

Financial Services Executive
Breakfast/Seminar
20 February 2008

Session I

Ukrainian tax and regulatory update

Global tax developments

Tax treaties – 'alternatives to Cyprus'

Session II

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Stabilisation – the first step to Creating Deal Value is Day One

Developments in securitisation – tax perspectives

Tax structuring for fund raising transactions

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Recent changes in tax legislation and their impact on FS industry *

20 February 2008

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Key tax amendments

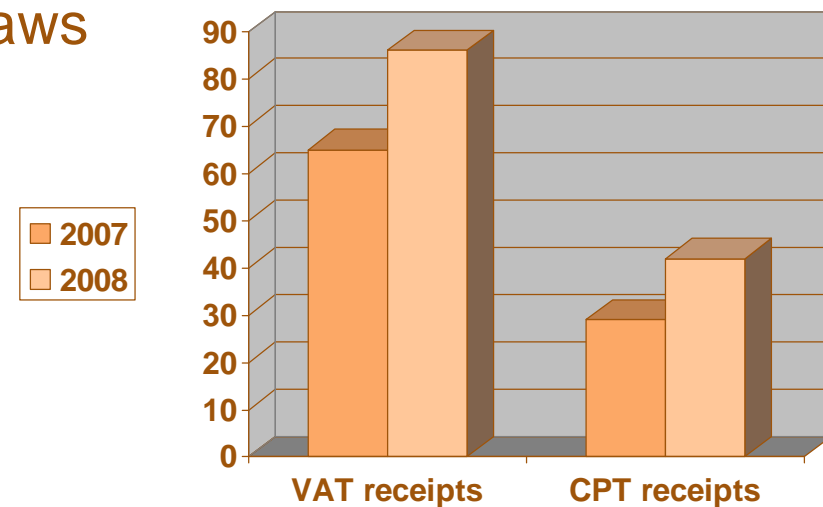
Other changes and developments

2008 Budget Law: key features (1/2)

- Prepared by the new Cabinet of Ministers under time pressure and substantially increased social commitments
- Based on optimistic macroeconomic projections (GDP growth – 6.8%, inflation – 9.6%)
- Budget deficit is UAH 18.8bln (i.e. 2.12% of GDP)
- Privatisation and state borrowings are the main sources for covering the budget deficit
- Introduces changes to more than 100 legislative acts
- To be revised in March 2008 = LOBBY!!!

2008 Budget Law: key features (2/2)

- Projects a 49% increase in corporate tax receipts and 32% increase in VAT receipts - sources for the increase are unclear
- Higher pressure on taxpayers from the tax authorities may be expected
- Projects a 31% increase in VAT cash refunds
- Introduced changes to certain tax laws



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2008 Budget Law: Tax loss carry forward

- No tax losses carry forward restriction
- Theoretically, tax losses incurred in 2003 - 2006 will be available for utilisation in 2008
- Construction projects are no longer at risk
- Abolishment of tax loss carry forward restriction contradicts governmental projections on increased tax receipts
- May be re-introduced in March 2008

2008 Budget Law: VAT refund (1/2)

- Input VAT arising on construction or acquisition of fixed assets may be claimed as refund even if the amount of refund claimed exceeds VAT-able sales for the last 12 calendar months
- VAT incurred on the purchase/construction of fixed assets is available for refund for companies registered as VAT-payers for less than 12 months only under consent of the Cabinet of Ministers of Ukraine (procedure -?)
- VAT refund is now available in the amount of input VAT actually paid to suppliers in previous reporting months (not month !)
- Entities registered for VAT less than 12 months can delay payment of VAT on import of fixed assets through the issue of promissory notes (under consent of the Cabinet of Ministers)

2008 Budget Law: VAT refund (2/2)

- At the recent AmCham meeting, the head of VAT department at the STAU confirmed the plans to introduce fast track refund procedure for “good” taxpayers (and exporters!)

2008 Budget Law: Land tax - freehold land (1/2)

- If land has been acquired under a civil law agreement and the contractual value exceeds the normative monetary value of land, land tax is to be calculated based on the contract value
- Land tax rates for land plots without normative monetary value increased fivefold

2008 Budget Law: Land tax - freehold land (2/2)

- If the land plot is valued, the land tax would be calculated as 1% (up to 7.5% - in special cases) of the normative monetary value of the land or contract value, whichever is higher.
- If the land plot is not valued, the land tax would be calculated as:
 - UAH 0.075 – UAH 1.05 per sq. m. (rates depend on the population size of particular village, town or city); multiplied by
 - a coefficient of 1.2 – 3, if a land plot is located in Kyiv, Simferopol, Sevastopol, certain other major cities and resort areas; multiplied by
 - an indexation coefficient established by annual budget laws (3.1 for the year 2008).
- **EXAMPLE:** Average land tax in Kyiv would increase from UAH 4* to UAH 28 per 1 sq. m.

* Calculated based on average normative value of land of UAH 385.8 per 1 sq. m after the increase by the decision of the Kyiv City Council of 26 July 2007

2008 Budget Law: Land lease payments

- Lease payments for state-owned agricultural land cannot be lower than equivalent of the land tax
- For state-owned non-agricultural land, lease payments cannot be lower than triple amount of land tax
- Maximum lease payment for state-owned land increased from 10% to 12% of monetary valuation. Lease payments may be even higher if lessee is determined in a tender
- Payers of land tax may be required by the tax authorities to amend lease agreements in accordance with the above changes in the law

2008 Budget Law: Other changes

- The Pension Fund charge on purchase of foreign currency reduced from 1% to 0.5%
- No major changes in rates of social security contributions
- From 1 January 2008, the cap for social security contributions increased to UAH 9,495 per employee per month and will increase gradually to UAH 10,035 by the end of the year (i.e. approx. USD 2,000 per month)
- The threshold for criminal responsibility for tax evasion increased from UAH 200 K to UAH 257.5 K

Other developments

- The Cabinet of Ministers obliged the tax authorities to carry out control over the tax privileges granted to individuals and legal entities exclusively based on the requirements of tax legislation (Resolution of the Cabinet of Ministers # 88 of 23 January 2008)

Recent changes in land and construction regulations and their impact on FS industry *

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Recent changes in the land laws

Recent changes in land laws

- Prolongation of moratorium on sale / re-zoning of certain types of agricultural land
- Re-distribution of competence to dispose the state land between the authorities
- Lease of unbuilt state land shall be done via auction
- Amendments to the calculation of land tax and lease payments

Recent changes in land laws - Moratorium

- Moratorium is prolonged for an indefinite period until two laws “On Land Market” and “On State Land Cadastre” are adopted
- Moratorium covers the same types of agricultural land and land certificates as before
- Contribution of land certificates to share capital of a company was also conditioned with adoption of the above laws

Recent changes in land laws – Disposal of state land

- State Property Fund disposes all the land under the objects assigned for state privatisation
- State Agency of Land Resources sales all agricultural land
- Sale of unbuilt state land via tender was suspended for 2008 (only via auction)

Recent changes in land laws – Lease of state land via the auction

- Lease of unbuilt state land may be done only via auction (exception – state institutions and public cultural organisations)
- Auction procedure must be defined by the law; currently there is no such procedure, and no basis for the lease
- The companies that applied for land lease according to the old procedure but have not concluded the lease agreement

Recent changes in currency regulations and their impact on FS industry *

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Repatriation of foreign investments
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Repatriation of foreign investments (1/3)

- Acquisition of foreign currency for return of foreign investments or incomes/profits realised by non-residents from investment activities in Ukraine is subject to the NBU currency regulations
- To acquire foreign currency a foreign investor needs to submit to servicing bank a set of documents
- The list of documents, among others, includes a statement from a Ukrainian bank on actual remittance by a foreign investor of foreign currency into Ukraine (“statement”)

Repatriation of foreign investments (2/3)

- If the settlement for the investment objects located in Ukraine is effected between two non-residents, the evidence may not be available
- Previously, the statement was not required based on the NBU clarifications
- On 4 December 2007, the NBU cancelled its previous liberal clarification
- As a result, investors may face problems with receiving dividends and/or proceeds from sale of their investments if the seller initially did not transfer foreign currency into Ukraine

Repatriation of foreign investments (3/3)

- The NBU, when being approached by the bankers, mentioned that whenever one would not be able to provide all required documentation, the NBU should be approached and would decide on each specific case
- It is highly recommended to obtain prior clearance from the servicing bank on sufficiency of the documents available at the target company at early stages of the deal negotiations/structuring

New NBU regulations on foreign loans (1/2)

- From 1 January 2008, the new NBU regulations on the procedure for obtaining loans from non-residents came into effect
- Foreign loans are subject to mandatory registration with the NBU, except for short-term loans obtained by banks
- The registration procedure will also apply to returnable financial assistance provided by non-residents

New NBU regulations on foreign loans (2/2)

- Payments under foreign loan agreements (interest, fines, commissions etc.) cannot exceed maximum allowable interest rates set by the NBU
- The maximum interest on loans in hard currency (USD, EURO) remain unchanged:
 - For fixed rate loans – up to 11%
 - For loans with floating interest rates - 3 month USD LIBOR plus 7.5%
- The NBU is obliged to inform about changes in the maximum rates one month before the change takes effect
- Given the current situation at the global financial markets, the maximum rates set by the NBU are unlikely to decrease in the short-term period, but USD LIBOR has reduced significantly

Other changes

- The export/import settlement period is extended from 90 to 180 days. New rules also apply to export/import transactions started prior to 1 January 2008 and not settled as at that date
- Financial and operating lease is no longer subject to currency controls (Letter of the NBU No. 28-311/4677-13526 of 24 December 2007)

Thank you

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