

Introduction

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Company has wide and unique for Ukrainian practice experience of providing assurance services, which include: auditing of financial statements including projects that are connected with companies' entry on international financial markets, M&A, consolidation and transformation of financial statements into international and American reporting standards, cooperation with international financial institutions.

Baker Tilly Ukraine is an independent member of Baker Tilly International – network of high quality, independent accountancy and business services firms, all of whom are committed to providing the best possible service to their clients, in their own marketplaces, and across the world.

Baker Tilly International:

- Established in 1987
- 110 countries
- 145 member firms
- 509 offices
- 25,000 personnel

Being an independent member of Baker Tilly International, Baker Tilly Ukraine has a unique possibility to provide services in different international finance centers.

Disclaimer

The information provided in this booklet is based on taxation laws and other legislation. The tax information is accurate as at 01.05.2009.

For more information please contact us at our offices.

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SECTION 1. POSSIBLE STRUCTURES OF DOING BUSINESS IN UKRAINE

1.1 Structures of business in the territory of Ukraine

- a)** Entity with foreign capital in the form of a limited liability company or joint stock company;
- b)** Representation; and
- c)** Joint activities
- d)** Other structures.

a) Entity with foreign capital in the form of a limited liability company or joint stock company;

Joint Stock Companies (JSC)

A JSC is a common form of legal entity used in Ukrainian business. A joint stock company may be:

- a private joint stock company;
- a public joint stock company;
- a national joint stock company.

Limited Liability Companies (LLC)

A popular form of corporate organization is LLC through which foreign companies can conduct business in Ukraine. LLCs have a slightly simpler registration process than joint stock companies and require a less complex capital and management structure.

In case of establishing a limited liability company or a joint stock company with foreign investments, such enterprise will be a resident of Ukraine, and all taxes will be applied to it in accordance with the sphere of its activities.

It is possible either to register a new enterprise, which takes a longer period of time, or to acquire the corporate rights of the already existing limited liability company. After a non-resident has acquired the corporate rights of a Ukrainian limited liability company,

it will be necessary to make amendments to the Charter and to re-register as an enterprise with 100 % foreign investments.

Also the legislation of Ukraine allows the acquisition of shares of a Ukrainian issuer by a foreign investor. In this case, there is no need to re-register the Charter of the enterprise and all founding documents. Acquisition and sales of securities at the Ukrainian market may be performed by non-residents only through a Ukrainian trader. In case of a subsequent sale of the Ukrainian securities, belonging to a non-resident, to another non-resident enterprise, the seller will receive income with the source of origin from Ukraine.

It is worth mentioning that, in case of an acquisition transaction, there exist certain risks to acquire an entity with hidden problems. To avoid such situation, foreign investors generally apply to specialists to conduct due diligence procedures of the Ukrainian enterprise.

b) Representation

Representative Offices of Foreign Companies in Ukraine

Non-resident legal entities which carry out their activities via representative office in Ukraine are not afforded the status of a legal entity in Ukraine and are subject to the legislation of the country of their permanent establishment. The representative office maintains accounting records and submits reporting in accordance with Ukrainian laws.

Permanent representations in the territory of Ukraine are not legal entities and act based on the authorities stipulated by the Provision on Representation, and the notarized Power of Attorney for the head of the representation. The Provision shall be executed by a non-resident legal entity, and shall indicate the activities, which the representation intends to carry out; at that, the area of activities of the representation shall not be wider than the one of the parent enterprise.

Representations of a foreign enterprise, carrying out economic activities in Ukraine, shall be mandatorily registered as for taxes and social funds on a par with resident.

Carrying out any economic activities in the territory of Ukraine by a non-resident without the registration of its permanent representation as the tax payer is prohibited and considered as tax evasion.

Permanent representations shall maintain records in accordance with the Ukrainian GAAP, while in the tax accounting they shall draw up and file tax returns and reports to the tax inspections and funds on a par with resident enterprises.

c) Joint activities

Joint Activity without Establishment of a Legal Entity

A foreigner has the right to invest without creating a legal entity by entering into a joint production or joint co-operation agreement with Ukrainian partners. Foreign investors are granted the right to get back their investment and repatriate the profit from it.

The presence of a foreign investor in Ukraine is possible in case of establishment of a joint venture.

If the activities have been arranged in the form of the joint activities, the agreement on the joint activities shall be registered as a separate tax payer (for the VAT and the income tax).

For the aims of taxation, two or more persons carrying out joint activities without the establishment of a legal entity, shall be considered as an individual entity within such activities.

d) Other structures

Also, there are following forms of entities in Ukraine: additional liability company (ALC), general partnership, special partnership.

An additional liability company is an entity, authorized capital of which is divided into shares according to shares stipulated in founding documents.

The main difference between LLC and ALC lies in the fact that responsibility of ALC participants (unlike LLC) is not limited by size of equity contributions made by them, but extends over the personal property of participants (such additional responsibility arises in case of company's insufficiency of funds to pay off the debts).

General partnership is an entity which participants, according to the contract concluded between them, carry out business activities on behalf of the company and jointly bear additional responsibility for its liabilities by all vested property.

Participants of general partnership are responsible for debts of the company by all vested property. Responsibility of participants is additional: the creditors of general partnership have first to apply to the company and only in case of failure to pay off the debt, it may be distrained.

Participants of general partnership are jointly responsible for company's debts. That is, in the event of failure to pay off the debt, a creditor has the right to apply to any participant with a demand of debt repayment, both in full or in part.

Summary of types of business structure

	Joint-Stock Company	Limited Liability Company	Additional Liability Company	General partnership	Representative Office	Joint Activity
Minimum number of participants	1	1	1	2		
Maximum number of participants	Not limited	10	Not limited	Not limited		
Constituent documents	Charter	Charter	Charter	Constituent documents	Enactment, issued by legal body (Item 3 of Article 95 of Civil Code of Ukraine (CCU))	Agreement on joint activity, in writing (Art. 1131 CCU)

SECTION 1. POSSIBLE STRUCTURES OF DOING BUSINESS IN UKRAINE

	Joint-Stock Company	Limited Liability Company	Additional Liability Company	General partnership	Representative Office	Joint Activity
Minimum seize of authorized fund	1250 minimum salaries	100 minimum salaries	100 minimum salaries	Not established	No legislative requirement	Joint activity can be carried out on the basis of participants association (simple society) or without the participants
Stake of authorized capital to be taken before registration	50% – CJSC, 30% – OJSC	50%	50%	–	–	
Participants responsibility	Limited by the amount paid for shares	Limited by the amount of contributions to authorized capital	Amount of contributions to authorized capital + additionally by own property in the amount proportionally to contributions to authorized capital	Full: participants bear responsibility for company's debts by all their property	Referred to legal body, who created representative office	By agreement of the parties

Minimum salary: 01.01.09 – 31.03.09 – UAH 605; 01.04.09 – 30.06.09 – UAH 625; 01.07.09 – 30.09.09 – UAH 630; 01.10.09 – 30.11.09 – UAH 650; 01.12.2009 – UAH 669.

WE DRAW YOUR ATTENTION! *It is better to entrust to professionals the process of registration of legal entities, taking into consideration the necessity of a proper Charter preparation, submission of all necessary documents, registration in all necessary state authorities.*

1.2 Registration of foreign investments

Ukrainian law requires registration of loans from non-residents.

The main thing to be paid attention to is that loans are allowed to be obtained only via bank transfer (that is no question of loans in cash).

Their receipt is carried out through the authorized banks of Ukraine which agreed to provide services of transactions under the contract.

If a contract with a non-resident stipulates obtaining the loan abroad (foreign currency will be transferred to the resident-borrower's account outside of Ukraine and/or loan will be repaid from a non-resident's account abroad), an individual license of National Bank of Ukraine will be required.

And subsequently, when repaying the loan from a resident-borrower's account abroad, such resident must submit the original registration certificate and originals or copies of billing documents certified by a foreign bank or copies of billing documents supporting loan repayment.

SECTION 2. TAXES IN UKRAINE**2.1 Corporate Income Tax (CIT)**

Income tax is a direct tax which is paid by legal entities on the basis of their financial results as defined by special rules.

CIT payers

CIT payers are as follows:

- Residents – entities (legal entities) carrying out their activity which is aimed at profits receiving;
- Non-residents, who receive income from Ukrainian sources;
- Affiliates which are no legal entities and are located in other territorial community than a parent company (affiliates may pay income tax separately or jointly with the parent company);
- Permanent representation of non-residents receiving income from Ukrainian sources.

However, if the company falls under the definition of CIT payer, it automatically pays this tax without additional registration.

Tax rates

The flat rate for enterprises' profits taxation is set at the level of 25%. However, separate rates are established for separate income.

For insurance activity two rates are established:

- 0%** – for income under long-term insurance contracts and pension provision;
- 3%** – for income under other insurance contracts.

Deductible expenses are all expenses paid (accrued) during a reporting period in connection with production preparation, organization, maintenance and goods (works, services) sales taking into consideration the restrictions established by the Law. The main criteria for their determining is «relation to business activity», that is activity which is aimed at income receiving.

Also, the Law stipulates some restrictions for deductible expenses. For example:

- costs for fuel and lubrication materials for autos and their rental are deductible expenses in the amount of 50% of the total costs;
- advertising costs – no more than 2% of taxable income of the last year.

Depreciation – in tax accounting it is accrued only for fixed assets used in business activity. For each group of fixed assets particular rates are established (see the Table below).

Group of fixed assets	Group items	Quarterly depreciation rates
1	Buildings, structures, transmitting devices, cost of capital improvements to land	2%
2	Motor vehicles, furniture, household appliances, electronic, optical and electromechanical instruments, office equipment	10%
3	Other property, plant and equipment not comprising Groups 2 and 3	6%
4	Computers, machines for information processing, related information reading and printing devices, computer programs, phone sets and portable radio	15%

Due dates and periods for tax payment

A reporting period for CIT is a quarter. However, during the year CIT payers form the figures of tax return on an accrual basis.

In this regard, tax return is filed for such periods:

- tax quarter;
- 9 months;
- half year;
- year.

Accordingly, it is necessary to file a tax return within 40 days following the reporting quarter. Payment is performed during 10 calendar days after filing deadline expires.

Taxation of non-residents' profits

Any income earned by non-residents which derived from carrying out business in the territory of Ukraine (business income) and received from Ukrainian sources (non-business) is subject to taxation. Such profits comprise:

- interest income;
- dividends paid by a resident of Ukraine;
- royalty, freight and income of «engineering» type;
- lease payments accrued by a resident in favor of a non-resident;
- revenue from sales of real estate located on the territory of Ukraine;
- income from transactions with securities;

This list excludes income in the form of proceeds from sales of goods (works, services), including cost of services of international communications and international information support.

A resident paying income to a non-resident originated from Ukraine is obliged to deduct tax against such payment and transfer withholding tax to budget at the rate of 15%. This tax is subject to remittance to the budget concurrent with income payment, unless otherwise is provided by International Treaty.

Non-residents' income received from Ukrainian sources – they are subject to taxation in general case at the rate of 15% (against income payment to a non-resident).

The following types of income have different rates:

- freight – 6%;
- advertising services – 20%.

In case if there is an International Treaty concluded with a non-resident's country for avoidance of double taxation, which provides for other rates (lower than mentioned above), then such rates are applied.

2.2 Value Added Tax

Value Added Tax is an indirect tax for consumption, which provides for the remittance of added value generated on all stages of production and circulation to the budget.

VAT payers

Persons who are mandatorily required to register for VAT are (both legal entities and individuals):

- persons whose taxable supplies for the past 12 months exceeded UAH 300,000;
- persons selling goods (works, services) by using worldwide (local) computer network;
- persons importing goods in customs territory of Ukraine.

Note that the first two groups of persons are subject to mandatory registration as VAT payers. To register, it is necessary to submit an appropriate application to tax inspection at the place of registration. For import transactions no registration is required. Value added tax on importation of goods, services is paid even without the Certificate of registration of tax payer.

If a person not falling under the category of VAT payer wants to register as such, he/she may do it voluntarily.

Transactions subject to VAT

There are three groups of transactions subject to VAT:

- supply of goods (services) with place of delivery in the customs territory of Ukraine;
- import of goods into the customs territory of Ukraine;
- export of goods beyond the customs territory of Ukraine in the export.

VAT rates

There are two VAT rates:

- 20%** – for supply transactions in the customs territory of Ukraine and for import transactions;
- 0%** – for export transactions.

In addition, there is a group of transactions which are exempt from VAT. For instance, supply of published periodicals, medical products, medical services, education services etc.

Reporting periods

There are two reporting periods established for VAT:

- A quarter – if the volume of taxable transactions for the last 12 calendar months is lower than UAH 300 thousands. Taking decision about selecting the quarter period is voluntary. In this case, it is required to submit the appropriate application and VAT return for the last reporting period of the calendar year to the tax inspection;
- A month – for other taxpayers.

2.3 Excise duty

Excise duty is an indirect tax for separate excisable goods which is included into the price of such goods.

Excisable goods

The peculiarity of the excise duty is lack of basic rate and use of a whole system of specific rates for separate goods.

Below in the Table there are main groups of goods which meet the definition of excisable goods and base rates of excise duty.

Group of excisable goods	Minimum and maximum rate
1. Alcoholic products*	
Spirits and alcoholic distillates, other spirituous beverages	from 10 to UAH 21,5 per liter of 100% alcohol
Wines and vermouth	from 0,25 to UAH 2,6 per liter
Cider flavoured with alcohol	0,1 UAH per 1 per cent of volume of alcohol per liter
Cider without alcohol	0,31 UAH per liter
2. Malt beer	
Malt beer	0,31 UAH per liter
3. Tobacco articles	
Cigarettes	50 UAH per kg, but no less than 47 UAH per 1000 items, plus 16% from turnover
3. Tobacco articles	
	from 15,6 to 37,5 UAH for 1000 items, plus 16% from turnover
Tobacco	from 6,25 to 15,6 UAH per kg, plus 16% from turnover
4. Oil products	
Light and medium distillates, gas	from 12 to 20 euro per 1000 kg
Gasolines	from 12 to 110 euro per 1000 kg

Group of excisable goods	Minimum and maximum rate
5. Motor vehicles	
Motor cars, including cargo-and-passenger	from 0,03 to 3,5 euro per 1 cc
Motorcycles	0,2 euro per 1 cc
Bodies	from 1000 to 4000 UAH per item

The Table above shows the rates of excise duty as of 01.04.09, these rates are subject to frequent changes.

Due dates and reporting

Payer	Due date	Type of reporting
Ukrainian enterprises-manufacturers selling alcoholic beverages	On the 3 rd business day after receiving of revenue from sales	Calculation of excise duty which is to be submitted within 20 calendar days following the reporting month
Ukrainian enterprises-manufacturers selling tobacco items	Every month till 16th day of every month following the reporting month	
Owners of alcoholic beverages and tobacco items manufactured in the territory of Ukraine using raw materials	No later than the day of receiving the finished goods	
Other	During 10 calendar days following the last day of deadline for tax return submission	
Importers of excisable goods	Before or concurrently with submission of the tax return	

2.4 Imported Goods – Tax payments

Tax payments comprise taxes and duties (mandatory payments), which are levied when transferring goods across the customs border of Ukraine and are calculated in the cargo customs declaration.

They include

1) customs duty:

It is a tax on goods transported across the state border. In Ukraine, there are such types of duties:

- ad valorem duty (calculated in percent from customs value);
- specific duty (calculated according to the established amount per article);
- combined duty (combines the two above-mentioned types).

Duties are charged by to the customs authority according to rates of Common Customs Tariff of Ukraine on the basis of customs value.

2) excise duty:

In Ukraine, like most countries, the principle of «place of destination» is used for the purposes of calculating the excise duty: export of goods is exempt from excise duty (or zero rate is applied), in it imposed on import (similar to value added tax).

3) value added tax:

Export-import transactions are taxable. On import the rate is 20%, while on export – 0%. The tax is imposed on the agreed cost of imported goods, but no less than the customs value specified in the cargo customs declaration, including costs for transportation, loading unloading and insurance till the point of crossing the customs border, as well as excise duty.

Except for import under sales and purchase agreements, the following is also considered as import transactions:

- import of goods under leasing agreements onto the customs territory of Ukraine, including returning the leasing subject to a resident, pledge agreements and other agreements in which the transfer of ownership rights for such goods is not stipulated.
- the supply of goods from duty-free stores onto the customs territory of Ukraine;
- the supply of products (finished products) from the customs regime of products processing to the customs territory of Ukraine for free circulation.

Tax payments are to be performed on the date of cargo customs declaration submission.

Procedure for their accrual and payment, among other things, is defined by the customs regime of import/export of goods and group of goods. For example, goods imported in regime of transit or temporary importation are exempt from certain payments.

4) common duty levied at border checkpoints

Common duty is a factual payment for exercise of sanitary, veterinary, phytosanitary, radiological and environmental control of cargo and vehicles, and for passage of vehicles along motor ways and for passage of vehicles with excess in established weight, axle loads and (or) dimensions.

It is paid regardless of transition regime (import, transit), type, capacity or the total weight of vehicles by a unified payment document.

2.5 Other taxes

2.5.1 Vehicles Owners Tax

This tax is paid for all vehicles depending on engine volume and length of a waterborne craft.

Taxpayers are all legal entities and individuals owning vehicles.

Tax rate is established in UAH based on 100 cc cylinder capacity, 100 kW engine capacity of vehicles or 100 sm long of vehicles.

2.5.2 Land fee

Legal entities and individuals owning and/or using some land plots pay this tax.

Rates of land tax are distinguished depending on the land:

- of agricultural purpose (depending on purpose of land use);
- of non-agricultural purpose (by groups of communities depending on population and location of the land plot).

2.5.3 Resource and other payments (charges)

What is subject to taxation	Payers	Rate
Charge for use of radio frequency resource		
Transactions of usage of radio frequency	Legal entities and individuals – users of electronic means or radio objects having license for use of radio waves	Depends on forest belt width determined in the license
Charge for special use of forest resources		
Usage of forest resources	Legal entities and individuals who were granted land plots of forest fund for permanent or temporary use	Depends on species of wood, quality if wood, forest belt

What is subject to taxation	Payers	Rate
Charge for use of subsoil for mining		
Volume of balance sheet and off-balance sheet reserves depleted in place	All business entities engaged in mining activities	Depends on the nature of subsurface use
Charge for special use of water resources		
Water volume used by a water user taking into account the losses	All business entities using water resources	Depends on type of water used and sphere of use
Charge for Environment Pollution		
Discharge into the atmosphere (into body of water) of pollutants	All business entities discharging pollutants into environment	Depends on type of pollutants and kind of dangerous impact on environment
Duty for the Development of Vine-Growing and Hop-Growing		
Revenue received from sales through wholesale and retail network of alcoholic beverages and beer	All business entities selling alcoholic beverages and beer through wholesale and retail network	1% from received revenue

2.6 Local taxes and duties

Local taxes and charges are mandatory payments, which, according to Ukrainian legislation, are implemented by the local authorities and are fully remitted into the local budgets.

Separate details of charging and paying the local taxes and duties are the responsibility of local authorities. They:

- define rates (within boundary rates);
- determine the period for reporting and payment dates;
- introduce rates or exempt certain categories from tax payment.

2.6.1 Advertising Tax

It is paid from all types of ads and messages that convey information with commercial purpose. Namely, through mass media, press, television, bills, posters, billboards, and other technical facilities, equipment and clothing; in the streets, highways, squares, houses, vehicles and in other places. This tax is calculated on the basis of cost of services for setting and placing the ads without VAT.

Boundary rates:

- 0,1% of cost of services for placing the disposable (one-time) ads;
- 0,5% for placing ad for a long period of time.

Taxpayers of advertisement tax are legal entities and citizens being advertisers. In fact, this tax is levied by advertising agencies on settlements with advertisers (performing payments for services for setting and positioning the ads). When drawing up of settlement documents the amount of advertisement tax is specified in a separate line.

Not all types of messages meet the definition of advertising: information on producer of goods and/or on goods in places where the goods are being sold or provided to the consumer, are not considered to be advertising. In this case, it is about information related to the goods and/or their manufacturer, which is necessary for a consumer to make a conscious choice of goods and protect his/her

own consumer's rights. Also, tax is not levied in case of placing the sign-plates with the entity's name on building sides..

2.6.2 Utility taxes

It is imposed on legal entities (except for budget establishments), organizations, subsidized and agricultural enterprises.

Its limit size should not exceed 10% of annual payroll fund calculated based on seize of citizens' personal exemption, i.e. UAH 1,7 per employee.

2.6.3 Other local fees

What is subject to utility tax	Payers	Boundary rate	Approved form of reporting
Market duty			
Places for trading at markets and in pavilions	Legal entities of all forms of ownership, their affiliates and individuals selling agricultural and industrial products and other goods	For legal entities – 3 minimum salaries* For citizens – 20% of minimum salary	Tax calculation of market duty
Duty for issuing permission for placement of objects of trade			
Trading in designated areas	Legal entities and citizens selling goods – owners of trading objects	For regular trade – UAH 340 For single sale – UAH 17	Not submitted
Fee for the use of municipal symbols and emblems			
Use of municipal symbols and emblems	Legal entities and individuals using municipal symbols and emblems with commercial purpose	For legal entities – 0,1% of cost of products manufactures (works, services) using municipal symbols and emblems For individuals – UAH 85	Tax calculation of Fee for the use of municipal symbols and emblems

What is subject to utility tax	Payers	Boundary rate	Approved form of reporting
Parking fees for automobiles			
Automobile parking	Persons parking their automobiles in designated areas	In designated areas – UAH 0,51 per hour Not designated areas – UAH 0,17 per hour	Tax calculation of parking fee for vehicles.
Fee for the issuance of occupancy rights to an apartment			
Moving into apartment	Persons paying for services related to the issue of the document giving right to move into apartment	UAH 5,10	Not submitted
Levy from dog-owners			
Dogs	Dog-owners (except for utility dogs)	UAH 1,70 per year	Tax calculation of levy from dog-owners.
Resorts fees			
Fact of staying in a place of public resort	Citizens staying in a place of a public resort	UAH 1,70	Tax calculation of resorts fees
Fee for participation in trotting matches at race courses			
A horse participating in trotting matches	Legal entities and citizens putting their horses for races of commercial nature	UAH 51 per horse	Tax calculation of fee for participation in trotting matches at race courses.
Fee for winning in trotting matches at race courses			
Winnings at races	Persons who gamble at race courses	6% of the amount of winnings	Tax calculation of fee for winning in trotting matches at race courses.

What is subject to utility tax	Payers	Boundary rate	Approved form of reporting
Fee for gambling at race courses			
Gambling at race courses	Persons who gambled at race courses	5% of amount of net winnings	Tax calculation of fee for participation in trotting matches at race courses.
Fee for the right to conduct local auctions and lotteries			
Value of goods declared for competitive sale or of the amount of lottery	Legal entities having right to conduct auctions, competitive sales and lotteries	0,1% of cost of value of goods declared for competitive sale or of the amount of lottery (UAH 51 per participant)	Not submitted
Fee for rights to conduct filming			
Filming conducting	Commercial movie and TV organizations conducting filming which require from local authorities carrying out some additional activities	Actual expenses for carrying out the above-mentioned activities	Not submitted

*since 01.04.09 minimum salary amounts to UAH 625

SECTION 3. PECULIARITIES OF CERTAIN TAX TYPES**3.1 Simplified System of Taxation (Unified Tax)**

Unified tax is a simplified system of taxation designed for small businesses. It stipulates the replacement of a number of taxes by a unified

Transition conditions

Entity	Transition conditions	
	Sales revenue per year	Average number of employees per year
Legal entity	UAH 1 million	50 persons
Individual	UAH 500 thousand	10 persons

If these conditions are met, and the entity wishes to switch to a simplified taxation system, it should make an appropriate application 15 days before the next accounting taxation period (quarter).

Taxes (charges) replaced by unified tax

The following are replaced by the unified tax:

- Value Added Tax (except of legal persons who have chosen unified tax rate of 6%);
- CIT;
- Personal Income Tax (for individuals– small businesses);
- Land Tax;
- Charge for Special Use of Natural Resources;
- Utility Tax;
- Charge for State Pension Fund;
- Charge for issuing permission for placement of objects of trade;
- Patent Payment.

Restrictions by type of activity

Those who switched for unified tax payment don't have the right to be engaged in:

- 1) gambling business;
- 2) manufacturing of excisable goods, export/import and gross sales of excisable goods;
- 3) wholesale and retail trade with fuels and lubricants;
- 4) transactions on circulation of precious metals and stones which are subject to licensing;
- 5) joint activity;
- 6) insurance and financial activity.

Tax rates

Entity	Tax rates
Legal entity	6% (under condition of VAT payment) or 10% (without VAT payment) of revenue from sales (works, services)
Individual	From UAH 20 to UAH 200 (size is determined by the local authority and depends upon a type of activity)

3.2 Fixed agricultural tax

This tax is actually a simplified taxation system for agricultural enterprises. By switching to FAT payments and paying a fixed tax amount these enterprises are exempt from charge and payment of a number of other taxes – CIT, land tax, utility tax, payment for acquisition of a trade patent for carrying out trading activity, charge for special use of water resources and fee for geological prospecting works funded from the state budget.

FAT transition conditions

First of all, an entity should have an agricultural status. It might be proved by Inquiry from management/administration of statistics, in which agricultural industry is stated as main type of activity. In addition:

- 1.** Amount received from sales of own agricultural production and its derived products for previous reporting (tax) year exceeds 75% from total amount of gross income.
- 2.** Availability of agricultural lands at enterprise (own or on a leasehold basis)

Actions to transfer to FAT

In order to become a payer of this tax, an agricultural entity should calculate a tax amount (see rates below) and prior to 1 February of current year submit the following:

- 1)** overall calculation of FAT for the current year on the whole land area on which tax is paid to tax inspection according to its location;
- 2)** reporting FAT calculation for each individual land plot to tax inspection according to the location of the plot;
- 3)** calculation of share of income from sales of own agricultural production and its derived products in total amount of taxable income;
- 4)** extract from State Land Cadastre about the composition of agricultural lands and their monetary value into tax inspection according to its location and location of lands.

Within 10 days the tax inspection should issue a certificate on assignment or confirmation of FAT payer status.

FAT Rates

They depend on type of lands and amount of their monetary value (see the Table below).

Type of territory	Type of land	Rate in percentage from amount of monetary value
General rates	Arable lands, hayfields and pastures	0,15
	Perennial plantations	0,09
	Water fund lands	0,45
Mountain areas and brushwood territories	Arable lands, hayfields and pastures	0,09
	Perennial plantations	0,03

SECTION 4. PAYROLL TAX

Salary is a remuneration (as a rule, in money form), which shall be paid by the owner or its authorized body to the employee for the work done.

Salary accruing and paying is followed by certain taxes payment. Generally they can be divided into two groups (see the Table):

- referred to employer's expenses;
- deducted from employee's wages.

However, insurance and social contributions are accrued on and paid from the amounts of income within the limit of taxable amount. Since 1 January 2009 it has been amounting to UAH 10 035.

Social benefits

They are established by Law of Ukraine «On Personal Income Tax» for certain groups of vulnerable citizens who are working under an employment contract with a business entity. This benefit stipulates the reduction of tax amount on personal income deducted from salary. Categories of persons who are granted tax social benefits and their amount are determined by Art. 6 of the above Law.

Here are some categories of such persons and amount of tax social benefits for them:

- Any employee – 50% of minimum salary amount as of 1 January of current year (in 2009 – UAH 302,50)
- Single mother (father) – 150% of benefit amount specified in Cl. 1
- Widow (widower) – 150% of benefit amount specified in Cl. 1
- Disabled person of 1 or 2 group (including those disabled from childhood) – 150% of benefit amount specified in Cl. 1
- Person who has three or more children under 18 years old – 150% of benefit amount specified in p. 1 per every child.

Taxes and deductions from salaries of employees (common rates)

Payer	Type of tax (charge)	Tax (charge) rate	Tax unit
Employer	Payment to Pension Fund	4%	Actual expenses for salaries of disabled persons
		33,2%	Actual expenses for salaries of other employees
	Payment to Social Insurance Fund for Temporary Disability	1,4%	Amount of expenses for compensation of employees
	Payment to social security fund in case of unemployment	1,6%	Amount of expenses for salaries of employees, including civil law contract payments concluded with employees.
	Payment to Mandatory State Social Unemployment Insurance	2,2%	Civil law contract payments concluded with persons having no working arrangements
	Fund of Social Insurance against Production Accidents and Professional Diseases	Tariff based on the risk of industry	Actual expenses for salaries
Employee	Payment to Pension Fund	2%	Total taxable income
	Payment to Social Insurance Fund for Temporary Disability	0,5%	Amount of remuneration of employees whose salary is under the subsistence level for able bodied person
		1%	Amount of remuneration of employees whose salary is over the subsistence level for able bodied person
	Payment to social security fund in case of unemployment	0,6%	Amount of remuneration of employees
	Personal income tax	15%	Taxable income

* in 2009 – UAH 669

SECTION 5. TAXATION OF PROFITS OF PRIVATE ENTREPRENEURS

Ukrainian legislation allows doing business without establishing a legal entity. It is enough for a citizen to be registered as a business entity – individual. In this status he/she is able to choose one of the following systems of taxation:

- unified tax
- fixed tax
- payment of personal income tax on a common basis

Comparison of these systems of taxation is presented in the Table below

System of taxation	Tax rate	Profits subject to taxation	Requirements to be followed to use this taxation system	Restrictions by type of activity
Unified Tax	UAH 20-200 per month. In case of using hired labour – additional 50% from the rate for each employee	Absent due to fixed rate	1) Amount of revenue per year is not more than UAH 500 thousand 2) average number of employees is not more than 10 persons	See page 28
Fixed Tax	UAH 20-100 per month. In case of using hired labour – additional 50% from the rate for each employee	Absent due to fixed rate	1) Amount of revenue per year is not more than UAH 119 thousand 2) average number of employees is not more than 5 persons 3) entrepreneur conducts trade in the market and pays market charge	Trade with alcoholic beverage and tobacco products
Personal Income Tax	15%	Taxable income is difference between income received and expenses incurred	Absent	Absent

SECTION 6. PROCEDURE OF REGISTRATION OF LABOR RELATIONS. PECULIARITIES OF EMPLOYMENT OF FOREIGNERS

6.1 REGISTRATION OF LABOUR RELATIONS

When a necessary employee is selected into the staff and has successfully passed through interview it is necessary to register labor relations in a proper way. This requires:

1. Employment application

The following documents must be attached to application: copies of passport pages, of identification code, of documents about education obtained, of social insurance certificate; Work record card (it is not necessary when applying for a work in a part– time position).

2. Order concerning acceptance for employment (form П-1)

It is drawn up after the approval of employment application by authorized personnel.

3. Employment agreement. It is an agreement between an employee and employer, according to which:

- employee undertakes to perform work specified in it;
- employer undertakes to pay salaries and provide with working conditions (in compliance with labor legislation), necessary to perform work.

Employment agreement is subject to registration in employment center if it is concluded between an employee and business entity – individual.

A contract is a special form of Employment agreement. Term of the contract, rights, obligations and responsibilities (including financial), terms of financial security and work organization, terms

of termination of agreement may be established by agreement of the parties.

4. Work book and personal card

Work book is maintained for all employees (for secondary job employees it is maintained only at primary employment). Moreover a record is made no later than a week since the first day of employment.

5. Financial responsibility contracts

They are concluded only when employing for those positions which require this. For example, for position of cashier, warehouse worker, etc.

6.2 PECULIARITIES OF NON-RESIDENT EMPLOYMENT

Ukrainian legislation stipulates equal rights and obligations in employment relations with Ukrainian citizens for foreign persons.

Permission for employment

When a non-resident is employed for a definite term, it is necessary to obtain corresponding permission to work (exception is employment of non-residents by investors under Production distribution agreement). This permission is issued by the State employment center (its regional centers). To obtain it an employer should submit the following documents:

- application (prepared in any form);
- statement of need for use of non-resident's work and possibility of establishing the necessary conditions for residence and work;
- copy of the contract (or its draft) to perform certain amount of work (services) by a non-resident;
- copy of certificate on state registration of market participant, certified in accordance with established procedure;
- list of foreigners specifying their full name, last name, year of birth, passport number, profession, sex;
- document confirming the right of the employer's representative to represent its interests at employment center;
- certificate from tax service body confirming the employer's payment of taxes and charges stipulated by legislation;
- inquiry certified by employer's seal and signature confirming that workplaces, occupied by foreign citizens, under Ukrainian legislation do not depend on citizenship;
- receipt confirming payment for examination of application.

A decision on issuing a work permission or a denial of it has to be taken within 30 days since the day of obtaining of stated above documents.

Employment agreement and work book of a non-resident

They are drawn up in accordance with general practices established for residents.

If profits with a source of origin in Ukraine are paid to a non-resident by a non-resident, such profits shall be entered in an account of a resident bank. The latter will be a tax agent during implementation of any debit operations from such account.

If an employer of a non-resident is a resident of Ukraine, in such case when concluding a labor agreement, the rate should be clearly specified at which profits paid to a non-resident will be liable to personal income tax.

SECTION 7. ACCRUALS AND PAYMENTS OF DIVIDENDS

Order of dividends accruals and payments are regulated by, from one side:

- Civil legislation;
- Tax legislation.

7.1 Legal aspects

Dividends form a part of income. Income calculated according to accounting data is taken as a basis.

Order of dividends accruals and payment depends on a form of business doing.

In entities, a decision regarding dividends payment is taken by general meeting of participants.

Joint-Stock Companies are not liable to declare and pay dividends:

- until complete replenishment of entire share capital;
- on decrease of net value of assets up to the amount less than equity and reserve seize;
- in other cases established by Law.

7.2 Tax aspects

In this regard, dividends are defined as payment carried out by a legal entity-issuer in favor of an owner of corporate rights in connection with distribution of part of profits.

When paying dividends, the issuer has to accrue 25% of advance payment on income tax from their amount. It is imposed on any issuer of corporate rights being a resident, irrespectively of his/her or a receipt's being an income taxpayer. Those persons who are applying alternative systems of taxation, including Fixed Agricultural Tax, also transfer such payment.

This advance payment:

- decreases payments to the budget on income tax in case if according to the results of the period in which advance payment was made, the entity declares income tax (to be paid to the budget);
- increases losses, in case if according to the results of the period in which advance payment was made, the entity declares losses.

In addition, additional obligations are imposed on entity-issuer in case if it pays dividends to:

- **Individual– resident (non-resident).**

In this regard, on accruing (paying) a part of profits, it is a tax payee by payment of personal income tax. The issuer is obliged to subtract and transfer to the budget 15% of the tax against the amount.

- **legal entity –non-resident.**

In this regard, it will have to deduct against payment and transfer 15% of withholding tax to the budget.

Exception is the case if Treaty for avoidance of double taxation is concluded with the non-resident's country. The list of such Treaties attached as an Appendix.

SECTION 8. EXERCISE OF CONTROL OVER DOING BUSINESS IN UKRAINE BY STATE AUTHORITIES

The list of authorities (which is not exhaustive) exercising control (please note that the Table shows main, but not exhaustive, list of controlling authorities and depending on the type, the activity may fall under control of other institutions as stipulated by law).

Controlling authority	Object of control
State Tax Service of Ukraine	Control over compliance with tax laws, monitoring the completeness of calculation and payment of taxes and fees (charges, duties), timeliness of submission of accounting reports, balance sheets and tax returns by tax payers, exercising control over maintenance of procedure for performing cash settlements, control over availability of certificates of state registration of entities and licenses for carrying out different types of business activities
Fund of Social Insurance against Production Accidents and Professional Diseases	Reliability of accruals, timely insurance payments
Mandatory State Social Unemployment Insurance	Reliability of accruals, timely insurance payments
Pension Fund of Ukraine	Accruals, calculation and insurance payments
Social Insurance Fund for Temporary Disability	Reliability of accruals, timely insurance payments
State Inspection on Price Control	Establishment and application of state fixed and regulated prices and tariffs
The State Customs Service of Ukraine	Control over movement of goods at the customs territory of Ukraine, monitoring agency business of customs broker and customs carrier
State Sanitation-And-Epidemiological Service	State sanitation-and-epidemiological control, production of food, control over following the sanitary standards of trading and consumer services of citizens, sanitary and epidemiological control at border checkpoints of Ukraine

SECTION 8. EXERCISE OF CONTROL OVER DOING BUSINESS
IN UKRAINE BY STATE AUTHORITIES

Controlling authority	Object of control
Fire Safety State Department	Evaluation of fire-protection state of objects, testing for fire-safety of substances, materials and building constructions
State Service for Tourism and Resorts	Travel agents and tour operators activities
The State Department for Monitoring Enforcement of Labor Legislation	Labor Law compliance, control over recruitment abroad
Forest Management State Committee	Control over forest and hunting management
State Ecological Inspection	Control over use of and protection of land, sub-surface resources, surface and subterranean waters, free air and other flora and fauna, monitoring observance norms of ecological safety
State Committee of Ukraine on Water Management	Control over use and protection of water resources
State Committee on Land Resources	Control over use and protection of land
Ukrainian Plant Quarantine State Service	Control over quarantine regime
State Committee Of Veterinary Medicine of Ukraine	Production, storage, transfer of fish, other water resources and food goods made out of them, which are exported; production and turnover of products of animal origin
The State Committee for Technical. Regulation and Consumer Policy	Consumers' rights protection; observance of law of Ukraine on advertizing
State Architectural Construction Inspection	Design, construction works, production of construction materials, items and structures

SECTION 9. ACCOUNTING INFORMATION

9.1 Financial statements of entities in Ukraine

Financial statements of entities (except for small businesses and representations of foreign entities) include:

- balance sheet (form №1);
- income statement (form №2);
- cash flow statement (form №3);
- statement of changes in equity (form №4);
- notes to financial statements (form №5);
- enclosures to the notes to financial statements (form №6);
- notes stipulated by standards but not included into the forms mentioned above

For small businesses and representations of non-residents, condensed financial statements are stipulated which include: balance sheet (form №1-М) and income statement (form №2-М).

9.2 Publication of financial statements and «statutory audit»

Annual financial statements are to be published no later than 1 June following the reporting year by way of publication in periodicals or distribution in the form of separate periodicals. This requirement must be followed by:

- Open joint-stock companies;
- entities – obligors;
- banks;
- trust institutions;
- currency and stock exchanges;
- investment funds and companies;
- credit unions;
- non-state pension funds;
- insurance companies;
- other financial institutions.

Entities for which the requirement of financial statements publishing is mandatory (as listed above), should support these financial statements by appropriate independent auditors' report.

SECTION 10. TAX CALENDAR. DUE DATES FOR TAX REPORTING SUBMISSION AND TAXES PAYMENT

The reporting period for each single tax is established by an appropriate normative act and described below:

Type of tax	Reporting period	Deadline of submission	Deadline of payment
Tax reporting with a monthly reporting period			
VAT (unless the entity did not choose a quarterly period)	month	During 20 calendar days following the reporting month	During 10 calendar days following deadline of tax return submission
Duty for the Development of Vine-Growing and Hop-Growing	month	During 20 calendar days following the reporting month	During 10 calendar days following deadline of tax return submission
Excise duty	month	During 20 calendar days following the reporting month	Depending on type of excisable goods
Tax reporting with quarterly reporting period			
VAT (if the entity chose a quarterly period)	quarter	During 40 calendar days following the reporting quarter	During 10 calendar days following deadline of tax return submission
Income tax	quarter, 1 half year, 9 and 11 months, year	During 40 calendar days following the reporting quarter	During 10 calendar days following deadline of tax return submission
Unified tax for legal entities	quarter	During 20 calendar days following the reporting quarter	No later than 20th day of every month
Calculation of Charge for environment pollution	quarter	During 40 calendar days following the reporting quarter	During 10 calendar days following deadline of tax return submission

SECTION 10. TAX CALENDAR. DUE DATES FOR TAX REPORTING SUBMISSION AND TAXES PAYMENT

Type of tax	Reporting period	Deadline of submission	Deadline of payment
Tax reporting with a yearly reporting period			
Calculation of Land Tax payment	Year	Till 1 February of the reporting year	By equal parts every month during 30 calendar days following the basis month
Calculation of Vehicle Owners Tax payment	Year	Till 30 March of the reporting year	By equal parts every quarter till 15th day of month following the reporting quarter
Calculation of Fixed Agricultural Tax	Year	Till 1 February of the reporting year	Every month during 30 calendar days following the basic month
Payroll Taxes			
Personal Income Tax	quarter	During 40 calendar days following the reporting month	Concurrently with salary payment, on delay in payment – till 30th day following current month
Payments to compulsory state pension insurance	month	Till 20th day following current month	Concurrently with salary payment, on delay in payment – till 20th day following current month
Payments to Social Insurance Fund due to temporary disability	quarter	Till 20 April, 20 July, 20 October and 25 January	Concurrently with salary payment, on delay in payment – till 30th day following current month
Payments to Social Insurance Fund in case of unemployment, insurance payments in case of job-related accidents	quarter	Till 20 April, 20 July, 20 October and 25 January	Concurrently with salary payment, on delay in payment – till 30th day following current month

APPENDIX

APPENDIX

List of countries with which treaties to avoid double taxation were concluded as at 01.01.09.

Country	Effective date of treaty	Country	Effective date of treaty
Austria	20.05.1999	Lithuania	25.12.1997
Azerbaijan	03.07.2000	Macedonia	23.11.1998
Algeria	01.07.2004	Moldova	27.05.1996
Armenia	19.11.1996	Netherlands	02.11.1996
Belgium	25.02.1999	Norway	18.09.1996
Belarus	30.01.1995	United Arab Emirates	09.03.2004
Bulgaria	03.10.1997	Poland	11.03.1994
Brazil	26.04.2006	Portugal	11.03.2002
U.K.	11.08.1993	Russia	03.08.1999
Hungary	24.06.1996	Romania	17.11.1997
Vietnam	19.11.1996	Serbia	29.11.2001
Greece	26.09.2003	Syria	04.05.2004
Georgia	01.04.1999	Slovak Republic	22.11.1996
Denmark	21.08.1996	Slovenia	25.04.2007
Egypt	27.02.2002	USA	05.06.2000
Israel	20.04.2006	Tajikistan	01.06.2003
India	31.10.2001	Thailand	24.11.2004
Indonesia	09.11.1998	Turkey	29.04.1998
Iran	21.07.2001	Turkmenistan	21.10.1999
Iceland	09.10.2008	Uzbekistan	25.07.1995
Italy	25.02.2003	Finland	14.02.1998
Jordan	23.10.2008	France	01.11.1999
Kazakhstan	14.04.1997	Federal Republic of Germany	04.10.1996
Canada	22.08.1996	Croatia	01.06.1999
Kyrgyzstan	01.05.1999	Czech Republic	20.04.1999
China	18.10.1996	Montenegro	29.11.2001
Korea	19.03.2002	Switzerland	26.02.2002
Kuwait	22.02.2004	Sweden	04.06.1996
Latvia	21.11.1996	Estonia	24.12.1996
Lebanon	06.09.2003	Republic of South Africa	23.12.2004

In addition, Ukraine applies USSR Treaties to avoid double taxation which are in force till entry into force of new agreements. USSR Treaties are effective in relations of Ukraine with such countries: Spain, Cyprus, Malaysia, Mongolia, Japan (Article 7 of Law of Ukraine «On Succession of Ukraine»).

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