

Tax Newsletter#1

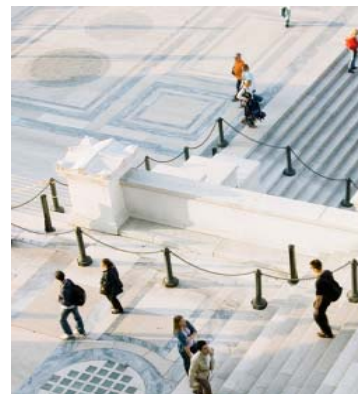
*Changes to the Tax Code –
2018: Corporate profit tax,
transfer pricing rules, land
tax*

16 January 2018



Changes to the Tax Code - 2018

The Law of Ukraine “On changes to the Tax Code of Ukraine and certain legislative acts of Ukraine regarding maintenance of balance of budget revenues in 2018” # 2245-VIII dated 7 December 2017, introduces changes to corporate profit taxes, transfer pricing rules, land and real estate taxes with effect from January 1, 2018. The major changes are summarised below.



I. Corporate profits tax (CPT)

General changes

- The deadline for submitting a year-end CPT return is extended from 40 to 60 calendar days after year end. The tax authorities have clarified that this rule applies to 2017 CPT returns.
- Taxpayers under the simplified tax regime are no longer required to make advance CPT payments on the distribution of dividends. Recipients of such dividends can no longer reduce tax base to the amount of such dividends.
- Taxpayers under the simplified tax regime that distribute passive income to a non-resident or its designated entity (except to the non-resident's permanent establishment in Ukraine) are obliged to withhold withholding tax (WHT) at the moment of such payments.
- The decreased WHT rate on payment of interest under Eurobonds issued before 31 December 2016 may be applied if the interest is paid to residents of low-tax jurisdictions.
- Interest payable under a syndicated loan through the organising bank, can be subject to a reduced WHT rates, under the double tax treaties between Ukraine and country of residence of each participating bank.
- Fees for purchase of copies of software programs for further resale should not be treated as royalties for tax purposes.
- The deductibility of payments to non-resident entities established under certain legal forms is limited to 70% of the amount. These forms are set forth by the respective Order of the Cabinet of Ministers of Ukraine.
- Permanent establishments of non-residents are subject to TP rules (see below).

Taxation of banks and financial institutions

- The limit on the deductibility of loan loss provisions (LLP's) for banks and other financial institutions is abolished. The LLP amounts,

which were not deducted as of 31 December 2017 due to the limitations in the Tax Code effective in the past periods (so called “overlimit”), are fully deductible in 2018-2019 (in equal parts).

- Banks are allowed to recognise in the tax accounting a positive (negative) difference resulted from revaluation of the amount of LLPs, which may occur at the beginning of 2018 due to the transition to IFRS 9, provided that such amount is reflected in the equity accounts of banks.

II. Transfer Pricing

TP rules for permanent establishments

- Transactions performed between a non-resident and its permanent establishment (i.e. commercial representative office) in Ukraine are considered controlled for TP purposes, if their value exceeds **UAH 10 million** (net of indirect taxes) for the corresponding tax (reporting) year.
- The value criteria for recognition of transactions as controlled should be calculated at prices, which are in line with the arm's length principle.

Definition of related parties

- In addition to the existing criteria for the related parties, the following new criteria are introduced:
 - ✓ A legal entity is considered related to another legal entity, if the ultimate beneficial owner (controller) of such legal entities is one and the same individual;
 - ✓ Powers of a single executive body of such legal entities are exercised by the same individual;
 - ✓ An individual is considered related to a legal entity if the individual is the ultimate beneficial owner (controller) of the legal entity;

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- ✓ The chain of legal entities is considered related if shares owned by each entity in the next legal entity in the chain is 20% and more.

If an individual is recognised as being related to other individuals then all such individuals are deemed to be inter-related.

Requests for TP documentation and TP audits

- A request for submission of TP documentation should be sent by the tax office not earlier than 1 October of the year following the calendar year in which such a controlled transaction took place:
- For the purpose of comparing conditions between controlled and uncontrolled transactions, the tax authorities have the right to use information obtained in the course of TP audit of counterparties who were parties to the tested controlled transactions.

Miscellaneous changes

- For a large taxpayer, it is possible to pre-align pricing in controlled transactions that are or will be carried out by those large taxpayers.
- If a taxpayer self amends the tax return for the TP purposes before 1 October of the year following the reporting one, a penalty of 3 percent is not applicable.

III. Land tax and Real estate tax

- A summary timetable of initial implementation of local taxes in various regions and their respective tax rates is to be published on the official website of the State Fiscal Service of Ukraine.
- The State Fiscal Service of Ukraine is required to release information regarding completed normative valuation of land plots on its official website by 1 February, 2018.
- Individuals are exempted from penalties for non-payment of real estate tax if the controlling state agency fails to issue and deliver the tax assessment in due time.