

Tax & Legal Alert

Ukraine • Issue 04/2007 • 25 May 2007

New Doing Business guide published

PricewaterhouseCoopers Ukraine has just completed its revised *Doing business and investing in Ukraine*. An electronic copy may be downloaded from our website (www.pwc.com/ua.)

For more information on the issues covered by this Alert, please contact your client relationship manager or one of the individuals identified below.



Financial statements due to State Registrar by 1 June

Contacts:

Ron Barden
Partner
E-mail: ron.j.barden@ua.pwc.com

Vladimir Didenko
Director
E-mail: vladimir.didenko@ua.pwc.com

PricewaterhouseCoopers
38 Turgenevskaya Street, Kyiv
Tel: + 380 44 490 6777

www.pwc.com/ua

Following an amendment to the law last year, all companies must submit their 2006 financial reports to the State Registrar before 1 June 2007. The penalty for failing to file by the due date is a fine of between USD 30 and USD 50, imposed on the chief bookkeeper of the company.

The documents to be submitted are the same as those submitted to the Statistics Office earlier in the year (i.e., profit and

loss statement and balance sheet). Companies must forward copies of the documents bearing the acceptance stamp of the Statistics Office, to the local State Registrar Office. The State Registrar recommends that this be done using courier mail.

(State Committee on Regulatory Policy and Entrepreneurship Letter No. 1897, dated 16 March 2007)

Net assets rule: a potential pitfall for companies

The new Civil Code in 2004 introduced a net assets rule for joint stock companies and limited liability companies:

- If the value of the net assets at the end of the second and subsequent financial years is less than the share capital of the company, the company must decrease its share capital and make relevant amendments to its Charter.
- If the value of net assets falls below the statutory minimum capital, the law requires the company to be liquidated.

The procedure for liquidation is unclear, and it is not clear what agency is responsible for enforcing this rule. The law appears to allow the State Registrar and Tax Authorities to ask the court to liquidate a company if the "net assets rule" is violated. To date though, the law has not been tested.

Now that financial statements must be filed (see above), the State Registrar will have greater access to information than before. The open question is whether the Registrar will start to look more closely at net assets.

This Tax & Legal Alert is produced by PricewaterhouseCoopers' tax and legal services department.

Tax & Legal Alert

Ukraine • Issue 04/2007 • 25 May 2007

Legal Disclaimer: The material contained in this alert is provided for general information purposes only and does not contain a comprehensive analysis of each item described. Before taking (or not taking) any action, readers should seek professional advice specific to their situation. No liability is accepted for acts or omissions taken in reliance upon the contents of this alert.

© 2007 Limited Liability Company PricewaterhouseCoopers. All rights reserved. "PricewaterhouseCoopers" refers to the Ukrainian firm of Limited Liability Company PricewaterhouseCoopers or, as the context requires, the network of member firms of PricewaterhouseCoopers International Limited, each of which is a separate and independent legal entity.

Compulsory liquidation could be a serious matter. For construction projects, for example, approvals are issued in the name of a company and would not be transferable to the successors if the company is liquidated. Because a court order is required though, one would hope that the authorities would limit attention only to the most deserving cases.

Investors do not need to leave the issue to chance. If the income stream will be deferred or losses are expected to be incurred in the initial years of operation,

one option is to ensure that a company's initial capital is sufficient to cover expected costs/losses. Asset revaluations within the bounds permitted by accounting rules may be another option. A third may be to establish a separate financing vehicle to help manage income and expenses.

Proactive management of risks will help to avoid the pitfalls.

(Law No. 3422-IV, dated 9 February 2006, and effective from 1 January 2007)

Authorities clarify input tax credits for imported goods

Normally, input tax is based on the amount of value-added tax (VAT) actually paid on the purchase and importation of goods and services. In November 2006, however, Parliament added a new rule to the law. If the contractual price exceeds the usual price by more than 20%, the input tax credit should be computed based on the usual (market) price. See Tax & Legal Alert 01/2007 for prior coverage.

One question the amendment raised concerns the treatment of input tax on imported goods. The taxable base for imported goods is the higher of the contractual or customs value of the goods, plus the amount of any import duties and

excise duties (if any). Thus, the VAT base is potentially quite different from the contractual price for the imported goods.

Although the law clearly focuses on the comparison between contractual prices and usual prices, the amendment raised concerns that the authorities might compare contractual prices and customs values.

In a positive development, the State Tax Authority confirmed that the VAT input tax credit should be based on the amount of VAT paid on imported goods.

(STA letter No. 7049/7/16-1517-26, dated 6 April 2007)

Ukraine joins European Business Register

On 18 January 2007, the State Committee on Regulatory Policy and Entrepreneurship ("SCRPE") announced that Ukraine has joined the European Business Registry ("EBR"). The EBR is a network of national business registers of most European states.

From the second half of 2007 Ukrainian companies should be able to obtain access to the information from EBR via SCRPE. Similarly, companies from member states will be able to obtain access to the information from the Ukrainian state company register through their national business registers.

Access to EBR enables users to search for information on companies and company

officials. Available reports depend on the country and company concerned. The EBR provides company profiles that contain some of the most important information on a business, such as the company name, registration number, address, country and date of registration, legal form, current status, type of business activities, share capital, and the date of the latest annual accounts.

The SCRPE statement indicated that confirming official registration of a target company online should be free, while more detailed information will cost up to EUR 30. The SCRPE website is www.dkrp.gov.ua.