishment of a non-resident that participates in a joint venture and, therefore, cannot withhold tax when paying out income.

Value added tax (VAT)

A supply of goods and services for VAT purposes includes contributions by the participants to the joint venture in any form (tangible or intangible). Transferring products back from a joint venture (or the results of other works) or services rendered to a participant in a joint venture is considered to be a "supply" for VAT purposes.

Therefore, transactions will be subject to VAT if conducted by taxpayers in Ukraine.

Exemptions and reliefs

24. Are any exemptions or reliefs available to the liable party?

No exemptions or reliefs are available to the liable party.

Transaction structures to minimise the tax burden

25. What transaction structures (if any) are commonly used to minimise the tax burden?

There are no specific transaction structures that can be used to minimise the tax burden.

Company reorganisations

Taxes potentially payable

26. What taxes are potentially payable on a company reorganisation?

Reorganisation of an entity includes its merger, separation or transformation (*Article 104, Civil Code*).

The Tax Code does not set out any specific requirements for reorganisation transactions. The tax implications for these transactions are the same as described for mergers in *Question 20* and *Question 21*.

Exemptions and reliefs

27. Are any exemptions or reliefs available to the liable party?

No exemptions or reliefs are available to the liable party.

Transaction structures to minimise the tax burden

28. What transaction structures (if any) are commonly used to minimise the tax burden?

There are no specific transaction structures that can be used to minimise the tax burden.

Restructuring and insolvency

29. What are the key tax implications of the business insolvency and restructuring procedures in your jurisdiction?

Tax implications for the business

Insolvency and restructuring procedures are regulated by the Code on Bankruptcy Procedure (Bankruptcy Code). Under Article 34 of the Bankruptcy Code, the commercial court can start bankruptcy proceedings against a natural person or legal person on receipt of a reasonable application from a creditor, regardless of the amount of indebtedness (that is, there is no minimal amount of indebtedness to start bankruptcy proceeding under the Bankruptcy Code).

The court will consider the application for bankruptcy and decide whether to start a financial recovery procedure or a liquidation procedure depending on the particular circumstances of the bankrupt's activity.

During a financial recovery procedure, the court will appoint a temporary manager to administrate the bankrupt company, who is entitled to exercise additional powers to pursue and return the bankrupt's property. Bankruptcy will not trigger any additional tax implications on a business, except that the court can freeze bankruptcy settlements with its creditors, including with the tax authorities. The court can also rule on the release of seized property by the tax authorities.

A declaration of bankruptcy has a few different stages. At first, the court appoints temporary administration and establishes a period for satisfaction of the creditors' claims. At the end of this period, the court declares the entity to be bankrupt and initiates a liquidation procedure. From that moment on, the entity will not be liable for any taxes.

Tax implications for the owners

There are no specific tax implications for the owners.

Tax implications for the creditors

There are no specific tax implications for the creditors.

Share buybacks

Taxes potentially payable

30. What taxes are potentially payable on a share buyback? (List them and cross-refer to *Question 4* to *Question 7* as appropriate.)

The Tax Code does not set out any specific rules on the taxation of share buybacks. Therefore, they are subject to tax in accordance with general procedures for share disposal (*see* Question 10).

However, it is possible that provisions equating share buybacks to dividend distribution will be implemented in the Tax Code in the near future (*see* *Question 36*).

Exemptions and reliefs

31. Are any exemptions or reliefs available to the liable party?

No exemptions or reliefs are available to the liable party.

Transaction structures to minimise the tax burden

32. What transaction structures (if any) are commonly used to minimise the tax burden?

There are no specific transaction structures that can be used to minimise the tax burden.

Private equity financed transactions: MBOs

Taxes potentially payable

33. What taxes are potentially payable on a management buyout (MBO)?

Ukrainian legislation does not set out any specific rules on the taxation of MBOs. Profits from an MBO may be liable to personal income tax and military tax (*see* *Question 5*).

Exemptions and reliefs

34. Are any exemptions or reliefs available to the liable party?

No exemptions or reliefs are available to the liable party.

Transaction structures to minimise the tax burden

35. What transaction structures (if any) are commonly used to minimise the tax burden?

There are no specific transaction structures that can be used to minimise the tax burden.

Reform

36. Please summarise any proposals for reform that will impact on the taxation of corporate transactions.

In early 2020, the Ukrainian Parliament (*Verhovna Rada*) considered Draft Law 1210, which could introduce significant changes to the current taxation system of Ukraine. The local business community raised strong criticisms against the draft, arguing that some proposed changes limit the free movement of capital outside Ukraine (such as prohibiting the deduction of losses related to foreign exchange rates fluctuations, extending thin capitalisation rules to loan obligations, and so on).

The Draft Law 1210 was passed by Parliament after two readings and was submitted to the President for signing. In Ukraine, every draft law must be signed by the President after being passed by Parliament to become a binding statutory act (law). The President has the right to veto any draft law submitted by Parliament for signing, in which case the draft law is returned to Parliament for reconsideration.

At the date of writing, the President had not signed Draft Law 1210, although it was very likely to be signed shortly. However, damages to the Ukrainian economy caused by the 2019 novel coronavirus disease (COVID-19) pandemic have changed the situation dramatically. The signing of Draft Law 1210 is now uncertain due to its harmful consequences on businesses operating in the context of a pandemic.

The Draft Law 1210 introduces many changes, for example:

- Rules on controlled foreign companies. Under the Draft Law, natural persons who directly or indirectly own at least 50% of the shares in non-resident companies must disclose information about the company to the tax authorities when paying PIT and military tax in Ukraine, under specific conditions.
- Introduction of the concept of "payments equated to dividends". This includes:
  - transactions between a company and its shareholders that may result in a decrease of undistributed profits (such as decreases of share capital, share buybacks, and so on); and
  - other transactions between a company and its shareholders in violation of transfer pricing rules (that is, when the amount of interest, royalties, or other payments to the related party does not comply with the arm's length principle).
- Extending the scope of WHT. Gains arising from the disposal of (among others) corporate rights and shares issued by non-resident entities become subject to WHT. Non-residents will be treated as a CPT payers in this regard.
- Improving regulations on the incorporation and transparency of permanent establishments of non-resident companies.
- Rules on the taxation of share buybacks.

Contributor profile

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Professional qualifications. Ukraine, Attorney at Law, 2008

Areas of practice. Tax; litigation; white collar crime; M&A and restructuring; agribusiness.

Non-professional qualifications. Master of Laws, Taras Shevchenko National University of Kyiv, 2003; Master of Economics, Taras Shevchenko National University of Kyiv, 1991

Recent transactions

- Structuring the activity of a non-resident entity in Ukraine.
- Representing client's interests in court and cancelling the seizure of VAT imposed by the tax authorities.
- Advising on tax accounting for capital investments on construction of fixed assets and the primary cost of fixed assets.
- Representing a client in a court dispute with tax authorities and providing consulting support.

Languages. English, Ukrainian, Russian

Professional associations/memberships

- International Bar Association.
- Ukrainian Bar Association.
- American Chamber of Commerce.
- European Business Association.
- German-Ukrainian Chamber of Industry and Commerce.
- US-Ukraine Business Council.

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