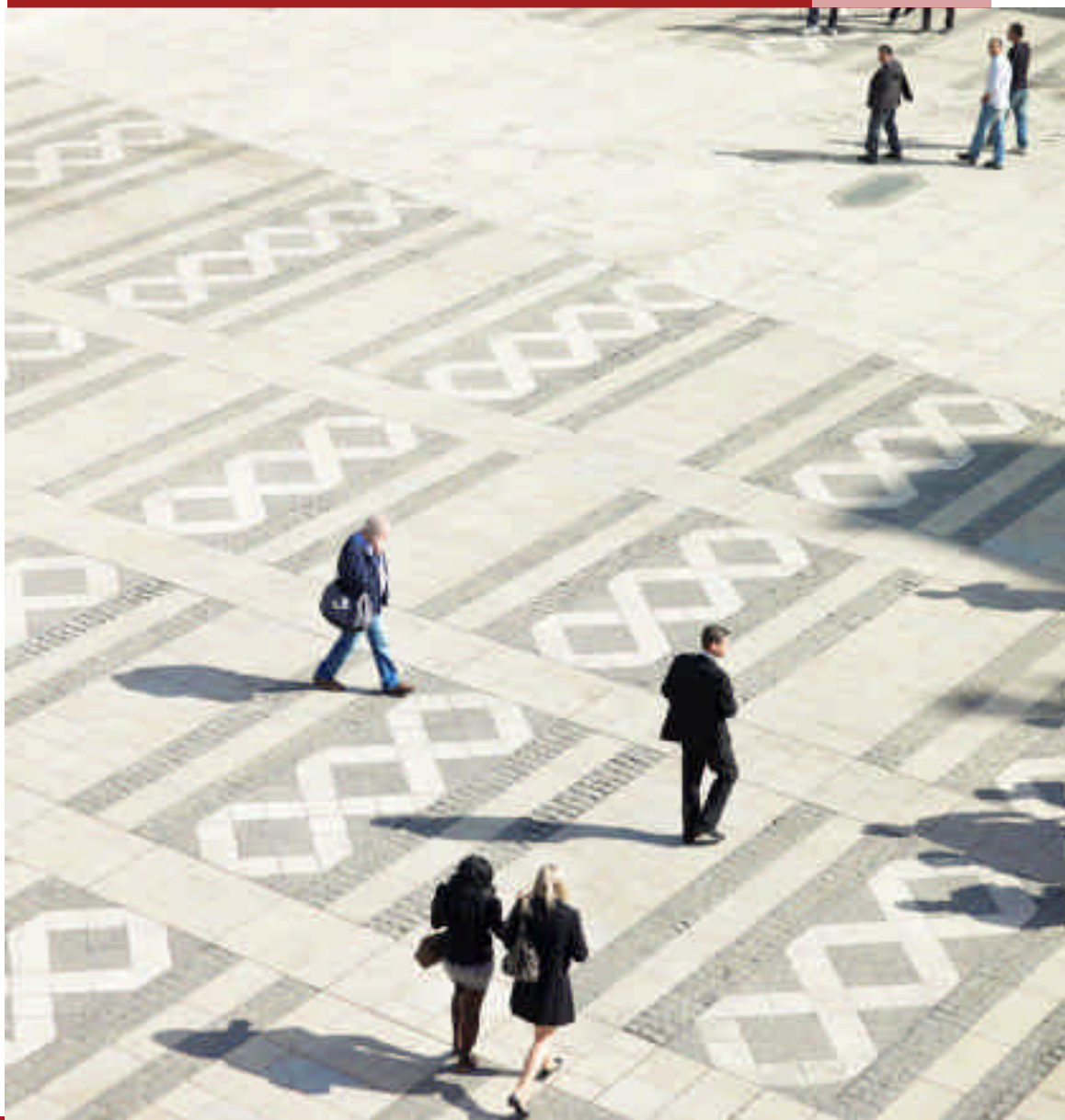


# ***Tax Newsletter#6***

Significant changes to the Tax  
Code related to financial  
institutions

23 January 2015



# Significant changes to the Tax Code related to financial institutions

*A number of significant changes to the Tax Code of Ukraine came into force 1 January 2015. In addition to our previous newsletters covering general tax matters, below we summarise some of the most important amendments related to financial institutions (banks, leasing, factoring companies and other entities registered as financial institutions by relevant laws).*



## I. Corporate profits tax (CPT)

### 1) Thin capitalisation rules for financial institutions

- These rules apply to interest payable by taxpayers, whose debts to non-resident related parties exceed their equity (share capital plus reserves) by 10 times.
- Debt and equity amounts are defined as an average of the amounts at the beginning of the reporting year and the reporting year end.
- For the purposes of thin capitalisation rules, the debt includes any loan, deposit, repo transactions, financial leasing and any other indebtedness, regardless of its legal form.
- The deduction of all interest expense for these taxpayers is limited by the amount of 50% of the taxpayer's EBITDA.
- The non-deductible portion of interest can be carried forward indefinitely, but unutilised amounts are extinguished by 5% per year.

### 2) Trading in securities

- Profits from trading in securities will be taxable at the standard CPT rate. The incurred losses are non-deductible, but may be carried forward to offset future profits from trading in securities without any limitations.
- The same rules apply for both listed and non-listed securities.

### 3) Loan loss provisions (LLPs)

- LLPs are created according to IFRS.
- Deductibility of the LLPs is restricted to the lower of the following limits:
  - 20% of the total value of assets that can be provided for from the year 2017 onwards (the limits for 2015 and 2016 are set at the level of 30% and 25% correspondingly), and

- the credit risk limit set by the NBU (the other authority regulating the banking activities) or the authority regulating activities of financial institutions other than banks.
- Starting 2015 LLPs can be utilised to write-off bad debts only if such debts fall within the definition of "bad debt" in the Tax Code. Otherwise, the amounts of the LLPs used for writing-off the debts should be added back and increase the taxable profits (decrease the loss).
- The definition of "bad debts" has been slightly amended. The changes mainly relate to the amounts due by individuals.
- The Tax Code also prescribes the transitional provisions for the LLPs:
  - The LLPs created by banks as of the end of 2014 according to the IFRS are considered the LLPs for tax purposes as of 1 January 2015, subject to the 30% limitation outlined above.
  - The positive (negative) difference between the LLPs calculated according to the previous edition of the Tax Code as of the end of 2014 and under the new rules as of 1 January 2015 can be carried forward over the next three years in equal parts.

### 4) Transfer pricing (TP)

- The requirement that the NBU together with the State Fiscal Service of Ukraine should issue the methodology of the determination of the market price for banks has been removed.
- Financial transactions (including leasing, participation in investments, loans, commissions for guarantees, etc.) are now regarded as controlled transactions provided they have an impact on the taxable profits of a taxpayer.

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- Please refer to Tax Newsletter #4 dated 15 January 2015 for other changes to the Tax Code related to TP for more details.

## **5) Factoring/ debt assignment**

- Special taxation rules for such transactions have been cancelled. From now on, debt assignment transactions should be accounted for under the Ukrainian GAAP or IFRS.
- Yet, the Tax Code does not envisage the transitional provisions in this respect.

## **II. VAT**

- There is an uncertainty whether banks are allowed to recover input VAT upon acquisition of the pledged assets if a debtor fails to register a VAT invoice in the Unified Register of Tax Invoices in time.

## **III. Personal Income Tax (PIT) & Military Tax**

- Bank interest, as well as most other passive income, is subject to 20% PIT and to 1.5% Military Tax.
- Ukrainian banks should act as tax agents and withhold both taxes.

## **IV. Other taxes**

- The special excise tax on trading in securities has been cancelled.

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