I am very pleased to present the 2013 edition of our guide: Doing Business and Investing in Ukraine. The guide is based on the laws as at 31 July 2013 and information made available through mid-July 2013. We prepared this new edition due to the number of significant changes that have been implemented since the publication of our 2011 edition.

Ukraine, like many other countries in the region and around the globe today, continues to face exceptional economic challenges. So far the country has weathered the storm better than many commentators had expected. Clearly, its geographic position and natural resources, as well as the ‘human factor’, have all played important roles in this achievement. Ukraine’s proximity to both the European Union and Russia, the sheer quantity of its consumers (nearly 46 million) and the physical size of the country make it an excellent location for businesses to expand both locally and regionally. The 2012 UEFA European Football Championship was a success, and investment for that event has significantly improved infrastructure (roads, railway, and airports).

Free trade with the EU continues to be discussed, and there remains hope that this may be signed by the year’s end. This would clearly increase the attractiveness of Ukraine as an investment destination. Ukraine’s ratings in the World Bank ease of doing business index, while still lower than we would hope, continues to improve. The Ukrainian Government appears committed to improving the country’s performance in the World Bank paying taxes survey, which should also continue to improve Ukraine’s attractiveness as an investment location.

For over 20 years PwC has been advising companies and individuals on how to do business in Ukraine. It is a challenging market, but it can be very rewarding. We draw on our significant experience in the local market, as well as the strength of our international network to help to build value, manage risks and improve the performance of your business in Ukraine. Apart from our vast experience in serving multinational and blue chip Ukrainian companies, we have a particular focus on middle market and private clients with dedicated teams serving these segments.

A brief guide such as this cannot answer all your questions. However, it will provide you with some valuable insight into the Ukrainian market and make you better prepared to meet the challenges ahead.

We look forward to hearing from you and having the opportunity to work with you in the future.

August 2013

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Laws and regulations change constantly. For updated information, please check our website: www.pwc.com/ua

Country profile and investment climate

Investor considerations

- Ukraine has a population of 45.5 million people. The population has decreased by 6% since 2001.
- Real GDP remained flat in 2012 (growth of 0.2% compared to 5.2% in 2011). The first six months of 2013 have also been flat (or negative).
- Nominal GDP for 2012 was USD 176.3 billion in comparison with USD 163.4 billion in 2011 (i.e. 8% growth).
- The IMF and the Ukrainian government continue to discuss a new bailout program of up to USD 15 billion.
- Ukrainian parliamentary elections were held on 28 October 2012. The Party of Regions won 185 seats (out of the total 445 seats) in the Ukrainian Parliament and rule in a minority coalition government.
- Hints for business visitors may be found in Appendix A.
1.1 Introduction

Ukraine, located in the heart of Eastern Europe and occupying a land area of 603,700 sq km, is the second largest country in Europe after Russia. It is bordered by Poland, Slovakia, Hungary, Moldova and Romania to the west, Russia to the north-east, Belarus to the north and the Black Sea and the Azov Sea to the south.

Ukraine declared independence on 24 August 1991 following the dissolution of the Soviet Union. On 1 December 1991, 90.3% of voters approved a referendum formalising independence from the Soviet Union. On 25 December 1991 Ukraine's independence was officially recognised by the international community.

1.2 Government structure

The head of state is the president. He/ she is elected by popular vote for a five-year term. In February 2010, Victor Yanukovych (from the Party of Regions) was elected President of Ukraine.

Legislative power is exercised by a single-chamber parliament called the Verkhovna Rada, which is comprised of 450 deputies who are elected every five years. According to the latest amendments, half of the parliament is elected by party-list proportional representation and the other half under the majority system in single-member electoral districts. The last parliamentary elections were held in October 2012. 445 deputies were elected to the Ukrainian Parliament (the Rada). On 25 December 1991 Ukraine's independence was officially recognised by the international community.

1.3 Legal system

Ukraine is a civil law country. The Constitution, adopted in June 1996, lays out the structure of the national government along with its powers and functions. The powers of government are divided into three branches: legislative, executive and judicial.

Laws adopted by the parliament are forwarded to the president for signing. Technically, the president should sign the law within a 15-day period, but this does not always happen in practice. The president has also the right to veto legislation within the 15-day period, but the veto can be overridden by a 2/3 majority of the parliament.

The Constitutional Court of Ukraine is the sole organ of constitutional jurisdiction in Ukraine. The 18 judges are appointed for a one-time, nine-year term. The president, the parliament and the Congress of Ukrainian Judges each appoint six judges. Those judges then select the chief judge from among themselves.

The court system in Ukraine has three branches:

- The general court system decides civil disputes and criminal cases. The structure consists of local district courts, regional courts of appeal and the Highest Specialised Court of Ukraine.
- The commercial court system generally resolves business disputes between legal entities. It consists of local commercial courts (one in each region, plus Kyiv and Sevastopol), interregional courts of appeal and the Highest Commercial Court of Ukraine.
- The administrative court system decides disputes involving state authorities. Its structure mirrors the commercial court system.

Under the Constitution of Ukraine, the Supreme Court heads the judicial system and has the power to review decisions of all three branches of the court system. However, as a result of 2010 judicial reform, the powers of this Court have been significantly diminished. The highest courts of all three branches have now become the courts of last instances and have the right to admit cases for reconsideration to the Supreme Court at their sole discretion.

As an alternative to litigation, Ukraine allows for third-party arbitration. Ukrainian law also allows foreign companies to include international arbitration clauses in their contracts with Ukrainian entities.

1.4 People

Population

Ukraine’s population was estimated at 45.5 million people as of June 2013, which is 6% lower than the population recorded in the 2001 census. Five cities have a population close to or exceeding one million people, including the capital Kyiv with 2.8 million people.

Ukraine does not allow dual citizenship, although in practice this is not uncommon. It is estimated that Ukrainian nationals make up 78% of the population, while Russian nationals account for 17%. More than two-thirds of the population live in urban areas. Females constitute 54% of the population, which is likely to cause demographic problems in the future.

Despite these negative statistics, Ukraine has developed an affluent middle class. Minimum rents in Kyiv are between USD 300-400 per month. Restaurant prices in Kyiv are 50% higher than in the rest of the country. Many companies continue the practice of paying salaries ‘in envelopes’, so official numbers may not accurately reflect the actual level of personal income.

Unemployment

In June 2013 the official average unemployment rate was about 8%, but the actual rate is likely to be higher in some regions (and lower in Kyiv).

1.5 Economy

The Ukrainian economy grew at an annual rate of over 7% from 2000 to 2008, and nominal GDP reached UAH 950 billion (USD 180 billion). However, in the fall of 2008, the global economic crisis resulted in a contraction of

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Ukrainian industrial production, a devaluation of the national currency, and a severe credit crunch. GDP contracted by approximately 15% in 2009 but then grew at an average of 5% p.a. in 2010 and 2011 before a further recession in the second half of 2012.

For the whole year 2012, the Ukrainian real GDP grew by only 0.2% while the inflation rate amounted to 0.6% in 2012 (compared to 8% in 2011). The real GDP for the first quarter of 2013 contracted for about 1%, and the inflation rate is less than 1% annualised.

During 2013 the IMF mission has visited Ukraine several times to discuss economic policies that could be supported by a new stand-by arrangement in the amount of SDR 10 billion (USD 15.4 billion). Important policy issues regarding the reduction of the fiscal and current account deficits and reformation of the energy and banking sectors remained unresolved and further discussion is forthcoming. There is no certainty that this stand-by arrangement will be finalised in the near future.

Transport
Ukraine has a well-developed transportation infrastructure and is readily accessible by land and air. A significant boost in the country’s transportation infrastructure was noticed during preparation for a major continental sport event, the UEFA Euro 2012. There are now intercity trains between the Euro 2012 cities (Kyiv, Lviv, Kharkiv, and Donetsk).

Ukraine has 22,000 kilometres of railway, 169,477 kilometres of highways, 4,400 kilometres of navigable waterways and 16 airports that are open to commercial air traffic. Most international flights go to Boryspil International Airport, about 29 km southeast of Kyiv, or Zhulyany Airport (near the city centre).

In 2011, Ukraine started implementing a comprehensive transport strategy to develop and elaborate sub-sector transport programmes, which is to be completed by 2020. A road safety strategy was adopted in May 2011, and a revised Air Code entered into force in September 2011.

Communications
The mobile cellular telephone system has been rapidly expanding in recent years. The three main mobile operators – MTS, KyivStar, Life:) – have a total of more than 54 million subscribers. There are over 17 million internet users.

Foreign trade
Ukraine’s main export products are metals and agriculture products (together accounting for 40% of exports). The main items imported are mineral fuel, petroleum and petroleum distillation products, machines and equipment, and chemicals. CIS and European countries account for more than 70% of Ukraine’s foreign trade.

According to Doing Business 2013, published by the World Bank Group, Ukraine stands at 145 in the ranking of 185 economies on the ease of trading across borders. The indicator is based on the number of documents required and the time and cost to export and import.

Business environment

Investor considerations
- Ukraine remains a challenging place in which to do business.
- Many investment opportunities exist, but Ukraine is still developing the legal and institutional frameworks required to fully support international business.
- Ukraine joined the WTO in 2008 and became a member of the Energy Community in 2011.
- Ukraine has a comprehensive free-trade agreement with Russia/CIS countries.
- In 2011, negotiations with the EU on an Association Agreement, including a Deep and Comprehensive Free Trade Area, were concluded. It may be signed by the end of 2013. Ukraine is also discussing a Customs Union with Russia.
- There was a dramatic drop in the real estate market during the 2008-2009 economic crisis (prices declined by about 50%).
- In 2012, Ukraine (together with Poland) co-hosted the Euro 2012 Football Championship. This event attracted about 1.8 million visitors. The estimated investments in infrastructure and other preparations amounted to USD 5 billion.

1.6 Foreign trade
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According to Doing Business 2013, published by the World Bank Group, Ukraine stands at 145 in the ranking of 185 economies on the ease of trading across borders. The indicator is based on the number of documents required and the time and cost to export and import.
2.1 Business climate

Since becoming independent in 1991, Ukraine has struggled to shift from a centrally-planned economy to a market environment. The economy grew at an annual rate of over 7% over the period from 2000 to 2008. This growth was fuelled by strong domestic demand and solid consumer and investor confidence. The economic and financial crisis that unfolded in 2008 shook investor confidence and stalled the inflow of capital. Ukraine remained in recession throughout 2009, but experienced a recovery in 2010 and 2011 as global conditions slightly improved. The recovery continued in 2012, but at a slower pace. Growth in Ukraine is expected to be close to zero in 2013.

Ukraine allows foreigners to purchase businesses and property (with the exception of agricultural land), to repatriate revenue and profits, and to receive compensation if their property is nationalised. Reform is still needed as complex laws/regulations and weak enforcement of contracts by the courts hinder foreign direct investment. At the same time, Ukraine is a party to over 40 bilateral agreements on cooperation and mutual protection of investments, which provide additional protection for foreign investments, including internationally recognised dispute resolution mechanisms (e.g. ICSID).

There was much interest in mergers & acquisitions (M&A) between 2004 and 2008. However, the volume of transactions has declined due to economic uncertainties following the global economic crisis, difficulties in defining a fair price for transactions and anxiety over country-specific risks.

At first glance, taxes appear quite low at 19% (16% – starting from 1 January 2014) for corporations and 15-17% for individuals, while value-added tax (VAT) is 20% (17% – starting from 1 January 2014). However, there are certain issues:

- Restrictions on deductions mean the effective corporate tax rate is closer to 22%.
- Social security contributions on employee income are significant. In 2013, employer contributions to various funds exceeded 36% of employees’ earnings. The earnings base, which is subject to social contributions, is capped at UAH 19,499 (approximately USD 2,400) per individual per month, and will increase to UAH 20,706 (approximately USD 2,600) in December 2013. Therefore, it does not impact higher levels of compensation (see Chapter 7.3 for more information).
- Due to VAT refund constraints, VAT can become a significant cost to doing business (although the introduction of an automatic VAT refund system for exporters has alleviated this problem to a certain extent).

Presently, the EU cooperates with Ukraine within its ‘neighbourhood policy’. After 21 rounds of negotiations over the EU-Ukraine Association Agreement (AA), both parties finalised the negotiation process on 19 December 2011. The signing of the EU-Ukraine Political and Free Trade Agreement (FTA) was frozen in December 2011, but, according to the European Commissioner for Enlargement and European Neighbourhood Policy, if Ukraine achieves tangible progress on the benchmarks set by the European Foreign Affairs Council, the AA (including the FTA) could be signed “possibly by the time of the Eastern Partnership Summit in Vilnius in November 2013”.

The FTA is an integral part of the AA. In July 2012, the final stage of initialising of the AA was reached when the sides finished editing and coordinating the provisions of the economic part of the AA (FTA). The provisions of the economic part of the AA are set to improve the investment climate in Ukraine and to help develop business cooperation between Ukraine and Europe.

The World Bank ranked Ukraine 137 out of 185 countries in its Ease of Doing Business index in 2013, which is a 15 improvements from the year before. Ukraine still compares unfavourably with its neighbouring countries: Poland – 55, Belarus – 58, the Russian Federation – 112.

The indication of the negative trends is that the European Business Association assessed Ukraine’s investment climate and gave it a rating of 2.12 out of 5 in 4Q 2012, “the lowest score for four years.” This index is a perception-based indicator of over 100 Ukrainian and international business leaders in the country.

The European Commission emphasises the necessity for Ukraine to improve its business climate. Pressure and harassment of businesses by various authorities and law enforcement bodies, corruption, and a general deficiency of rule of law are major obstacles to doing business in Ukraine.

2.2 Economic development plans

In March 2013, the Cabinet of Ministers of Ukraine published the State Economic Stimulation Program for 2013-2014. It proposes developing priority industries, promoting positive structural changes in the economy, diversifying energy sources, and reducing the energy intensity of production.

The program stipulates the involvement of banks to finance priority projects (i.e. import substitution, energy efficiency projects), to take part in the selection of projects that will get state support (including loan guarantees or interest rate compensation), and to oversee the proper use of the allocated funds. It is not clear how this program will be implemented or what its impact will be on the economy.

2.3 Free trade zones

On 30 July 2012, Ukraine ratified an agreement establishing a free trade zone in the Commonwealth of Independent States (CIS) countries - Russia, Ukraine, Belarus, Kazakhstan, Armenia, Kyrgyzstan, Moldova, Tajikistan and Uzbekistan. The government expects this FTA will help increase trade turnover between Ukraine and the CIS countries by 35% in the medium term.

The mentioned FTA has a number of exceptions in respect of goods, the import and export of which is critical for Ukraine. They include preservation of export duty on ferroalloys, scrap metal and sunflower seeds as envisaged by the agreements with WTO, and a 50% sugar import duty. A 30% Russian gas export duty is valid for Ukraine.

The FTA between Ukraine and EFTA - the European Free Trade Association (Iceland, Lichtenstein, Switzerland and Norway) came into force on 1 June 2012.

Ukraine is also a party to FTAs with Georgia, Macedonia, Montenegro and is in the process of negotiating such arrangements with Jordan, the UAE, Syria, Serbia, Singapore, Morocco and Israel (as well as the EU agreement mentioned above).

2.4 European Union, NATO, WTO

In 2005, former President Victor Yushchenko stated that membership in the EU was a strategic goal of his foreign policy and current President Victor Yanukovych has confirmed his commitment to the EU. In practice, Ukraine maintains especially close ties with Russia (including energy dependence) and balancing this relationship affects the speed at which Ukraine can move toward integration with the EU.

Ukraine also maintains a close relationship with the North Atlantic Treaty Organisation (NATO), particularly with respect to emergency situations, technical cooperation, scientific studies and military and defense reforms.

The General Council of the World Trade Organisation approved Ukraine’s accession on 5 February 2008, and Ukraine became the WTO’s 152nd member on 16 May 2008.

2.5 International agreements

Ukraine has established diplomatic relations with over 170 countries.

Ukraine is a member of the United Nations, the Council of Europe, the International Monetary Fund (IMF), the World Bank, the European Bank for Reconstruction and Development (EBRD), the World Trade Organisation (WTO) as well as a number of other international organisations. It also cooperates with the Organisation for Economic Cooperation and Development (OECD), but is not a member.

In addition, Ukraine has concluded numerous bilateral agreements concerning trade, the avoidance of
Foreign investment and privatisation

2.6 Property market
Foreign citizens and legal entities have the right to own apartments, houses and other facilities. Ownership of non-agricultural land is also possible, although legal and regulatory restrictions can significantly complicate the process.

Ukraine’s property markets remain depressed, though there are signs of some stabilisation. The commercial property market has been characterised by relatively stable rental rates and slightly decreased vacancy rates. The rent for Class A office buildings peaked in 2008 at over USD 70 per square metre and has since fallen to an average of USD 25-30 per square metre, depending on the region.

Residential property has yet to recover from the housing bubble, when prices increased by 550% between 2002 and 2007.

2.7 Foreign investor associations
There are a number of foreign business chambers in Ukraine including the American Chamber of Commerce (www.chamber.ua), the European Business Association (www.eba.com.ua). There are also business associations for German, British and Japanese businesses, among others.

Around 28 domestic and foreign groups (originating from the USA, UK, Austria, Poland, Russia, Turkey, Japan and other countries) make up the Domestic and Foreign Investors Advisory Council (DFIAC) – an advisory organisation under the President of Ukraine.

Contact details are provided in Appendix B.

Investor considerations
• There are very few restrictions on foreign investment.
• Total FDI at 1 April 2013 was USD 55.7 billion (USD 1,222 per capita).
• The Ukrainian legal system is still evolving.
• Ukraine has a number of foreign currency exchange restrictions, but these should not create insurmountable problems and are gradually being removed.
• Privatisation continues to be on the government agenda.
3.1 Foreign investment

Investment climate
The Ukrainian authorities regularly declare their support for foreign investment, and the broader public is well disposed to it.

In general, the regulatory framework for the establishment and operation of businesses in Ukraine by foreign investors is similar to that for domestic investors (apart from the ownership of agricultural land).

As a general rule, investment permits are not required, but all enterprises must be established according to the form and procedure prescribed by law and registered with the appropriate government agencies. Foreign investors are generally not required to seek special approval for foreign direct investments, but may register with the state authorities. Registration of a foreign investment may ease the restrictions on the remittance of dividends abroad.

Unfortunately, many investors still encounter difficulties at a practical level. These do not relate specifically to the issue of foreign ownership or investment, but rather to arbitrarily enforced administrative hurdles and/or random delays.

As at 1 July 2013 the total stock of FDI in Ukraine reached USD 55.3 billion (or USD 1,222 per capita), according to the National Bank of Ukraine (NBU). A number of foreign currency transactions may be undertaken only if an individual licence has been obtained from the NBU (see Chapter 4.2).

Regulatory legislation
Ukraine continues to struggle to build a legal system that facilitates easy interaction with the international community. Many issues are not dealt with by a single piece of legislation, so it may be necessary to piece several laws together to develop a full understanding of an issue (although the 2011 Tax Code is an exception). The various laws may also be ambiguous or contradictory, which further complicates matters. The following major pieces of legislation – in addition to the Tax Code – affect foreign investment into Ukraine:

- The law On Foreign Investment Regime sets out in broad terms Ukraine’s policy on inward investment and the rights and obligations of foreign investors.
- The Civil Code regulates civil relationships, the establishment of legal entities, and personal property rights.
- The Commercial Code (enacted on the same day as the Civil Code) governs business relationships. The Commercial Code is intended to regulate issues that are not dealt with in the Civil Code, although in practice there is some overlap.
- The law On Securities and Stock Market governs the public issuance and trading of securities.
- The law On Protection of Economic Competition restricts business monopolies. The majority of mergers and acquisitions in Ukraine are likely to require pre-approval from the Anti-monopoly Committee.
- The law On Protection from Unfair Competition aims to protect business entities and consumers from unfair competition.
- The Environmental Protection Law establishes a framework for pollution charges to be imposed on any legal entity that discharges contaminants into the environment.

Restrictions on foreign investment
Foreign companies are restricted from owning agricultural land, manufacturing carrier rockets, and some publishing activities.

Investment incentives
The Tax Code has introduced a number of tax incentives for a range of investors (see Chapters 9.12 for detailed information).

Foreign exchange issues
Foreign currency turnover is regulated by the 1993 Cabinet of Ministers decree On the System of Currency Regulation and Currency Control, as well as a number of implementation rules issued by the National Bank of Ukraine (NBU). A number of foreign currency transactions may be undertaken only if an individual licence has been obtained from the NBU (see Chapter 4.2).

Repatriation of capital and earnings
Foreign investors are entitled to repatriate profits, income or other funds relating to investments without any restrictions, provided the investment was made in accordance with applicable legislation and after the payment of applicable taxes. Foreign investors are guaranteed the right to prompt and unimpeded repatriation of profits.

Guarantees and rights
Foreign investments duly registered with the state authorities are not subject to nationalisation, expropriation, requisition or any other measure of similar effect, except when it is in the public interest. In such cases, compensation must be provided to the investor based on the market value of the property.

3.2 Simplification of permit process
Since late 2009, the procedure for obtaining permits has been simplified, although in practice, difficulties remain.

A ‘silent consent’ principle has been established for obtaining most, but not all, permits. If an application for a permit and the respective supporting documents have been properly submitted and the authorities fail to respond within the term established by law, the applicant is allowed to pursue the activities as if the permit had been issued. Nevertheless, obtaining a permit is still advisable.

In Ukraine, certain types of activities are subject to obtaining a special state permit document/licence. The list of activities which have to be licensed is being gradually reduced. There are less than 60 types of activities (groups of related activities) that are subject to licensing.

Licences are issued for an indefinite period unless a limited term of validity has been established by the government for a particular type of licence. Even in such cases, the term of validity will be no less than five years.

3.3 Privatisation

Background
The vast majority of state-owned enterprises were privatised by 2004, but a number of significant enterprises remain in state ownership.

A few major privatisations have been conducted since the privatisation rush of 2004. The most prominent recent privatisation involved Ukrgazprom (Ukraine’s monopoly in the fixed-line communication market), which was finally privatised in 2011. In 2012, most regional gas distribution companies were privatised, and the State Property Fund (SPF) launched the privatisation of heating plants.

Legacy of privatisation
The impact of Ukraine’s privatisation can be assessed in terms of the following strategic changes in Ukraine’s economy:

- The state has given up majority ownership in 90% of the industrial enterprises it owned in 1991. Millions of Ukrainian citizens have become shareholders in more than 60% of Ukraine’s labour force work for private enterprises.
- In many cases, the new generation of investment fund managers, who have become major shareholders via the privatisation programme, are putting in place new enterprise directors and managers and introducing new management techniques.
- State budget support for unprofitable enterprises has been greatly reduced.

Privatisation prospects
A revised State Privatisation Programme (SPP) for 2012-2014 was adopted by the Ukrainian parliament in December 2011. The implementation of this programme is aimed at concluding the privatisation process in Ukraine.

The SPF introduced a new approach – any state enterprise may be privatised unless it is on the special list of strategic enterprises that may not be privatised. The number of enterprises in this restricted group is going to be reduced from around 1500 to less than 300.

Therefore, the SPF is entitled to sell, among other things, key energy and oil/gas transportation enterprises, TV and radio transmission centres, publishing houses, dairies, sports complexes, pools and stadiums (with certain exceptions).

In accordance with the new law On the Peculiarities of the Privatisation of Coal Mines adopted in April 2012, the privatisation of coal mines has been announced as a priority for 2013.

During 2013-2014 the government is planning to gradually shift from privatisation procedures to the efficient management of the remaining state property.
4.1 Banking system
Ukraine has a two-tier banking system. The National Bank of Ukraine (NBU) is Ukraine’s central bank. Commercial banks, including the state-owned Export-Import Bank of Ukraine (Ukreximbank) and the State Savings Bank of Ukraine (Oschadbank), operate under the authorisation and supervision of the NBU. Three private banks became state-owned in 2009 after recapitalisation by the government to support their liquidity.

Though money market liquidity levels were very volatile during 2010-2012, measures undertaken by the government and the NBU ensured a stable exchange rate of the Ukrainian hryvnia against major foreign currencies.

Banking sector
As at 1 July 2013, 178 banks were registered and granted licences by the NBU to perform banking transactions in Ukraine. The Ukrainian banking sector is highly concentrated. According to 2012 data published by the NBU, about 53% of the banking sector’s total assets were held by the ten largest banks. As of 1 July 2013, the total loans granted by banks amounted to UAH 863 billion (USD 104 billion) while their total statutory capital amounted to UAH 176 billion (USD 22 billion). At least 51 bank in Ukraine had some foreign capital, of which 21 were fully owned from abroad. Ukrainian banks with foreign capital (including four of the ten largest) account for approximately 35% of the total statutory capital of Ukrainian banks.

Banks are required to obtain a licence from the NBU for operations. The NBU has established requirements for banks in respect of minimum statutory capital, minimum regulatory capital and capital adequacy. The minimum regulatory capital requirement is UAH 120 million (approximately USD 15 million).

Since 2012, banks have been required to prepare financial statements in accordance with International Financial Reporting Standards (IFRS).

4.2 Foreign currency rules
Foreign currency operations are regulated by the 1993 Cabinet of Ministers decree, On the System of Currency Regulation and Currency Control, as well as a number of implementing rules issued by the NBU.

As at 1 July 2013, key provisions of Ukraine’s currency exchange control regulations are:
• Payments under foreign trade contracts between a resident and a non-resident entity may be either in foreign currency or in UAH.
• Payments in foreign currencies between residents in the territory of Ukraine are generally prohibited (a specific licence is required).
• Salaries to Ukrainian staff must be paid in UAH (but expatriate employees can be paid in hard currency).
• Foreign loans must be registered with the NBU before funds are remitted to Ukraine. There is a maximum interest rate (including other charges) that may be applied to foreign currency loans obtained from non-residents (approximately 11% p.a. – refer below).
• The maximum allowable interest rates for foreign fixed rate loans in hard currency is 9.8% p.a. for loans of up to 1 year; 10% p.a. for loans of 1-3 years and 11% p.a. for loans of over 3 years. For loans with floating interest rates, the maximum allowable interest rate is three months USD LIBOR plus 7.5% p.a.
• Proceeds from exports must be credited to the exporter’s Ukrainian bank account within 90 days (potentially to be increased to 180 days from 20 November 2013) from the date of customs clearance (for goods) or the date of service delivery. Similarly, goods subject to prepayment must be imported and cleared through customs within 90 days of payment. Failure to do so results in a fine of 0.3% of the amount due or paid for each day of delay.
• 50% of hard currency export proceeds must be converted into UAH by the exporter’s bank on the interbank currency exchange market within 1 working day of receipt.
• Payments by Ukrainian business entities for services rendered by non-residents and royalties paid to non-residents for amounts exceeding EUR 100,000 (annually) require confirmation from the Foreign Markets Monitoring Centre (FMMC) that the fee for the services does not exceed market prices. This process cannot be taken lightly as no payment will be permitted if the FMMC rejects an application.

Both Ukrainian companies and individuals are required to obtain a licence from the NBU for a number of transactions, including the following:

• cash investments abroad for the acquisition of fixed assets, intangible assets, corporate rights, securities and derivatives
• purchase of Ukrainian securities from non-residents (however, a licence is not required if payments are made through a Ukrainian securities trader who obtained a general licence from the NBU [a bank for example]), and
• transfer of funds to bank accounts opened abroad.

4.3 Specialised financial institutions

The Ukrainian leasing market had been growing until 2009. According to information published by the Ukrainian Union of Lessors, during 2012 and 2013 the number of leasing operations continued to shrink.

Transport, farm machinery, and construction and IT equipment constitute the largest part of the leasing market.

4.4 Investment institutions

The law On Joint Investment Institutions (Unit and Corporate Investment Funds) was enacted in 2001 and provides a framework for the establishment of mutual investment funds. The investment funds boast an attractive tax regime for investments and re-investments (corporate profits tax exemption). They flourished in 2006-2007, but the 75% drop in the Ukrainian stock market in 2008 led to a drastic decrease in their popularity with investors.

Asset management companies, licensed by the State Securities and Stock Market Commission of Ukraine, are permitted to manage assets of both corporate and non-governmental pension funds. An investment fund, when created and registered with the State Securities and Stock Market Commission of Ukraine, issues securities (investment certificates or shares) to investors. The money from the investors is used to invest in the securities of other issuers in participatory interest, real estate, bank metals and other assets, as permitted by the legislation.

4.5 Capital markets

Capital market transactions in securities are regulated primarily by the law on Securities and the Stock Market and the law On State Regulation of the Stock Market in Ukraine. The law regulating joint stock company activity was actively amended throughout 2012 and 2013.

All transactions on the stock market are under the control of the State Securities Commission of Ukraine.

Current currency control regulations and cross-border investments rules, coupled with the current economic situation, discourage foreign investors from making investments in Ukraine through the stock exchange.

4.6 Insurance

Although approximately 420 insurance companies are currently registered and operating in Ukraine, the size of the insurance market is fairly small and further decreased throughout 2012 and the first half of 2013.

At 1 July 2013 there were over 60 life insurance companies; however, they represented only 5.5% of written gross premiums. While a broad range of insurance services is available, over 30% of insurance services are related to car insurance.

The Ukrainian insurance market is highly concentrated. The ten largest life insurance companies represent about 90% of gross premiums written in the area of life insurance while the top twenty non-life insurance companies are responsible for over 50% of gross premiums written in the area of non-life insurance.

The market is regulated by the State Financial Markets Commission, and initiatives to strengthen industry practices are ongoing. The activity of foreign insurance companies in Ukraine is limited to re-insurance and certain types of insurance activity specifically stated in the law.

The insurance sector most affected by the economic crisis was that providing insurance to individuals. Nonetheless, a number of new insurance companies (both in the life and non-life insurance fields) were registered in 2012. There are significant restrictions on the ability of Ukrainian residents to make insurance payments abroad.

Investor considerations

• Ukraine joined the World Trade Organisation (WTO) in 2008.
• Ukrainian customs valuation rules generally comply with WTO rules. Ukraine’s customs procedures are based on the Kyoto Convention on the Simplification and Harmonisation of Customs Procedures.
• Ukraine has a free-trade agreement with Georgia, Macedonia, Montenegro, CIS and EFTA countries and is negotiating another one with the EU and a number of other countries.
• Goods imported into Ukraine are subject to customs duties, excise tax (if applicable) and value-added tax (VAT – 20% in 2013, 17% from 1 January 2014).

Importing and exporting

• The customs authorities often scrutinise customs values and the classification of imported goods and conduct post-entry customs audits. This can lead to delays and disputes.
• The new Customs Code and a number of new regulations have come into force in June 2012.
• During 2013 the Tax and Customs structures have merged into the Ministry of Revenues and Duties.
5.1 Trends in customs policy
In recent years, Ukrainian customs regulations have continued evolving towards greater compliance with international practice.

In 2008, Ukraine joined the WTO. This resulted in a further reduction of import duties and post-entry audits becoming more frequent. Ukraine is a signatory to major international customs conventions, including the Kyoto Convention on the Simplification and Harmonisation of Customs Procedures; the International Convention on the Harmonised Commodity Description and Coding System; and the Istanbul Convention on Temporary Admission.

In June 2012, Ukraine implemented a new Customs Code. The new Code introduced many ‘innovations’, such as an instrument of Authorised Economic Operators (AOE), updated procedures of customs valuation and brought other significant changes to the customs regulations.

Although the legal framework has been brought into compliance with international norms, in certain cases administrative practices still remain unchanged. For instance, although the Ukrainian customs authorities have obtained extensive powers to conduct post-entry audits to verify compliance with customs and tax legislation, in practice, the authorities sometimes conduct deep customs control during the physical entry of goods into Ukraine.

Ukraine introduced the option of electronic filing of customs declarations, and all types of customs declarations may now be filed electronically.

5.3 Customs duties

5.3.1 Classification of goods
The Ukrainian Classification of Goods in Foreign Economic Activities (UCG FEA), based on the Harmonised Commodity Description and Coding System (edition 2007), is the effective customs classification system in use in Ukraine. UCG FEA serves as the basis for Ukraine’s Customs Tariff. When classifying the goods, the customs authorities generally follow the World Customs Organisation’s classification approaches.

5.3.2 Tariff rates
There are two rates of import duty under the Customs Tariff:

• Reduced duty rates apply to goods originating from all WTO countries and countries that have granted Ukraine ‘Most Favoured Nation’ trade status.

• Full rates of duty apply to goods originating from other countries, or where the country of origin cannot be determined.

In practice, the reduced rates and full rates of duty are equal in many cases. Rates of duty may be ad valorem, specific (in monetary units per unit of goods), or a combination of both. There are seasonal, special, anti-dumping and countervailing duties. A selection of customs duty rates can be found in Appendix D.

5.4 Temporary import relief
Permission for temporary import with full conditional exemption from import taxes may be issued in a number of cases specified by the International Convention on Temporary Admission (Istanbul Convention). The list of goods which may be temporarily imported duties-free includes:

- goods intended for display or use during exhibitions, fairs, conferences and similar events
- professional equipment used by mass media or required for making films
- containers, pallets, packaging or any other goods imported in connection with commercial transactions
- transport vehicles used for moving passengers and goods across the Ukrainian border
- aircrafts imported by the Ukrainian airline companies under operational lease agreements (this exemption is available under the Customs Code only), and other items.

Partial exemption from customs duty and VAT is available for many other goods that do not qualify for full tax exemption. The amount of tax paid is computed as 3% of the total amount of import duty and VAT payable multiplied by the number of months of temporary import.

Temporary importation is allowed for a maximum of three years (may be extended by the customs authorities).

5.5 Customs duties incentives

5.6 Customs control

All goods crossing the border are subject to customs control, which includes specific procedures aimed at ensuring compliance with customs rules. The customs authorities may conduct post-entry audits to verify compliance with customs and tax legislation. In addition to customs control, Ukrainian authorities may conduct other types of state control, including sanitary, veterinary, phytosanitary, radiological, ecological, and control over cross-border movement of cultural valunables.
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Duration of customs clearance
The Customs Code explicitly prescribes that the duration of customs clearance should not exceed 4 hours. This limit may be exceeded only in certain cases.

Authorised economic operators
Qualifying entities may obtain the status of an authorised economic operator (AEO), and, thereby, enjoy the following benefits:
• simplified customs clearance
• scheduled customs audit once every 30 months (instead of the standard 12 months), and
• automatic acceptance of the customs value by the customs authorities based on minimal documentation.

The criteria for qualifying as an AEO are as follows:
• conducting import-export activities for more than three years
• absence of underpayments and tax debts
• absence of unpaid tax assessments as a result of customs audits
• absence of violations of customs rules, and
• system of accounting of goods which allows the customs authorities to reconcile data in the customs declarations with internal accounting documents.

In practice, AEO status is still not available to Ukrainian entities (as of the middle of 2013) due to absence of appropriate regulations.

Registration of importers
Any business entity (including representative offices of non-residents) that is engaged in cross-border movement of goods is required to register with the customs office that serves the area in which the company is incorporated. This registration may be done electronically. After registration with the Ukrainian customs authorities, the company may declare the goods and clear them through any customs office within Ukraine.

Documentation
Goods crossing Ukraine’s border should be declared to the customs authorities, either by the importer or a licensed customs broker on behalf of the importer. The importation of goods must be supported by complete documentation. The following import documents are required for all shipments to Ukraine:
• import customs declaration
• declaration of customs value
• cross-border contract
• invoice and waybill
• compliance certificate (if any)
• certificate of origin
• evidence of customs duty and tax payment, and
• any other documents that may be requested by the customs authorities.

An invoice and declaration of customs value should be attached to the customs declaration. Other documents should be provided to the customs authorities upon request.

In practice, missing or deficient documents are likely to cause delays during customs clearance.

Declaration of customs value
Customs value is declared by filing a customs declaration and submitting the following documents:
1. declaration of customs value, including a reference to the valuation method used
2. foreign trade contract (agreement)
3. invoice or pro forma invoice
4. banking documents related to the goods being valued
5. other payment and/or accounting documents confirming the value of the imported goods (if any)
6. transport (shipping) documents, if the price of the transportation is not included in the value of the goods
7. import licence (if applicable)
8. insurance documents (if applicable)

In certain cases, the importer must also provide additional documents. The exact list of such documents is established by the Customs Code. If these documents are not available, or if the customs office has well-grounded doubts about the data provided by the importer, the customs office may determine the customs value based on the available information on prices for identical or similar goods.

Where the importer does not agree with the customs value determined by the customs office, the importer may release the goods to free circulation against financial guarantees. The importer may then appeal the determination of the customs value by the customs authorities to a higher customs office or to the courts.

5.7 Warehousing and storage
The goods may be stored in a temporary storage warehouse (TSW) under customs control for up to three months before they are released under a specific customs regime. The TSW operator must obtain a permit from the customs authorities for operating the TSW. There are two types of TSW:
• open TSW, which is available to any users on a contractual basis with the TSW owner, and
• closed TSW, which can only be used by its owner.

Alternatively, imported goods may be stored in an opened or closed customs bonded warehouse (CBW) under customs control without payment of import duty and taxes for up to three years, depending on the nature of the goods. Certain goods are not allowed for storage in the CBW.

The 2012 Customs Code permits the transfer of title for foreign goods stored in a customs bonded warehouse. This allows the sale of the goods prior to their customs clearance for import.

Operating a CBW requires a permission issued by the local customs authorities. To obtain such permission, the CBW owner should comply with technical requirements (safety regulations, warehousing equipment, etc.).

In practice, due to vague (and contradictory) currency control legislation, usage of the CBW as a trading hub may attract currency control issues; however, proper structuring of trading hub operations should mitigate possible issues.

5.8 Exports
Restrictions
A limited number of exports are subject to licensing and/or quotas. Examples include silver and gold, certain metal products exported to the EU and Russia, and oil or gas of Ukrainian origin.

Export duties
Ukraine has limited export duties on natural gas, scrap metal, livestock, raw hides and certain oil seeds.

VAT treatment of exported goods
Export of goods is zero-rated for VAT purposes. The zero rating also applies to the re-export of goods that are returned to a non-resident due to nonfulfillment of the contractual terms.

However, any other re-export of goods (e.g. after inward processing or temporary import) is VAT exempt. Re-exporting goods with VAT exemption may negatively impact the VAT credit of the re-exporting entity.
5.9 Protection of intellectual property rights

Owners of intellectual property rights may request that the Ukrainian customs authorities register goods containing intellectual property in order to prevent the illegal import or export of pirated or counterfeit goods. In this case, the customs authorities may delay the customs clearance of such goods until it can be proven that no breach of intellectual property rights has taken place. If the importer or exporter does not submit sufficient evidence, the customs office may seize the goods and impose penalties.

5.10 Customs audits

The customs authorities are entitled to conduct post-entry audits. At the current stage, the customs authorities view customs audits as a priority area of customs control.

Customs audits include scheduled and unscheduled field (at the premises of the company) and desk audits (at the premises of the customs authorities).

The customs authorities may request financial and business information, conduct counter-checks, perform examination tests, etc. in the course of customs audits.

Areas of customs audits

Under the new Customs Code the customs authorities focus on the following areas during customs audits:

- accuracy of payment of import taxes by Ukrainian importers
- classification of imported goods, specifically in cases where revised tariff codes would attract higher amounts of customs duty and VAT
- country of origin of imported goods, especially in cases where the goods were imported free of customs duty under free-trade agreements
- inclusion of costs for transportation, insurance, royalties, artwork, design, engineering works, etc. into the customs value of imported goods
- grounds for tax exemptions during customs clearance of the imported goods
- compliance of actual usage of the imported goods with the aim declared during customs clearance, and
- legality of importation of the goods into Ukraine.

Scheduled customs audits

The customs authorities need to inform business entities about a scheduled audit 10 calendar days in advance. The duration of a scheduled audit is up to 30 days, which can be extended up to 15 days. The customs authorities may carry out a scheduled audit of an entity once in 12 months (once in 30 months for entities with AEO status).

Unscheduled customs audits

No advance notification is required for an unscheduled customs audit. Unscheduled customs audits may be carried out at random, for example, if the company fails to provide an answer to a query from the Ukrainian customs authorities within 10 days, or the customs authorities have reasonable grounds to believe the business entity violated customs law. The duration of an unscheduled customs audit is the same as for scheduled audit.

Assessments

The statute of limitation period for tax assessments by customs authorities is three years.

If the customs audit detects an underpayment of duty and VAT, penalties ranging from 25% to 50% of the underpayment may apply. Late payment interest at the rate of 120% of the National Bank of Ukraine discount rate is applicable if the conditions of exemption from customs duty and VAT are breached.

The appeals procedure is similar to that of the tax authorities (see Chapter 9.10 below).

5.11 Administrative issues

Customs rulings

A business entity may request an individual ruling from the customs office. The customs authorities may issue general customs rulings, which can be used by any business entity. These rulings are not legally binding but reflect the best understanding of the law by the customs authorities. The business entity may appeal the customs ruling to higher customs authorities or the court. If an entity acted according to a ruling which was subsequently revoked, penalties would not be applied.

Conflict of interests

If law provisions or by-law acts allow multiple interpretations, the decision should be taken in favour of the business entity. Nonetheless, in practice, Ukrainian authorities and courts may not follow this rule.

Conflict of interests

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6.1 Legal framework

Legal framework for business entities

The primary framework for establishing and operating legal entities in Ukraine is found in the 2004 Civil Code. Legal entities may be established in the form of joint stock companies, limited liability companies, additional liability companies, general partnerships or limited partnerships.

The Civil Code, the 1991 Law On Business Associations, as well as the 2009 law On Joint Stock Companies (the JSC Law) deal with such issues as shareholder rights and obligations, corporate governance and minimum capital requirements.

Commercial law

The 2004 Commercial Code governs business relationships and was intended to regulate issues that are not dealt with in the Civil Code. In reality, parts of the two Codes overlap, including a number of provisions dealing with the establishment and operation of legal entities.

6.2 Forms of business organisations

Choice of business entity

Establishing a legal entity in Ukraine involves registering with the local state registrar, the tax authorities, the statistics office and the pension fund, as well as opening a bank account, and other formalities.

From a foreign investor’s perspective, the choice will tend to be either an LLC or, a JSC, or in certain circumstances a representative office engaged in either commercial or non-commercial activities.

For a 100% investment, using an LLC tends to be more convenient. It is easier and quicker to establish (up to 4 weeks, including opening a bank account), has no minimum capitalisation requirements and is less regulated.

Under the law, the National Securities and Stock Market Commission has the right to initiate liquidation proceedings against JSCs that violate the net assets rule, and they tend to scrutinise this issue (particularly for banks and insurance companies). As for the LLC, the procedure for initiating liquidation is not clear, and we are not aware of any company being liquidated due to non-compliance with the net assets rule.

6.4 Limited liability companies

A limited liability company (LLC) does not have shares in a traditional sense. Instead, participants in an LLC own a percentage in the company’s capital (participatory interest), as specified in its Charter. Because the investors’ interests in an LLC are not ‘securities’ as defined by law, they are not subject to registration with the National Securities and Stock Market Commission. This means that an LLC can be established more quickly than a JSC, and is easier to maintain.

Nonetheless, there are a number of key points that investors need to be aware of before establishing an LLC:

• Participants in an LLC may transfer their participatory interest in the company’s capital to third parties (non-participants). However, other participants have a pre-emptive right to acquire the participatory interest in the LLC.

• A participant may withdraw from an LLC by any lump sum payment within the participants’ meeting’s notice period. Upon withdrawal, a participant is entitled to his proportionate share of the assets of the LLC, which often involves a cash settlement.

• A participant who systematically ignores or improperly fulfills his duties, or whose actions interfere with reaching the aims of the LLC, may be excluded from the LLC by a majority vote. The excluded participant is entitled to his proportionate share of the assets of the LLC at the time of exclusion.

Charters will need to be amended to record the change.

Generally, incorporation will take three to four working days from the day documents are filed with the registration authority. An LLC is deemed to exist as a legal entity from the date of its state registration.

Capital structure

There is currently no minimum amount for the charter capital of an LLC. The participants may establish its amount at their own discretion.

The LLC’s Charter capital must be paid within the first twelve months of the LLC’s activity. It is possible for participants to contribute assets in kind to an LLC.

An LLC must create reserve capital from net profits in the amount of at least 25% of its Charter capital. At least 5% of annual after-tax profit must be transferred to this reserve until the entire 25% fund is fully paid (this is not tax deductible).

The conversion of debt into equity is not feasible for an LLC.

Relationship of participants, directors and officers

LLCs have two corporate bodies.

The General Participants’ Meeting consists of the participants of the LLC who have voted (proportionally to their interest in the LLC’s charter capital. The Quorum for a General Participants’ Meeting requires the presence of participants holding at least 60% of all votes. Most resolutions are approved by a simple majority of the voters present at the General Participants’ Meeting, although resolutions amending the Charter and a limited number of other decisions must be approved by a majority of all participants’ votes.

The Board of Directors (or single Director) is the executive body of an LLC and is responsible for managing the day-to-day activities of the LLC and representing the LLC before third parties. The structure of the Board, its authority and its working procedures are specified in the Charter.

Liquidation, receivership

An LLC is liquidated if its participants agree to liquidate it, its corporate term expires (if such term is specified in the Charter), or it is ordered to be liquidated by a court. In a voluntary liquidation the claims should generally be satisfied in the following order:

1. Indemnification of losses caused by disability, other health injuries or death, as well as creditors’ demands secured by pledge or otherwise;
2. Employee claims connected with labour relations;
3. Taxes and duties;
4. All other claims.

The sequence is slightly different for liquidation through compulsory liquidation (bankruptcy).

6.5 Joint stock companies

A joint stock company (JSC) is a legal entity whose Charter capital is divided into a specified number of shares with equal nominal value. The liability of shareholders in a JSC is limited to the value of their capital contribution.

According to the JSC Law, all JSCs shall be established as either ‘public’ or ‘private’.

The legal framework for JSCs is for the most part similar to that for LLCs. However, the JSC Law regulates many peculiarities of JSC activities. A brief comparative of the two vehicles is provided in Table 1 on page 26.

 Shares

Currently all shares of the JSC shall exist only in non-documentary form.

• Public JSC may perform public and private placement of shares which may
be further traded on a stock exchange. By contrast, private JSC may only perform private placement of shares.

- Existing shareholders in a private JSC have pre-emptive rights to purchase shares offered for sale by other shareholders, as long as such rights are provided by the Charter.
- Public JSCs must be included into the stock list of at least one stock exchange in Ukraine. Shares of public JSCs may be purchased or sold on the stock exchange.

Corporate

- The number of shareholders in a private JSC may not exceed 100.
- All shareholders must be notified in writing of the General Shareholder’s Meeting 30 days before said meeting.
- Cumulative voting will be either mandatory or voluntary (depending on the type of JSC and the number of shareholders) for the appointment of the members of the Supervisory Board and/or the Audit Committee.
- Cumulative voting means voting during the election of the JSC’s bodies, where the total votes of a shareholder are multiplied by the number of members of the JSC’s body that are being elected. The shareholder is entitled to give all the votes so counted for one candidate or to distribute the votes among several candidates.
- JSCs (both public and private) having 25 shareholders or less may approve amendments to the Charter and bylaws of the JSC by simple majority. JSCs (both public and private) having more than 25 shareholders or less may approve amendments to the Charter and bylaws of the JSC by cumulative vote of the shareholders, as long as such rights are provided by the JSC’s Charter.

Capital structure

The minimum capital requirement for a JSC is the equivalent of 1,250 Ukrainian monthly minimum salaries at the time when the JSC is formed. The minimum capital requirement for JSCs as at July 2013 was UAH 1,435,750 (USD 179,000). A JSC must create a reserve capital from net profits and retained earnings in an amount not less than 15% of its Charter capital. At least 5% of annual net profits must be transferred to this reserve until the entire 15% fund is fully paid (this is not tax deductible).

Minority shareholders

The JSC Law provides specific protection for minority shareholders through:

- determination of the right of the shareholder to receive detailed information on the JSC’s activity
- abolition of the practice of paying dividends with products produced by the JSC
- introduction of the right of shareholders to conclude shareholder agreements
- possibility of requesting the management to buyout of shares in cases provided for by the JSC Law, and
- disclosure of conflicts of interest during acquisitions.

Reporting requirements

JSCs are required to submit quarterly and annual reports to the National Securities and Stock Market Commission. These reports include the annual audited financial reports, quarterly financial reports, reports on securities circulation and details of any shareholders owning more than 5% of the total shares. JSCs should also publish their annual report in official media not later than 30 April of the following year.

6.6 Foreign directors

A foreign national can be appointed as a director only after obtaining a work permit. Also a written employment agreement (contract) concluded between the Ukrainian company and the individual must be provided to the authorities.

A foreign national who is to be appointed as a director of a Ukrainian company needs to obtain an Ukrainian Tax Individual Number (Tax ID). Obtaining a Tax ID can take up to 10 days and this can slow down the employment process. See Chapter 11.1 for more details.

After the Ukrainian company has been registered with all required state authorities, it will be required to obtain a work permit for all foreign employees. Ukrainian legislation prohibits employing a foreign individual without obtaining a work permit. Refer to Chapter 11 for a discussion of taxation of foreigners in Ukraine.

6.7 Partnerships and joint activities

The Civil Code of Ukraine provides for the establishment of general partnerships and limited partnerships as legal entities, but such types are not widely used. Because partnerships are legal entities, there are no regulatory or legal advantages to conducting business through a partnership. Taxation is also imposed at two levels – at the partnership level and in the hands of the partners.

Joint ventures typically involve the establishment of a separate legal entity (JSC or LLC) in Ukraine. However, the Civil Code does recognise the concept of a joint venture without the need to establish a separate legal entity. In such cases, the relationship between the parties will be governed by the agreement. Such agreements are commonly referred to as ‘joint activity agreements’.

The use of joint activity agreements is still relatively unexplored. There are no minimum capital requirements or capital impairment rules with which to contend. A partner may still withdraw by giving three months’ notice, but legislation considers that this could be treated as a breach of contract and that it may necessitate the payment of damages.

6.8 Branches

In Ukraine, it is not currently possible to register a branch of a foreign legal entity.

6.9 Representative offices

A representative office is not a separate legal entity, and operates in Ukraine on behalf of the foreign company it represents.

From a tax perspective, local rules for representative offices are broadly in line with those of other countries. The problem is that the broader legal framework has not been updated, which can create uncertainty when dealing with the state authorities.

Foreign nationals employed by representative offices must obtain a work permit for all foreign employees. Ukrainian legislation prohibits employing a foreign individual without obtaining a work permit. Refer to Chapter 11 for a discussion of taxation of foreigners in Ukraine.

There is no agreed upon standard regarding how the titles of laws should be translated. For example, the Commercial Code is often referred to as the Economic Code.

Individual words within the text of the laws may also be rendered in different ways. For example, the Ukrainian word транспаспорт in the Civil Code is equally rendered in English as company, association, society or partnership.

As with investment in any other country, one cannot assume that the labels used in Ukraine will mean the same as they do in the investor’s home country.

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As with investment in any other country, one cannot assume that the labels used in Ukraine will mean the same as they do in the investor’s home country.
Labour relations and social security

Investor considerations

- Ukrainian labour law still contains many socialist concepts, including a strong sense of the employee’s right to work and restrictive conditions on employment.
- Labour records must be kept for up to 75 years.
- Employer unified social contributions exceed 36% of an employee’s gross income (cap of approximately USD 2,400 per employee per month applies to the income subject to contributions).
- Companies with more than eight employees are required to employ disabled individuals as 4% of their headcount. Failure to do so attracts substantial penalties.
- Under the new law On Employment, valid from 1 January 2013, Ukrainian companies are required to employ socially protected people (including those registered as unemployed, recent graduates) as 5% of their headcount. Some social benefits (compensation of USC portion) are available instead.
- The new Labour Code is expected to be adopted in the next few years. This is likely to be in line with western principals.
- Foreign employees require work permits and temporary residence permits.

6.10 Brief comparison of joint stock companies and limited liability companies

Table 1

<table>
<thead>
<tr>
<th></th>
<th>Joint stock company (JSC)</th>
<th>Limited liability company (LLC)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Registration</td>
<td>Primary registration is made with the State Registration Department.</td>
<td>Primary registration is made with the local State Administration.</td>
</tr>
<tr>
<td></td>
<td>JSC shares must be registered with the National Securities and Stock Market Commission.</td>
<td></td>
</tr>
<tr>
<td>Minimum capital</td>
<td>1,250 Ukrainian monthly minimum salaries (approximately USD 179,000).</td>
<td>Not required</td>
</tr>
<tr>
<td>Transfer of shares</td>
<td>There are generally no restrictions on the transfer of shares in a public JSC. There are specific regulations regarding significant shareholdings and mandatory buyouts.</td>
<td>Unless the Charter sets forth otherwise, the existing participants have a pre-emptive right to purchase the participant's share in LLC.</td>
</tr>
<tr>
<td></td>
<td>In a private JSC, the existing shareholders may have a pre-emptive right to purchase shares.</td>
<td></td>
</tr>
<tr>
<td>Supervision</td>
<td>Regular reporting to the National Securities and Stock Market Commission and to the tax and other local authorities, filing of annual accounts.</td>
<td>Regular reporting to the tax and other local authorities, filing of annual accounts.</td>
</tr>
<tr>
<td>Management requirements</td>
<td>• The General Shareholders’ Meeting and the Supervisory Board (not required if there are less than 10 shareholders).</td>
<td>• The General Participants’ Meeting.</td>
</tr>
<tr>
<td></td>
<td>• Single Director or a Board of directors headed by the General Director, or another body stipulated in the Charter.</td>
<td>• Single Director or the Board of Directors headed by the General Director.</td>
</tr>
<tr>
<td></td>
<td>• Audit Committee or Internal Auditor (if there are fewer than 100 shareholders).</td>
<td></td>
</tr>
<tr>
<td>Statutory audits</td>
<td>There is a requirement to submit an annual audit report to the National Securities and Stock Market Commission.</td>
<td>Not directly required by the law. In practice, most LLCs do not conduct audits</td>
</tr>
<tr>
<td>Risks</td>
<td>Liquidation if the net assets are less than the minimum requirements of the law.</td>
<td>Liquidation if the net assets are less than the minimum requirements of the law.</td>
</tr>
<tr>
<td></td>
<td>• Participants may withdraw from the LLC at any stage with three month notice.</td>
<td></td>
</tr>
<tr>
<td>IFRS</td>
<td>Shares and undistributed reserves are treated as equity.</td>
<td>Because contributors may request withdrawal of their contributions at any time and the company has the right to defer the withdrawal for at least 12 months, contributions of the participants and undistributed reserves are reported as non-current liabilities to participants (not equity).</td>
</tr>
<tr>
<td>Minimal dividend payment</td>
<td>Not required</td>
<td>Not required</td>
</tr>
<tr>
<td>Reserve capital/fund</td>
<td>Not less than 15% of share capital</td>
<td>Not less than 25% of share capital</td>
</tr>
</tbody>
</table>
In some cases before termination of approval of the trade union is required, the Federation of Trade Unions of Ukraine establishes and are granted certain rights prohibiting the employer to terminate the employment relationship at any time by giving at least two weeks’ notice, whereas under the contract for fixed term employment an employee may terminate employment only on grounds of sickness or disability, preventing him/her from performing his work. The employment contract may also be terminated according to the conditions specifically stipulated in it, or other conditions stipulated by the legislation.

The Labour Code permits employers to terminate employment relationships at the request of the employee. The grounds of reorganisation of the company, failure of the employee to perform his/her duties, or a loss of trust in employees involved in professional misconduct (e.g. theft, etc.) and other grounds. It is important, however, to ensure that all termination formalities are complied with in full accordance with legislation. Among these, the employer must follow the requirement for two months termination notice prior to the actual termination of employment relations.

In practice, employment is quite often terminated by mutual agreement and it is rare for disputes to arise. Under employment legislation, the retirement age is generally in the range between 55-60 for women, depending on the date of their birth, and 60 for men. Employee contributions For employees of Ukrainian entities (including those employed by a representative office), USC is withheld by the employer at the source from salary payments and remitted directly to the appropriate authorities.

For 2013, the contribution is 3.6% for Ukrainians and foreign nationals (based on gross remuneration/cap). For individuals providing services with services based on civil agreements, the contribution is 2.6% (based on gross reward/cap). Individuals remaining on a foreign payroll are not liable to mandatory USC in Ukraine from this income. Also, under the opinion of the Pension Fund of Ukraine, foreign employees of representative offices are not required to pay employees’ USC.

Employer contributions Ukrainian employers are liable to pay USC in respect of all Ukrainian and foreign national employees. For 2013, the following rates apply to gross remuneration: 36.76% - 49.7%, depending on the level of risk accidents in the industry sector (34.7% for remuneration of services based on civil agreements). The majority of entities are subject to the lower rates.

Administration Employers are required to file a monthly report with the Pension Fund of Ukraine by the 20th of the month following the reporting month.

Penalties for non-compliance There are severe penalties for non-compliance with social security obligations:
• Avoidance of registration or untimely registration is penalised in the amount of 10 times the minimal amount of income not subject to personal income tax (approximately USD 21 currently).
Non-payment (non-remittance) or a delay with payment (remittance) of contributions is subject to a penalty in the amount of 10% of the outstanding amounts/amounts paid late.

Contributions additionally assessed by the Pension Fund or employer should be paid together with a penalty of 5% of such additional assessments for each month of delay, but not more than 50% of such additional assessments.

Late reporting, incorrect reporting or non-reporting is subject to a penalty in the amount of 10 times the minimal amount of income not subject to personal income tax (approximately USD 21 currently).

An interest penalty on late payments is charged at the rate of 0.1% per day, based on the amount of the outstanding contributions.

Also, Ukrainian legislation provides for administrative / criminal responsibility for violating the USC legislation and the avoidance of USC payment.

7.4 Foreign personnel

Tax registration of foreigners

The requirements for tax registration of foreigners are described in Chapter 11.1.

Residence permit/registration with the immigration authorities

Foreign nationals arriving legally in Ukraine may temporarily stay in the country on the basis of their passport and relevant entry visa (if required – see Appendix A). The stamp affixed to the foreign national’s passport by a Frontier Service officer upon initial entry into Ukraine is considered to be automatic registration for a period of 90 days (cumulatively) in Ukraine, unless a shorter period is specifically indicated in the visa.

If a foreign national, due to serious reasons, has to stay in Ukraine for more than 90 days (cumulatively) during a 180-day period, his/her passport must be registered with the State Migration authority (formerly OVIR). The written application of the foreign national and the inviting party must be submitted no later than 15 days before the 90-days period expires. The extended registration will be evidenced by a registration stamp affixed to the foreign national’s passport.

Foreign nationals that have Ukrainian work permits or other document confirming employment/assignment (see below) or their relatives who are accompanying them in Ukraine should obtain a temporary residence permit instead of a registration.

Work permit

Ukrainian employers must obtain work permits for foreign nationals who are either directly employed by local companies, seconded to work in Ukraine by foreign companies, are intra-company cessionaries (i.e. foreign nationals assigned to work in Ukraine on a temporary basis at the subsidiaries in Ukraine if their employer is a resident of a WTO member country), or are providing services to affiliates based on consulting agreements or agreements on provision of personnel.

A work permit is generally issued for up to one year with subsequent renewal. Intra-company cessionaries may apply for a work permit valid for up to three years and are eligible for renewal lasting two more years. The overall time of employment in Ukraine is not limited.

The labour authorities must consider an application for a work permit within 30 days of its date of submission. To obtain a work permit, foreign nationals are required to provide a range of documents, including apostilled copies of their certificates/diplomas, a criminal clearance certificate, and medical certificates.

Non-compliance with the requirements of the work permit is subject to penalties (see below), as well as potential deportation of the foreign national from Ukraine (at the employer’s expense).

Work permits are not required for the personnel of representative offices of foreign companies who are employed abroad. Such personnel should be accredited with the Ministry of Economic Development and Trade of Ukraine. The accreditation is valid for up to three years.

Penalties for non-compliance with the immigration legislation

According to the current Ukrainian legislation, various types of non-compliance with immigration legislation may be subject to the following penalties for individuals and/or their employers:

- fines in the range of UAH 170 – 23,480 (approximately USD 21 – 2,935), depending on the violation
- summary deportation of the foreign national, and
- administrative imprisonment and property confiscation (may apply in exceptional cases).

Investor considerations

- In principle, local accounting standards should not contradict international accounting standards. In reality, there are gaps between the two.
- JSCs are subject to an annual audit requirement and must publish their annual financial statements.
- Tax accounting is directly connected to financial accounting in most areas. Tax officials are not familiar with accounting standards, and this could lead to disputes.
- All Ukrainian legal entities should use the specified chart of accounts.

Accounting and audit requirements
8.1 Accounting

International Financial Reporting Standards

The law On Accounting and Financial Reporting, effective from 1 January 2000, introduced National Accounting Regulations (Standards) (NR(S)AU). The law states that local standards should not contradict international financial reporting standards (IFRS), but in practice, there are gaps between them.

Ukrainian accounting regulations

Ukrainian entities, as well as representative offices of foreign entities, must maintain accounting records and financial statements in accordance with NR(S)AU. Financial statements are prepared for a calendar year and relevant interim periods and must be prepared with Ukrainian UAH as the reporting currency. The financial statements include the balance sheet, income statement, cash flow statement, statement of changes in equity and notes to financial statements. Financial statements should be submitted to the founders or shareholders of a legal entity, labour collectives (upon request) and the state registrar. Other entities, labour collectives (upon request) founders or shareholders of a legal entity, labour collectives (upon request) and the state registrar are responsible for ensuring that all economic transactions are recorded in supporting documents, ledgers and financial statements.

Differences between NR(S)AU and IFRS

Although NR(S)AU are generally based on IFRS, they are not identical. There are still areas for which no local standards have been introduced (e.g. accounting for government grants and disclosure of government assistance, interim financial reporting, insurance contracts, share-based payments). In addition, when local standards do exist, they often lack the detail and some of the disclosure requirements found in IFRS.

NR(S)AU have less interpretative guidance, explanations and illustrations than IFRS do, which inevitably leads to some confusion in the application of local standards. This undermines the comparability and quality of financial statements in Ukraine. Since 1 April 2011, the majority of revenues and expenses for corporate tax purposes have been based on the statutory financial statements. The tax authorities and many chief accountants are not very familiar with NR(S)AU / IFRS yet.

The adoption of the 2011 Tax Code has resulted in additional matters to consider. Calculating deferred tax and applying the new tax base for fixed assets and the new corporate profits (income) tax rates may have a significant impact on accounting practices. The Tax Code seeks to reduce the number of differences between tax and accounting records, for example, through implementing new rules on the timing of recording expenses and revenues in tax records. However, certain temporary differences between tax and accounting balances will remain, affecting deferred tax calculation.

8.2 Chart of accounts

According to Decree # 291 of the Ministry of Finance, all Ukrainian legal entities should use the specified chart of accounts. The chart of accounts represents the system of accounts, within which each account has a title and numerical symbol and is assigned to a specific class or group of transactions or balances.

Banks should use the separate chart of accounts issued by the National Bank of Ukraine.

Small businesses, non-profit non-governmental organisations and foreign business entities’ representative offices are permitted to use a simplified set of accounting rules. In addition to the statutory accounts, Ukrainian taxpayers need to maintain a separate set of tax accounting records.

A short form of the Chart of Accounts for non-banking entities may be found in Appendix E.

8.3 Audit requirements

Auditing is regulated primarily by the law On Auditing, which outlines requirements for auditing firms and auditors in individual practice, regulates auditing methodology and sets out the legal framework of operations for the Ukrainian Chamber of Auditors (UCA) and the Professional Public Union of Auditors of Ukraine.

The UCA is responsible for approving audit regulations and standards, carrying out the certification of auditors, approving programs of professional training for auditors and maintaining the register of auditing firms and auditors in individual practice that are eligible to provide audit services in Ukraine. In addition, certain regulators, such as the NBU, National Securities and Stock Market Commission, National Commission for Regulation of Financial Services Markets maintain their own registers of auditors or audit companies or both.

In 2003, the UCA adopted the International Standards on Auditing (ISA) as the national auditing standards of Ukraine.

Several other laws (e.g. the law On Financial Services and State Regulation of Financial Services Markets, the law On Banks and Banking Activities, the law On Securities and Stock Market, the law On Insurance) establish additional requirements for audits and auditors for selected industries.

Audits required by law

Under Ukrainian law, audits are mandatory for a range of enterprises, in particular:
- banks
- insurance companies
- JSCs
- bond issuers
- investment funds, trusts and other financial institutions
- brokers and traders, and
- other companies that are required to publish their financial statements.
Ukraine is not an easy country in which to pay taxes. In the report, ‘Doing Business 2013’, released by the World Bank, Ukraine is still identified as one of the most difficult countries in which to pay taxes out of the 185 countries surveyed. The study estimated that a medium-sized domestic business would need to make 28 tax payments each year (including social security), and would require 491 hours per year to be compliant with its tax requirements. Nevertheless, Ukraine’s paying taxes rank in the Doing Business report improved from 183 in 2012 to 165 in 2013. Obviously, one of the reasons for such improvement was the introduction of the Tax Code in 2010, which entered into force on 1 January 2011 and introduced significant amendments to tax rules and administration. Since that time, the Code has been repeatedly changed and there are a number of important novelties, which came into force from 1 January 2013. Notwithstanding, there are many clauses in the text of the document with unclear wording, which lead to ambiguous interpretations and disagreement between taxpayers and the tax authorities.

An interesting feature of the Ukrainian tax system is a simplified or unified tax available for many small businesses. Qualifying sole proprietors opting to use the system pay a fixed amount of tax or a tax from turnover on a low rate. The corporate tax regime is discussed in Chapter 10.1, while the regime for private entrepreneurs is discussed in Chapter 11.2.

Although the form over substance concept continues to dominate in Ukraine, this is likely to change. In practice, the tax authorities and courts are paying more and more attention to the economic substance of taxpayers’ transactions and consider the ‘overall picture’.

9.2 Direct and indirect tax burden
For 2012, taxation accounted for around 85% of government revenues. More than 3/4 of this is collected through corporate profits (income) tax (CPT), personal income tax (PIT) and VAT. Tax collection has increased rapidly over the past years. The trend in income taxes and VAT collections for the period 2007 to 2012 is illustrated in diagram 1.

9.3 Principal taxes
The Tax Code provides the general framework for taxation in Ukraine and sets the taxes that may be imposed. The principal taxes and compulsory payments are:

- corporate profits (income) tax (CPT) (see Chapter 10)
- personal income tax (PIT) (see Chapter 11)
- value-added tax (VAT) (see Chapter 12)
- unified social security contribution (see Chapter 7.3)
- excise tax and import duties (see Chapter 5)
- land tax (see Chapter 10.7)
- stamp duty (see Chapter 10.8), and
- fee for subsoil usage (see Chapter 10.8).

Employers and employees are obliged to make a unified mandatory contribution to the state social security fund. The maximum cap for such contributions depends on the level of the minimal salary, which is set in the annual budget law and may result in a significant cost burden for employers (see Chapter 7.3 for further information).
9.4 Legislative framework

Statute law

According to the Constitution, taxes and levies, as well as penalties for non-compliance, may only be established by laws enacted by parliament.

Strictly speaking, the Ministry of Revenues and Duties of Ukraine (MRDU) (which was organised in the course of consolidating the State Tax Service and State Customs Service during 2012-2013) does not have the power to amend the law. However, in practice, the tax authorities often issue tax clarifications (general and individual) that are not always consistent with the law; although this could be a reflection of ambiguities in the law itself as much as anything else.

9.5 Tax treaties

As of 31 July 2013, Ukraine has 70 double tax treaties in effect. The double tax treaty with Cuba and the new double tax treaty with Cyprus have both been ratified by the Parliament but have not come into force yet. Also, there are 2 treaties that have not been ratified yet (treaties with Luxembourg and Ireland).

Withholding taxes (WHT) on interest, dividends and royalties are typically reduced by the treaties. A summary of the withholding rates under the various treaties is provided in Appendix C.

Historically, one of the most favourable treaties was the Ukraine - Cyprus treaty, which provided for 0% withholding tax on dividends, interest and royalties.

However, a new tax treaty between Ukraine and Cyprus and a protocol to the treaty were ratified and are effective from 1 January 2014. The new treaty provides for the following WHT rates: dividends – 5%/15%; interest – 5%/10%; royalties – 5%/10%. If ratification by the parliaments of the two states happens before 31 December 2013, the new treaty will apply from 1 January 2014.

Taxpayers do not require confirmation from the tax authorities before claiming relief under a treaty. However, the withholding agent must hold a certificate of residence from the treaty country for the person to whom income is paid. The certificate is valid for the calendar year of its issuance. It should be properly legalised and translated into Ukrainian.

In addition to the above, the Tax Code requires the recipient of all types of income from Ukraine to be the beneficial owner (actual recipient) of the respective income. Agents, nominee holders and other intermediaries in respect of the received income cannot be beneficial owners of income sourced in Ukraine and, therefore, are not entitled to favourable treaty provisions.

The Ukrainian tax authorities are increasing their awareness of the beneficial owner concept.

9.6 Administration of the tax system

National and local taxes are administered by the MRDU.

The allocation of revenues between the state and local budgets is set out in the annual budget law. Revenues are allocated based on source, rather than by amount. One consequence is that payments for some state taxes may need to be made to local budget accounts.

9.7 Registration requirements

The tax registration of legal entities and private entrepreneurs in Ukraine should be performed automatically after their state registration by the tax office where the business or private entrepreneur is located. Generally, such registration is confirmed by the respective extract from the State register.

Also it is an obligatory requirement for individuals (including private entrepreneurs and non-residents) to have an ID number for receiving payments from the Ukrainian tax agents (Ukrainian legal entities, other private entrepreneurs, etc.). Moreover, it is not possible to open a bank account in Ukraine without a tax ID number. The latter is issued by the local tax office upon the request of an individual.

Permanent establishments of non-residents and representative offices of foreign entities (both commercial and non-commercial) are required to follow the tax registration procedure by submitting a request to the tax office. Registration with the tax office in such cases may take up to 10 calendar days and is confirmed by a special notification form. There is a direct provision in the Tax Code that a permanent establishment, which started its business activity in Ukraine before registration with the tax authorities, is treated as having committed tax evasion.

9.8 Tax returns and payments

PIT returns are filed for each calendar year, but individual taxpayers whose entire income is subject to withholding tax at the source (e.g. salaries) are not required to file PIT returns unless they obtain income from two or more sources. PIT returns for individuals must be filed by 30 April of the following year.

Tax returns for private entrepreneurs must be filed by 9 February of the following year.

Tax returns for CPT should be generally submitted on an annual basis, but some taxpayers will have to submit them quarterly (see Chapter 10.1).

Taxpayers with annual turnover for the previous year exceeding UAH 10 million (excluding agricultural producers) have to make monthly advance CPT payments (by the 30th day of each month) in the amount of 1/12 of the previous year’s tax liabilities. These taxpayers do not need to file separate quarterly returns.

Value-added tax returns are generally filed on a monthly basis.

Monthly tax returns should be filed within 20 calendar days following the last day of the reporting month. Quarterly returns are due within 40 calendar days following the last day of the reporting quarter. Annual returns are due within 60 calendar days following the last day of the reporting year.

Tax returns should be filed in electronic form by all businesses (except small).

If the filing date for any return falls on a weekend or a public holiday, the return may be filed on the following working day.

Payment of taxes should be generally made within 10 calendar days from the day on which the return is required to be filed or the assessment is issued. Payments are normally made through taxpayers’ bank accounts.

Withholding taxes must be remitted to the authorities no later than the date when the payment is made to the income recipient (e.g. no later than the date the income is paid abroad in case of payments to non-residents).

A non-resident that does not have a permanent establishment in Ukraine is not liable to file tax returns or pay tax in Ukraine.

Resident companies and non-resident entities with a permanent establishment in Ukraine must keep records that comply with tax rules.

The tax authorities have recently been focusing on non-commercial representative offices. In many cases, the tax authorities have considered these entities to be taxable and applied significant penalties.

At any stage of the process, or if the national office rejects the appeal, a taxpayer is entitled to pursue action through the administrative court system (there is no separate tax court system). Submitting an appeal (both administrative and court) suspends the requirement to pay the assessed tax, as well as the accrual of interest and penalties. Late payment interest (for the whole period of underpayment including appeal proceedings) and penalties will apply only if the taxpayer finally fails to win the case.

The taxpayer cannot ground the administrative or court appeal on documents not provided to the tax authorities in the course of the tax audit. The tax authorities have recently been threatening to apply criminal responsibility against officers of the company if assessed taxes are not accepted.

9.9 Appeals

Assessments may be appealed administratively or through the court system. The initial administrative appeal is made to the regional tax office which supervises the tax office that made the assessment. If an appeal is rejected, a taxpayer may appeal in turn to a national office. Large taxpayers appeal directly to a national office.

An administrative appeal must be filed to the relevant level of the tax system within 10 calendar days of receiving an assessment or official advice that an administrative appeal has been rejected at a lower level.

The tax authorities must respond to the appeal within 20 calendar days. If they fail to do so, the appeal is deemed to be decided in favour of the taxpayer. The 20-day period may be extended by up to 60 days, but only if the authorities advise the taxpayer in writing within the initial 20-day period.

Penalties of up to 75% apply for failure to withhold taxes.

Generally, the following withholding tax rates apply to income paid to non-residents:

- Passive income (dividends, interest, royalties) from Ukrainian sources that is paid to non-resident entities is generally subject to 15% withholding tax.
- Other payments, including ‘engineering services’, lease payments, agency and brokerage fees are also
subject to 15% withholding tax, but payments for most other services are not subject to withholding.

- 15% withholding tax applies to income on the sale of real estate and on profits from sales of securities.
- Payments for freight services (including sea freight) are subject to 6% withholding tax.

Withholding tax rates may be reduced under a relevant tax treaty (see Chapter 9.5).

Payments to non-resident persons for advertising services are not subject to withholding. However, the resident payer is required to pay a 20% surtax based on the value of the services for the production and/or distribution of the advertisement from its own cost.

A resident payer is also required to pay a 12% tax if a payment is made to a foreign insurer or reinsurer whose rating of financial reliability does not meet the requirements set by the authorised state agency.

As the taxes on advertising and insurance are levied on the resident party, they cannot be relieved using a tax treaty.

9.12 Tax audits

The frequency of the scheduled audits performed by the tax authorities depends on the risk rate of activities carried out by a taxpayer. In general, the frequency of scheduled tax audits for high-risk business is limited to one time per year. Business entities must be notified of the audit in writing at least 10 days before the scheduled audit. The scheduled audit should be carried out within a maximum of 30 business days (i.e. for large taxpayers – 30 days, for small – 10 days, for others – 20 days), although the period may be extended by up to 15 days (10 and 5 days respectively depending on the size of the taxpayer) or the audit may be paused (for large taxpayers).

In addition, the tax authorities may perform unscheduled audits in any of the following circumstances:
- A taxpayer does not respond within 10 days to a request for information from the tax authorities when the latter are cross-checking information, or when the cross-audit of another business entity has revealed a violation by the taxpayer.
- A business entity does not file tax returns on a timely basis.
- A taxpayer submits adjusting tax returns for periods covered by the audits of the tax authorities.
- A taxpayer initiates an appeal process against an assessment and refers to facts, which were not investigated during the audit.
- A business entity is reorganised or liquidated.
- A taxpayer claims a VAT refund for an amount exceeding UAH 100,000 (the unscheduled audit can only be performed in respect of such a refund).
- If a taxpayer does not provide a VAT invoice or provides an invalid VAT invoice and a respective claim is submitted, but the taxpayer does not respond to the written request from the tax authorities within 10 days from the date of receiving the request.
- The courts, investigation authorities, state investigators or public prosecutors make a decision within a criminal case.
- If, in respect of the tax officer who conducted the tax audit, a criminal case or internal investigation was started.

The duration of an unscheduled audit cannot exceed 15 business days for large taxpayers (5 and 10 days for small and other taxpayers respectively), but may be prolonged by an additional 10 business days (2 and 5 days respectively). The unscheduled tax audit of a large taxpayer may be paused. Before starting an audit, the tax inspector must present a written order to the taxpayer, outlining the reason for, scope and period of the tax audit.

A possibility to request an electronic tax audit from the tax authorities, in order to verify tax compliance, will be available for payers of simplified tax for 2016; for ‘micro’, ‘small’ and ‘medium’ business taxpayers - from 2015; and for other taxpayers - from 2016.

9.13 Penalties

Late filing

In addition to a nominal penalty for late filing (UAH 170 for the first and UAH 1620 for a second within one year), if the tax authorities assess tax when a taxpayer fails to file a return, penalties could reach up to 50% of the tax assessed.

Late payment of tax

If a taxpayer (i) does not pay the amount of tax shown in its tax return or monthly amount of advance payment of CPT on time, or (ii) fails to pay an assessment within the time shown on the assessment notice (within 10 days of the final resolution of the appeal, if the assessment is appealed), penalties are imposed as follows:
- 10% of the underpaid tax for delays of up to 30 calendar days, and
- 20% of the underpaid tax for delays exceeding 30 calendar days.

Understated tax liabilities

If, during an audit, the tax authorities determine that the tax liability shown in the taxpayer’s return is understated, they will impose penalties of up to 50% of the tax assessed, depending on number of similar breaches during the three-year period.

According to the Tax Code, the first breach of the respective tax rules within a three year period will result in penalties of 25%, for a second offense and any subsequent breach - 50%.

The same penalties apply for overstatement of VAT refunds.

Criminal responsibility

The individual taxpayer (or officials) may be subject to criminal penalties if tax evasion is proven. For tax evasion, fines of up to UAH 425,000 (in certain cases – not less than the amount of tax assessment) may be imposed in combination with the prohibition from occupying certain positions or engaging in certain activities for up to three years, or confiscation of property (depending of the amount of the tax assessed).

The individual could be dismissed from criminal responsibility if all the tax assessments with penalties and interest are paid before the criminal proceedings against them are instituted.

If an individual is found guilty and is not willing or able to pay the fine, the court has the ability to convert the fine into imprisonment (capped by 10 years for tax evasion).

Interest for late payments

When tax is not paid on time, interest for late payment is charged on a daily basis in addition to the above penalties. Under a general rule, the rate is 120% of the NBU discount rate that is effective at the date the payment was due or the date the payment was made, whichever is higher. Interest is charged on the entire outstanding tax, including penalties.

For amounts additionally assessed by the tax authorities, interest is accrued from the date the tax was due using the NBU discount rate effective at this date.

Voluntary disclosures

If a taxpayer voluntarily discloses through the submission of an adjusting tax return and pays the underpaid tax before the tax authorities commence an audit, there will be a 3% penalty applied to the amount of under-declared tax.

If the taxpayer pays the underpaid tax disclosed in the return for the tax period (without filing the adjusting tax return) a 5% penalty applies. Submitting an adjusted tax return in the course of a scheduled or unscheduled tax audit is prohibited if the tax return relates to the period covered by the tax audit.

Penalties during appeal

Penalties and interest are not accrued during the appeal process (see Chapter 9.10).

9.14 Tax ruling

A tax clarification (ruling) may be sought from the tax authorities, who are required to issue such clarifications. Tax clarifications are not legally binding for the taxpayer and may be challenged in court. A taxpayer may use the tax ruling as guidance on the methodology to be applied by the taxpayer.

In practice, the tax ruling does not provide solid protection against tax assessments and penalties.

However, it is prudent to consider MRDU interpretations that substantially reduce the risk of conflict with the MRDU.
**Taxation of corporations**

**10.1 Corporate tax system**

**Companies**

Ukrainian entities and foreign entities doing business in Ukraine through a permanent establishment are liable for corporate profits (income) tax (CPT). The tax rate is 19% for the year 2013 (and will be reduced to 16% for 2014 and the following years).

Reduced CPT rates of 0% and 3% are applicable for the income of insurance companies. Long-term life insurance premiums and pension insurance premiums are subject to a 0% rate, but the 3% rate applies for gross insurance premiums regarding other insurance, investment income, and some other income from insurance activities (commissions received for agent and other similar services, penalties for the breach of a contract, etc.). Profits earned by insurance companies from non-insurance activities are taxed at the standard CPT rate.

Qualifying small companies may elect to be taxed under a simplified tax regime at beneficial rates (refer below).

Resident entities are liable for Ukrainian tax on their worldwide income. Foreign taxes should be available for credit against Ukrainian tax liabilities, but difficult to obtain in practice. The amount of foreign tax credit is limited to the amount of Ukrainian tax that would arise from the equivalent income in Ukraine.

Foreign entities are liable for Ukrainian tax only on income from sources in Ukraine. In broad terms, income will have a source in Ukraine if:

- the income arises from activities performed or the property is located in Ukraine; or
- in the case of dividends, interest, royalties and other passive income, the income is paid by a resident of Ukraine.

Professional services, except specific engineering services, are not subject to withholding.

**Accounting period (compliance)**

The reporting year for companies generally follows the calendar year. The exception is for agricultural manufacturers, which report based on a June 30 year end.

Starring from 1 January 2013 taxpayers with an annual turnover exceeding UAH 10 million (excluding agricultural producers) make monthly advance corporate tax payments in the amount of 1/12 of the previous year’s tax liabilities.

Together with an annual tax return such taxpayers have to provide a calculation of monthly advance payments for the next 12 months. Such taxpayers are not required to file quarterly corporate tax returns.

If the taxpayer is expected to pay monthly advanced corporate tax payments but did not have a taxable profit or was in a tax loss position in the first quarter of the reporting year, the taxpayer may elect to file a CPT return and pay tax on a quarterly basis. Similar requirements apply to taxpayers with an annual turnover exceeding UAH 10 million that did not receive taxable profit for the previous year but appear in a tax payable position in respect of the first quarter of the reporting year.

Taxpayers with annual turnover for the previous year not exceeding UAH 10 million and newly established companies have to submit an annual tax return and pay CPT on an annual basis.

Tax returns are based on the financial statements of the company.

**Permanent establishments**

The domestic definition for a permanent representation essentially adopts the definition of a permanent establishment found in the OECD Model Tax Convention.

The Tax Code of Ukraine provides three tests as follows which are used to determine whether or not activity of a non-resident creates a permanent establishment in Ukraine:

- a fixed place of business test (through which the non-resident carries out all or part of its business activities)
- a dependent agent test, and
- a service permanent establishment test.

The term ‘permanent establishment’ specifically includes, inter alia, headquarters, branches, offices, factories, workshops, mines, oil or gas wells, quarries and any other places where natural resources are extracted.

A resident acting on behalf of a non-resident is not treated as an agency permanent establishment if (a) it acts on behalf of more than one non-resident, and/or (b) it acts in the ordinary course of its business.

The service permanent establishment test provides that the provision of services by a non-resident through its...
employees or other personnel in Ukraine (apart from the provision of personnel) shall constitute a permanent establishment provided such activities (within the frame of one project) last more than 6 months in any 12-month period.

A construction site in Ukraine may also give rise to a permanent establishment, provided the length of the construction activities exceeds six months.

When a foreign company conducts business in Ukraine through a permanent establishment, taxable income should be determined on the same basis as for domestic entities. If it is not possible to determine taxable profit in Ukraine based on the ‘direct’ method (taxable income less deductible expenses), the allocation method or notional method should be used.

The allocation method requires the taxpayer to allocate a portion of its worldwide income and expenses to Ukraine. This method is difficult to apply and is rarely used in practice. The tax authorities prefer the notional method, which involves applying a notional margin of 30% to gross revenues earned in respect of activities in Ukraine (generally, all funds that are received by local permanent establishments and representative offices).

Ukraine has no special tax rules for non-commercial representative offices established to engage in liaison-type activities. Such offices are subject to normal CPT, but an exemption from income tax may be available for the representative offices carrying out activities of an auxiliary and preparatory nature for a foreign entity.

In practice, the tax authorities tend to challenge the tax exempt status of non-commercial representative offices and courts have tended to support the assessments.

Holding companies and group taxation

There is no system of group taxation in Ukraine. All members of a group must file separate tax returns.

Dividends received by a Ukrainian entity from another Ukrainian entity are exempt from CPT.

Dividends received by Ukrainian companies from foreign companies controlled (at least 20% shareholding) by these Ukrainian companies (except for those having ‘offshore status’) are exempt from CPT.

Cost sharing and similar intra-group payments, other than remuneration for services actually rendered, may not be deductible.

10.2 Incentives and special tax regimes

Tax holidays

Tax holidays may be available until the end of 2015 for small businesses, but are unlikely to impact international investors. A zero CPT rate is applicable for those taxpayers who meet certain criteria (including maximum amount of total income for reporting period, minimal amount of salary paid to employees, date of incorporation, etc.)

Single (unified) tax

Qualifying small legal entities (only companies that are 75% owned by individual investors or other legal entities on a single tax) may opt to use the simplified taxation, accounting and reporting system.

There are now two categories for legal entities subject to the single (unified) tax:

- Legal entities with annual revenue of up to UAH 5 million, and an average number of employees up to 50 persons (‘fourth group’ of single tax). Such VAT-registered entities pay 3% of their income.

- Non-VAT registered entities pay 5% tax accordingly.

- Legal entities with an annual revenue of up to UAH 20 million, without limitation on number of employees (‘sixth group’ of single tax). Such VAT-registered entities pay 5% of their income, while non-VAT-registered entities pay 7% tax accordingly.

This regime also foresees easier reporting for small businesses under the simplified tax system.

However, specific types of business activities are prohibited under this tax regime (inter alia, transactions with certain excisable products, the exploration/production/sale of precious metals and stones, company management and communication services).

Agricultural producers

Agricultural producers are entitled to use a very favourable tax regime (with exemption from CPT), provided certain requirements are met. The main criterion requires that income from the sale of their own agricultural products constitutes not less than 75% of their total gross revenue of the previous tax (reporting) year.

Under this regime the amount of tax due depends on the scale of the agricultural land plot owned or rented by agricultural producers. The tax rates vary from 0.03% to 2.5% and apply to the normative monetary value of one hectare of agricultural land. The tax rates also depend on the type of such land.

IT companies

Qualifying IT companies are entitled to utilise the reduced CPT rate of 5% from 1 January 2013 until 1 January 2023. The main criterion requires that income from IT activity for the last four consecutive quarters (two for newly established companies) constitutes not less than 70% of the total gross revenue.

The list of qualifying IT activities, in particular, includes production/sale of software, computer programming and similar activities, consulting on informatisation, implementation and management of IT systems, and data processing.

Some value-added tax (VAT) incentives are also available for the supply of IT products.

Favourable tax regime for investors

Starting from 1 January 2013 until 1 January 2018, Ukraine provides a rate of 0% CPT for taxation of investor’s income derived from qualifying investment projects resulting in job creation in qualifying industries.

The government has yet to provide the details of the industries that will qualify for this incentive, but the list of such qualifying industries is likely to include high-tech, eco-friendly, manufacturing and export-oriented industries.

The incentives are granted for both new investment projects and for reconstruction or modernisation of existing enterprises.

The incentives are provided under the following conditions:

- the value of the investment should exceed 3 million euros (EUR) for large businesses, EUR 1 million - for medium businesses, and EUR 0.5 million - for small businesses
- the number of new jobs created should exceed 150 for large businesses, 50 - for medium businesses, and 25 - for small businesses
- the salary level should exceed 2.5 times the minimum monthly salary set at 1 January of the reporting year (the minimum salary as of 1 January 2013 is equal to UAH 1,147)

Other tax incentives

Apart from small businesses, agricultural producers, IT companies and qualifying investors discussed above, the Tax Code provides for certain additional tax ‘holidays’ and incentives. Specifically, the following businesses are entitled to benefit from 10 years of CPT exemption from 1 January 2011 (subject to certain limitations and qualifying criteria):

- ‘light’ industry
- ship- and aircraft-building industries
- enterprises that produce machinery for the agricultural industry
- power generating companies that receive profit from the generation of electric energy from renewable energy sources, and
- three, four and five star hotels.

There are a number of industry specific tax incentives available:

- The publishing and cinematography industries will benefit from an incentive regime until 1 January 2015 and 1 January 2016 respectively.
- Certain incentives are available for taxation of profit of investment funds.
- For enterprises selling domestically produced energy-saving goods in Ukraine, up to 80% of profits may be tax exempt; and for enterprises adopting energy-saving projects, up to 50% of profits may be exempt.
- Income from the sale of bio-energy fuel by producers of bio-energy fuel is exempt from CPT until 2020. Also, the same tax exemption is available for producers of electric and heat energy generated from bio-energy fuel, as well as for producers of domestic equipment powered with bio-energy power.
- An exemption from CPT is available for producers of gas (methane) until 2020.

- The profits of producers of qualifying baby food products from the sale of such domestically produced products are tax exempt.
- An investor’s income derived from qualifying investment projects (resulting in job creation) in qualifying industries is exempt from CPT until 2018 and will be taxed at a reduced CPT rate of 8% from 2018 to 2023.
- Qualifying IT companies are entitled to use a reduced CPT rate of 5% until 2023.
- Taxable gains on sales of securities are subject to a reduced CPT rate of 10%.
- There are also certain tax incentives for the fuel and energy sectors and for enterprises supplying water, heat, and wastewater disposal services.

In addition to the above, Ukraine offers generous depreciation rates for most fixed assets, i.e. property, plant and equipment (see Chapter 10.4).

10.3 Gross income

Business profits

Taxable profits are calculated as taxable income less the allowable expenses which include depreciation charges.

Taxable income encompasses all revenues received by a taxpayer from all economic activities, unless the revenues are expressly exempted under the law, and includes income from operating activity and other income.

Allowable expenses encompass all expenses incurred in relation to ‘business activities’ resulting in a reduction of economic benefits by a decrease in assets or an increase in liabilities unless a specific provision in the law restricts the deduction. There are two major categories of expenses: operational expenses (those related to the cost of goods/services sold) and ‘other’ expenses.
‘Business activities’ are defined in the law as “activities related to the production and/or sale of goods or the provision of works/services, aimed at income generation, and carried out by a person (either an individual or a legal entity) on their own and/or via its branches, or any other person acting for the benefit of this person, including acting under agency agreements”.

Despite the Tax Code reconciling tax accounting with financial accounting, some differences still remain. Starting from the reporting periods of 2013, taxpayers will be required to provide information on tax differences in their financial statements based on the forms and methodology approved by the Ministry of Finance of Ukraine.

Accounting for income
Income from the sale of goods is recognised at the date of transfer to the buyer of the title of ownership of the goods.

Income from supply of services is recognised at the date an acceptance of goods or services is rendered, should be recognised in the reporting period when income from the sale of such goods or services rendered was recognised.

Other expenses are recognised in the reporting period in which they were actually incurred subject to certain requirements set by the law.

10.4 Deductibility of expenses
Business expenses
Expenses incurred in the furtherance of a taxpayer’s business activities should be deductible, unless a specific provision in the law says otherwise (see below).

For VAT-registered persons, revenues and expenses are calculated without VAT. For non-VAT-registered persons, the VAT component of most expenses will be included in deductible expenses, except for the VAT related to the purchase and repair of fixed assets, which form their balance value, subject to depreciation.

Research and development expenses other than those subject to amortisation are deductible when incurred, provided they are business related.

The deduction of loan loss provisions created by banks against lending and other active credit facilities is capped at 20% of a bank’s total amount of indebtedness due, i.e. loan portfolio. Other financial institutions (excluding insurance companies) are entitled to deduct loan loss provisions in an amount up to 10% of all debt claims.

Non-deductible expenses
The main items that are not deductible for CPT purposes are:
- Expenses that are not supported by relevant documents (e.g. contract, voucher, receipt).
- Organisation of receptions, presentations, festivals, entertainment and recreation, and the procurement and distribution of gifts (other than with advertising purposes).
- Amortisation of goodwill.
- Cost of goods sold to related parties, to the extent that the sale price does not exceed such cost (until 1 September 2013).
- Expenses related to the maintenance of management bodies, including mother companies.
- Dividends paid.
- Fines and penalties.
- Repairs of fixed assets (including leaseholds) subject to depreciation in excess of 10% of the aggregate book value of all assets as of the beginning of the tax year (the excess is capitalised).
- Expenses incurred in connection with the acquisition of consulting, marketing and advertising services from a non-resident at a rate in excess of 4% of the income (net of VAT and excise tax) for the year preceding the reporting year (unless provided through permanent establishments of non-residents, which are taxed accordingly).
- If the non-resident is a resident of an offshore tax regime, the expenses above are not deductible.
- Expenses incurred in connection with the acquisition of engineering services from non-residents at a rate exceeding 5% of the customs value of the equipment imported under a related contract (unless provided through permanent establishments, which are taxed accordingly). If the non-resident is the resident of an offshore, or the enterprise to which the fee is charged for the engineering services is not the beneficial owner of such services, the expenses above are not deductible.

Payments for goods or services to foreign entities in listed jurisdictions operating offshore tax regimes (36 tax haven jurisdictions are listed) have limited deductibility. Only 85% of the amount of such payments is deductible, unless evidence is shown that the entity is subject to the ordinary tax rules of that jurisdiction (i.e. it does not benefit from the offshore tax regime).

Royalties paid to non-residents also have limited deductibility (refer below).

Accounting for expenses
The expenses that form the cost of goods sold, work performed and services rendered, should be recognised in the reporting period when income from the sale of such goods or services rendered was recognised.

Other expenses are recognised in the reporting period in which they were actually incurred subject to certain requirements set by the law.

Foreign income
Foreign income is taxed under the general rules, and there are no special rules regarding anti-deferral or unlimited earnings.

Inventory valuation
A taxpayer is entitled to adopt any of the methods of inventory valuation prescribed by the accounting standards, namely: the first-in, first-out (FIFO) method; weighed average methods; identified cost of unit of goods; normative cost; or sale price. The last-in, first-out (LIFO) method does not apply in Ukraine.

Depreciation and amortisation
Assets costing more than UAH 2,500 and with a useful life exceeding one year are subject to depreciation.

Depreciation is determined on a monthly basis. Each asset is accounted for separately.

Fixed assets are divided into 16 groups according to their statutory minimal useful life. The useful life of fixed assets may be extended by a taxpayer (see table below):

<table>
<thead>
<tr>
<th>Group</th>
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<td>(including some electronic devices)</td>
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</tr>
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<tr>
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</tr>
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<td>Other fixed assets</td>
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<td>5</td>
</tr>
<tr>
<td>Returnable containers</td>
<td>6</td>
</tr>
</tbody>
</table>

Assets may be depreciated using any of the following five methods:
1. Straight-line method
2. Residual value method
3. Accelerated residual value method (used only for machinery and vehicles)
4. Cumulative method
5. Production method

At the same time, ‘other assets’, temporary facilities and returnable containers are only subject to the straight-line and production methods.

Expenses related to repairs of fixed assets (including leasehold) are subject to depreciation in excess of 10% of the aggregate book value of all assets as of the beginning of the tax year (the amount below the limit is deductible).

The following intangible assets may be amortised using one of the above-mentioned methods over the period of an asset’s lifetime (considering the minimum period set by the law for some classes):
- rights to use natural resources
- rights to use property
- rights on intangible assets
- technology, know-how (not less than five years)
- copyrights (not less than two years), exceed such cost (until 1 September 2013).
- expenses related to the maintenance of management bodies, including mother companies.
- dividends paid.
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- royalties paid to non-residents also have limited deductibility (refer below).

Accounting for expenses
the expenses that form the cost of goods sold, work performed and services rendered, should be recognised in the reporting period when income from the sale of such goods or services rendered was recognised.

Other expenses are recognised in the reporting period in which they were actually incurred subject to certain requirements set by the law.
At the same time, there are restrictions on the deductibility of interest payable to non-resident related parties. Such interest is deductible within the amount of interest income plus 50% of the company’s taxable profit (excluding interest income). Any interest paid to affiliates in excess of this limit is carried forward to future tax periods.

Interest received by taxpayers is included in their taxable income on a general basis.

Interest-free loans from non-residents are taxable (and deductible upon repayment), unless they are received from shareholders for a period not exceeding 365 calendar days.

Royalties
Royalties paid to non-residents in an amount exceeding 4% of income (net of VAT and excise tax) for the prior year are not deductible.

Furthermore, royalties paid (i) to non-residents in offshore zones, (ii) to non-beneficial owners of the respective payment, (iii) to a person who shall not be taxed with regard to such royalty in the country of their residence or (iv) for intellectual property rights generated in Ukraine are not tax deductible at all.

Income from royalties received by taxpayers is included in their taxable income on a general basis.

Operating Leases
Lease payments on operating leases are tax deductible for the lessee. The lessor is entitled to claim a deduction for depreciation of the leased assets.

Financial Leases
For tax purposes, financial leasing is treated as if a sale has been made. The lessee is entitled to claim depreciation charges on such property.

The lessee deducts the interest and commission elements of the lease payments (and foreign exchange losses) in the period in which they are accrued.

The lessor recognises taxable income for the total principal amount of the lease when the asset is transferred, and recognises the interest and commission element of the payments over the term of the lease.

A lease is treated as a financial lease if it meets any of the following conditions:

- The leased property is transferred for a period during which at least 75% of its acquisition cost would be depreciated under tax depreciation rules, and the lessee is obliged to acquire the title to the property during or at the end of the lease period.
- The amount of the lease payments equals or exceeds the acquisition cost of the property.
- The book value of the leased property at the end of the leasing agreement does not exceed 25% of the original cost of the property at the beginning of the agreement.
- The property has been manufactured to the order of the lessee and cannot be used by other entities when the lease expires because of the property’s processing and quality features.

Notwithstanding the above-determined rules, the parties may agree to treat the lease as an operating lease for CPT purposes. If they do so, they must continue to treat it as an operating lease throughout the term of the lease.

Losses
Ukrainian tax legislation does not provide refunds for deductions. However, tax losses may be carried forward, subject to certain limitations.

In particular, tax losses accumulated as of 1 January 2012 by taxpayers with annual revenues for 2011 not less than UAH 1 million can be utilised during 2012-2015, 25% each year. The provision on reflecting tax losses in further reporting periods is not stated clearly in the Tax Code. The amount of tax losses as of 1 January 2012 includes losses accumulated as at 1 January 2011.

Ukrainian tax legislation does not provide for refunds for losses carried off.

10.5 Special tax rules

Dividends – Advance Corporate Tax (ACT)
Dividends derived by a Ukrainian entity from their affiliates, both resident and non-resident companies located in non-tax haven jurisdictions, are exempt from corporate tax.

Companies paying dividends are required to pay ACT at the standard rate, unless the dividends are paid to individuals or out of received dividends (with some other exceptions). The advance payment is used to meet subsequent CPT liabilities (other than for insurance companies).

If ACT is not able to be used in the year the dividend is paid, it is carried over to future years, but cannot be refunded.

According to the law, companies are entitled to offset ACT on dividends against ‘general’ advance CPT, which is payable by taxpayers whose annual turnover for the previous year exceeds UAH 10 million for the year. If the amount of ACT on dividends exceeds the total amount of ‘general’ advance CPT, the excess of ACT may decrease the future ‘general’ advance CPT until it is fully utilised.

Securities
New rules on taxing transactions with securities were introduced in 2013.

Taxable gains on sales of securities are subject to a reduced CPT rate, while losses are available to offset future gains. Gains/losses should be computed by individual transactions, but the taxable gain will be calculated on an aggregate basis. The aggregate gain is subject to a 10% CPT, and the aggregate loss can be carried forward.

Gains and losses should be calculated and reported separately for stock exchange transactions and off-stock exchange transactions.

The maximum carryforward period for losses from off-stock exchange transactions with securities and derivatives is three years.

Accumulated taxable losses from transactions with securities and derivatives as of 1 January 2013 cannot be utilised. The cost of securities held at that date will be deducted in arriving at taxable gain when these securities are sold.

See the information on the special excise tax on disposal of securities below.

Foreign exchange
Taxable income in foreign currency is revalued in Ukrainian hryvnia at the National Bank of Ukraine’s (NBU) official exchange rate at the date when the respective taxable income should be recognised under the general rules of the Tax Code, and, in terms of previously received payments, at the exchange rate on the receipt date.

Expenses incurred (and not paid) by the taxpayer in a foreign currency on the purchase of goods, works, and services are recognised at the NBU’s official exchange rate on the date of such purchase, and, in case of a prepayment, at the exchange rate on the payment date.

Realised and non-realisated foreign exchange gains/losses are generally treated as taxable/deductible. Foreign currency differences arising from unsettled debt balances and foreign currency account balances are computed according to accounting standards.

Bad and doubtful debts
To claim a deduction for bad or doubtful debts, a taxpayer must initiate an action for collection. A reduction of taxable income for bad or doubtful debts is allowed if:

- the creditor applies to the court with a claim for debt collection or for initiating bankruptcy proceedings, or
- the creditor has a note of execution for collection executed by a notary.

At the same time, the expenses related to income from the underlying goods/services should be decreased as well.

If the taxpayer subsequently recovers an amount that has been deducted as a bad or doubtful debt, the amount recovered is included into taxable income (with respective deductible expenses).

When a creditor pursues action to recover a debt and the debtor fails to pay, the debtor is required to reduce deductible expenses in the period when the court issues the respective resolution or the execution of a note duly executed by a notary. If the debt is subsequently repaid, the debtor may claim a deduction.

Incentives for gas and oil industries (Product Sharing Agreement)

10.6 Transfer pricing rules

Recently the Parliament of Ukraine adopted the Law ‘On Changes to the Tax Code of Ukraine in respect of transfer pricing’. The Law (TP) which comes into force on 1 September 2013.

TP rules apply for the purposes of CPT and VAT. According to the Law on TP, the list of controlled transactions includes:

- transactions with related parties-non-residents of Ukraine;
- transactions with related parties-residents of Ukraine that:
  - declared tax losses for the previous tax year;
  - apply special tax regimes;
  - apply CPT and / or VAT rates other than the standard rates;
  - are non-CPT and / or non-VAT payers.
transactions with residents of low tax jurisdictions (where the corporate profits (income) tax rate is less than the Ukrainian rate by 5% and more). The list of the low tax jurisdictions will be set by the Cabinet of Ministers of Ukraine (CMU).

The threshold for controlled transactions is UAH 50 million (USD 6.25 million), net of VAT. This threshold applies cumulatively for all transactions with one counterparty per year.

The Law on TP provides five pricing methods that can be used to determine the market price:

- Comparable uncontrolled price (CUP) method
- Resale price method
- Cost plus method
- Profit split method
- Net profit (margin) method

The CUP method is the primary transfer pricing method to be used over all other methods.

All affected taxpayers should file a report on controlled transactions by the first of May (each year) of the year following the reporting year. The documentation on TP, substantiating the market level of prices, should be submitted only upon the request of the tax authorities.

The Law on TP introduces a new type of tax audit - specialised TP audit, which will be conducted if a TP report and/or TP documentation is not filed, the TP documentation is filed with violations or the prices in controlled transactions are identified as deviating from the market level. The duration of a TP audit cannot exceed 12 months.

The Law on TP establishes the following penalties for non-compliance with the TP rules:

- 5% of the controlled transaction value - for failure to file a report on controlled transactions
- 100 minimum monthly salaries (UAH 114,700 based on the minimum salary as of 1 July 2013) - for failure to file TP documentation.

Large taxpayers have the right to conclude Advance Pricing Agreements and agree in advance on certain terms of controlled transactions with the Ministry of Revenues and Duties of Ukraine.

The Law on TP prescribes transitional provisions till 1 January 2018 for foreign trade transactions with residents of low tax jurisdictions in respect of the prescribed types of commodities, such as agricultural, metal, iron ore and chemical products.

Taxpayers performing these transactions shall use, according to their own choice, one of the following two options for the determination of prices for tax purposes:

- use the information about the prices of the stock exchange (for commodities traded on the stock exchange) or prices published in the official sources of information set by the CMU (for other commodities) and adhere to the permissible deviation percentage of up to 5%; or
- justify the prices by using one of the methods set by Article 39 of the Tax Code and disclose copies of the contracts for subsequent sales of commodities to unrelated parties.

The Law on TP establishes a penalty of UAH 1 for each violation related to the underestimation of taxes according to the new rules during the first year of their application.

10.7 Transactions with land

Corporate tax

Special rules apply to expenses/losses arising from the purchase/sale of land. Expenses related to the acquisition of land are not depreciated nor deducted. If the land plot is sold in the future, the purchase cost is offset against the proceeds.

Losses incurred in the disposition of land are non-deductible.

Land tax

Land tax is assessed annually for the following year and is paid monthly in equal instalments by the owners or users of land. The rate of land tax depends on the category, location and existence of the state valuation of each particular land plot.

10.8 Other taxes

Special Pension Fund charges

The following special Pension Fund charges are payable to the budget:

- 3%, 4% or 5% charge on the value of a new car, which is subject to the first registration with the state authority (State Traffic Inspection), depending on the said value for the year 2013, the following criteria apply: up to UAH 189,255 – 3%; above UAH 189,255, but not more than UAH 332,630 – 4%; above UAH 332,630 – 5%.
- 1% charge on the acquisition of real estate payable by individuals and legal entities that purchase real estate.
- 7.5% charge on mobile communication services.
- 5% charge on sales of jewellery.

Stamp duty

Stamp duty is imposed on certain actions, including the notarisation of contracts and the filing of documents with the courts. In most cases, the amounts involved are nominal.

Operations carried out at commodity exchanges and real estate sales attract a stamp duty of 1%.

Excise tax

Excise tax applies to certain goods imported to or produced in Ukraine. Excisable goods include ethyl alcohol, alcoholic beverages, tobacco and tobacco products, cars, car bodies, motorbikes, certain trailers, liquefied gas, petrol, diesel fuel, and certain other oil products. The rates are specific for each product or group of products subject to excise tax.

Rates of excise tax can be ad valorem (a percentage of the value of the goods), specific (in monetary units per unit of goods), or combined. A list of selected rates can be found in Appendix D. Special excise tax applies to disposal of securities and transactions with derivatives with the following criteria and tax rates:

- 0% for stock exchange transactions with derivatives.
- 0.1% for off-stock exchange transactions with listed securities.
- 1.5% for off-stock exchange transactions with non-listed securities.
- 5 tax-free allowances (currently UAH 85) for transactions with off-exchange derivatives.

Charges for the use of subsoil are deductible for CPT purposes.

Local taxes and duties

The principal local taxes and duties that may affect business are:

- duty charged for certain business activities
- tourism duty
- tax on immovable property (property tax)
- duty for parking of a transport vehicle, and
- single (unified) tax.

Charge on environmental pollution

Environmental pollution charges (ecological tax) are imposed on any legal entity that discharges contaminants into the environment (air or water) or disposes of waste. The actual rate depends on the type and toxicity of each contaminant.

Amounts involved are nominal. Shares of private joint stock companies, corporate rights issued in a form other than securities, securities issued by non-residents, and a few other financial instruments and transactions are exempt from excise tax.

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11.1 Territoriality and residence

Individuals are classified into two categories for income tax purposes:

- Residents are liable for tax on their worldwide income.
- Non-residents are liable for tax only on their Ukrainian-sourced income (including salary paid by a foreign company for work in Ukraine).

Tax residence

According to the legislation, a person is a tax resident in Ukraine if they have a place of abode in Ukraine. If the person also has a place of abode in another country, they are deemed to be a resident of Ukraine if they have a permanent place of abode (domicile) in Ukraine.

If the individual has a permanent place of abode (domicile) in Ukraine and another country, the person is deemed to be a resident of Ukraine if their centre of vital interests is in Ukraine.

If an individual’s centre of vital interests cannot be determined, the individual will be deemed to be a resident of Ukraine if they stay in Ukraine for at least 183 days during the tax year (calendar year).

If residential status cannot be determined based on the aforementioned, an individual will be deemed to be a resident of Ukraine if they are a citizen of Ukraine.

Notwithstanding the above, the Ukrainian tax authorities could consider that all Ukrainian citizens are tax residents of Ukraine and subject to personal income tax, even if they reside abroad.

An individual may also voluntarily choose that their main place of abode (and therefore tax residence) is in Ukraine.

Individuals registered as Ukrainian freelancers or private entrepreneurs also qualify as Ukrainian tax residents.

Tax registration

All taxpayers, including foreign nationals, must register with the State Registry for Individual Taxpayers and be assigned a personal tax ID number. This number is required for various transactions such as registering Ukrainian companies, renting apartments, opening bank accounts and paying personal income tax. Receiving the ID number is also one of the conditions for obtaining the right to claim a tax deduction in respect of certain expenses incurred by a taxpayer during the reporting year.

In practice, non-resident individuals whose income from Ukraine is exempt under a relevant tax treaty will not need to obtain a tax ID number unless it is required for purposes other than taxation.

Individuals are obliged by law to inform the tax authorities of their valid tax address. This information should be submitted to the local tax office where the foreign national is registered. The procedure is similar to initial tax ID registration.

Tax rates

The following tax rates are applicable for the main types of income in Ukraine:

<table>
<thead>
<tr>
<th>Income Type</th>
<th>Tax Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salary, other benefits under employment and civil agreements, state and non-state money lottery winnings or gambling, foreign income and other income not covered elsewhere</td>
<td>up to UAH 11,470* per month 15% exceeding UAH 11,470 per month 17%</td>
</tr>
<tr>
<td>Winnings or prizes (except for state or non-state money lotteries or gambling)</td>
<td>30%</td>
</tr>
<tr>
<td>Interest: from Ukrainian and foreign banks until 31 December 2014</td>
<td>Exempt</td>
</tr>
<tr>
<td>from Ukrainian banks after 1 January 2015</td>
<td>5%</td>
</tr>
<tr>
<td>from foreign banks after 1 January 2015</td>
<td>15-17%</td>
</tr>
<tr>
<td>Dividends: from Ukrainian and foreign companies</td>
<td>5%</td>
</tr>
<tr>
<td>Disposal of real estate by tax residents: first sale</td>
<td>0% second and further sales 5%</td>
</tr>
<tr>
<td>first and subsequent sales of property abroad</td>
<td>15-17%</td>
</tr>
<tr>
<td>Disposal of real estate and movable property by non-residents</td>
<td>15-17%</td>
</tr>
</tbody>
</table>

* For 2013, to be indexed further according to the minimum salary increase.
11.2 Private entrepreneurs

General tax system
As a general rule, the taxable income for individuals registered as private entrepreneurs (including foreign nationals) is calculated as the difference between gross income and the documented expenses connected to their activity, subject to the standard 15% - 17% rates.

An entrepreneur on the general tax regime is entitled to deductions from their gross income on the same basis as corporations.

Tax returns should be filed by 9 February of the year following the reporting year and should indicate all forms of income (i.e. from entrepreneurial and non-entrepreneurial activities). Advance tax is paid in four instalments throughout the year. The final tax payment is due by 19 February of the year following the reporting one.

The applicable rate of Unified Social Contribution for private entrepreneurs on general taxation is 34.7% of the taxable entrepreneur’s income (subject to a cap).

Single (unified) tax
Individuals registered as private entrepreneurs (including foreign nationals) may elect to be covered by the ‘single (unified) tax’ regime if they meet the qualification criteria.

The current legislation establishes four groups of individual private entrepreneurs subject to the simplified tax regime (which differ depending on the scope of activities that they are allowed to perform) and two groups for the tax regime (which differ depending on the qualification criteria.

The current legislation establishes four

private entrepreneurs in the ‘first’
group:

− Tax rate applied: 1-10% of the minimal monthly salary.
− Reporting period - calendar year.
− Tax payment deadline - 20th day of each month.

Private entrepreneurs in the ‘second’
group:

− Annual revenue does not exceed UAH 1,000,000 and the private entrepreneur has no more than 10 employees.
− Tax rate applied: 2-20% of the minimal salary per month.
− Reporting period - calendar year.
− Tax payment deadline - 20th day of each month.

Private entrepreneurs in the ‘third’
group:

− Annual revenue does not exceed UAH 3,000,000 (w/o VAT) and the private entrepreneur has no more than 20 employees.
− Tax rate applied: 3% of revenue for VAT payers; 5% of revenue for non-VAT payers.
− Reporting period - calendar quarter.
− Tax payment deadline - 10 days after the reporting deadline.

Private entrepreneurs in the ‘fifth’
group:

− Annual revenue does not exceed UAH 20,000,000 (w/o VAT).
− Tax rate applied: 5% of revenue for VAT payers; 7% of revenue for non-VAT payers.
− Reporting period - calendar quarter.
− Tax payment deadline - 10 days after the reporting deadline.

Passive income (dividends, interest, royalties) received by individuals, as well as income from the sale of real estate or transport assets (even if it was used for entrepreneurial activity) shall be excluded from income subject to the unified tax.

In addition, such private entrepreneurs are required to pay compulsory Unified Social Contributions equal to 34.7% of the statutory minimum salary (for the 3Q 2013 – minimum monthly contribution is USD 50 and will increase by the end of the year to USD 53). Entrepreneurs can make extra contributions for their social security on a voluntary basis (up to the cap established by the law).

Income from independent professional activities
Income from independent professional activities (scientific, literary, educational, accounting, medical, etc.) is subject to the standard rates of taxation (15%-17%). Individuals who perform such activity should be registered with the tax authorities. They can utilise the right to deduct expenses as entrepreneurs on the general tax system.

There are a number of important exceptions:

− The value of the use of, or compensation for, housing or other tangible and intangible assets that belong to the employer and are used for entrepreneurial activity (for example, housing or cars) are taxable for the employer, except for cases when they are required for the fulfilment of the employee’s labour duties based on a labour agreement, prescribed by a so-called ‘collective agreement’ (an agreement between the owner and the personnel), or the law, within the limitations set therein.
− Limited employer contributions for voluntary long-term life insurance or non-state pension insurance for the benefit of an employee are not taxable.
− Amounts paid by employers to educational institutions for training/re-training of employees are not taxable within limited amounts.

Rental income
Rental income is subject to tax at the standard 15%-17% tax rates. This income is determined based on the contractual fee, but cannot be lower than the minimum rental fee determined according to the methodology established by the Cabinet of Ministers of Ukraine.

A non-resident individual may rent out an Ukrainian real estate only via a Ukrainian individual private entrepreneur or a resident legal entity, based on a written contract with such private entrepreneur or resident legal entity. Incompliance with this requirement is considered tax evasion.

If the lessee is a business entity, it is obliged to act as a tax agent and to withhold tax from rent payments to an individual, unless that individual is registered as a private entrepreneur whose activity is renting out property.

If rental income is received from someone other than a tax agent, the recipient is obliged to pay tax from such income on a self-assessment basis every quarter.

Income from prizes and winnings
Cash prizes from the state lottery are provided to an employee for free are taxable for the employer, except for prizes for which the employee’s activity is renting out property. Rental income is subject to tax at a 5% rate.

Investment income
Dividend income received from Ukrainian and foreign companies is generally subject to tax at a 5% rate.

Income from the sale of investment assets is determined independently from other income. The gain or loss is determined for each investment asset sold (sales proceeds less acquisition costs), and then aggregated for the year. If the aggregate amount is positive, it is subject to tax at the standard 15%-17% tax rates. If the aggregate amount is negative, it is carried forward and applied against investment income in subsequent years. Sales proceeds and expenses must be supported with documents. For taxation purposes, equity received as a gift or an inheritance is considered as bought for a price equal to the state duty and tax is paid as a result of the receipt of the gift/inheritance.

If an investment asset is sold to a related person at a loss, the loss is disregarded. Losses are also disregarded when an asset is gifted.

The following transactions are also treated as the sale of an investment asset:

− the exchange of one investment asset for another investment asset. The sales proceeds are deemed to be the market value of the shares that the individual transfers;
− the redemption of corporate rights by an issuer;
− the return of funds or property in the authorised fund of a company if the taxpayer ceases to be a founder/participant or if the company is liquidated.

In practice, the Ukrainian tax authorities tend to disallow the deduction of expenses for acquisitions in respect of investment income received from abroad, and impose tax on gross sales proceeds from such income.

Disposal of real estate
A resident’s gross revenue from the sale of real estate (including incomplete constructions) is subject to tax at either 0% or 5%, depending on the nature of the real estate, the number of years of possession by the seller, and the number of real estate sales performed by the same taxpayer during a calendar year.

The tax is based on the price indicated in the sale agreement, but cannot be lower than the property’s value calculated by an authorised institution. The tax should be paid before the notarisation of the sale agreement.
Income of non-residents is subject to tax according to the same rules at 15%-17% tax rates. No deduction is permitted for the cost of the property.

Disposal of movable property
A resident’s gross revenue from the sale of movable property is subject to tax at a 5% rate.

There is an exception for one sale per calendar year of a car, a motorcycle or a scooter, which is non-taxable.

The tax is based on the price indicated in the sale agreement, but cannot be lower than the value of the property calculated by an authorized institution or its ‘average market value’, depending on the taxpayer’s choice. The tax should be paid before the notarisation of the sale agreement.

Income of non-residents is subject to tax according to the same rules at 15%-17% tax rates. No deduction is permitted for the cost of the property.

Inheritance and gifts
Income received as an inheritance or gift is subject to tax at a 0% rate if received from a resident spouse, son, daughter or parent. A 5% rate applies if received from resident testators other than those mentioned. 15%-17% rates apply to inheritance and gifts received from/provided to a non-resident.

Gifts are non-taxable if their monthly value does not exceed 50% of the minimal salary set as of 1 January of the reporting year (for 2013 – about USD 72), except for cash payments in any amount.

Insurance proceeds
Receipts from insurance companies under the following forms of insurance contracts are exempt from tax:
- proceeds from health insurance, provided the insured event is confirmed by the appropriate documentation
- proceeds from property insurance, provided the amount of reimbursement does not exceed the market value of the insured property (increased by insurance payments), and
- proceeds from civil responsibility insurance, provided the amount of reimbursement does not exceed the amount of damage actually incurred by the beneficiary, which is defined based on usual prices.

Proceeds from life insurance when an insured person dies are taxed on the same basis as an inheritance.

Other insurance proceeds are generally subject to tax at the standard 15%-17% tax rate.

11.4 Tax-exempt income
Apart from the exceptions already noted, the following are the main items of income that are exempt from taxation:
- income from investments in securities issued by the Ukrainian Ministry of Finance and cash prizes or winnings from state lotteries (not exceeding 50 minimal monthly salaries)
- alimony received from residents
- shares received from the capitalisation of undistributed profits by a resident entity, provided that the allocation of shares between shareholders remains unchanged, and
- interest income from current bank accounts, deposits placed with banks and non-banking financial institutions and from saving certificates. This exemption is available until 31 December 2013.

11.5 Deductions
Non-business
There are no major deductions available to individuals in Ukraine. A registered tax resident taxpayer may claim a deduction from the annual taxable income for a limited amount of documented expenses incurred in the reporting year for:
- a limited amount of interest on a qualified mortgage, provided it is used to finance the acquisition of a taxpayer’s ‘main place of residence’
- limited premiums for qualified Ukrainian voluntary long-term life insurance or non-state pension insurance for the benefit of a taxpayer and their family members (spouse, parents, children), and
- donations to Ukrainian charities and not for profit organisations in an amount not exceeding 4% of the taxpayer’s annual taxable income.

The total deductions may not exceed the amount of taxable income received in the form of salaries. Amounts not deducted from the income of the reporting year cannot be carried forward.

Social security contributions
Taxable income is reduced by the amount of an employee’s mandatory USC paid. The employer’s mandatory USC is not included in the taxable income of the employee.

For details on Social Security contributions, see Chapter 7.

11.6 Foreign tax credits
Tax residents are allowed to credit foreign taxes paid on income received abroad, provided there is a valid double tax treaty between Ukraine and the relevant foreign state. The amount of foreign tax credit is limited to the amount of Ukrainian tax that would arise from the equivalent income in Ukraine (i.e. maximum 15%-17%). To claim a tax credit, the taxpayer needs an official confirmation of the amounts of income subject to tax abroad and the tax paid therefrom that is issued/verified by the relevant foreign tax authority. This document should be duly legalised or stamped with Apostille. If the above official confirmation is not available by the Ukrainian tax return filing deadline (30 April of the year following the reporting year for the reporting one), the taxpayer should apply in writing for an extension of the filing deadline till 31 December of the year following the reporting one.

11.7 Taxation of non-residents
Non-resident individuals are subject to Ukrainian tax only on income that has a source in Ukraine. The source rules for individuals are broader than those for corporations. For individuals, any income received from activities performed, capital employed or property used in Ukraine will have a Ukrainian source.

Income earned by non-residents from sources in Ukraine is generally taxed under the same rules and at the same rates as for tax residents (15%-17%), unless otherwise specifically provided by the law.

Consideration should also be given to the provisions in the Ukrainian tax treaties, which often exempt income earned by individuals from short-term visits to Ukraine from Ukrainian tax.

There is also an unclear provision that was in the previous PIT Law, but was not enforced in practice. If ‘Ukrainian source’ income is paid to a non-resident by another non-resident, such income must be transferred to an account opened by a recipient at a Ukrainian bank. The bank should act as a tax agent for this income. In practice, this provision was not functioning and non-residents filed tax returns and paid tax due on a self-assessment basis.

11.8 Tax compliance
Obligations of tax agents
Employers and other business entities that pay income to individuals are defined as tax agents and are responsible for withholding the tax and mandatory unified social contribution and remitting them to the state budget and the appropriate authorities.

Tax agents should remit the tax withheld to the state not later than the date of the payment of the income to individuals. Tax in respect of income that is accrued but not paid to the individual should be transferred to the state within 20 calendar days following the end of the reporting month.

The tax is payable before or at the time of the income payment. If income is paid in kind, the tax agent should remit the tax to the state no later than the next banking day following the date of ‘payment’.

Tax agents who fail to withhold tax from income paid to individuals are responsible for payment of the tax liability plus 25%-75% fines, as well as interest penalties depending on the period of delay of payment. The individual concerned is not obliged to settle the tax liability (i.e. the tax authorities may only recover the tax by pursuing the tax agent).

Tax agents must file quarterly reports on income paid to individuals and the amount of tax withheld from that income.

Tax returns for individuals
An individual is obliged to file a tax return if, during the year, they received income from non-tax agents (e.g. foreign income), or income subject to tax at 15%-17% rates from two or more tax agents if the total annual amount exceeds 120 minimum monthly salaries set as of 1 January of the reporting year (for 2013, approximately USD 17,200).

If the individual wishes to claim a tax deduction for expenses incurred during the year, or to claim a foreign tax credit, he/she may file a return voluntarily.

The return should be filed with the local office where the individual resides / is registered by 30 April of the year following the reporting year. Tax due on the return must be paid by 31 July of the year following the reporting year. Payment must be made in local currency (UAH). There is no mechanism established by the Ukrainian legislation for payment of personal income tax in foreign currency.

A taxpayer can officially apply for a filing extension to 31 December of the year following the reporting year, if the documents required from the foreign jurisdiction are not available by the standard/general deadline for claiming a foreign tax credit.

If a tax resident departs from Ukraine, the individual must submit a ‘departure tax return’ no less than 60 days before his/her departure, and settle the tax due based on the assessment issued by the tax authorities. No such requirement exists for non-resident individuals.

Overpaid personal income tax should be returned to the taxpayer within 60 calendar days of filing the tax return. Upon the taxpayer’s request, the overpayment may be offset against the taxpayer’s future tax liabilities.

Penalties for non-compliance:
- Late reporting or non-reporting attracts a penalty in the amount of UAH 170 – 1,020 (approx. USD 20 - 128).
- Late tax payment is subject to a 10%-20% penalty depending on the period of delay (30 days of delay inclusively or more).
- An interest fine in the amount of 120% of the National Bank of Ukraine’s discount rate (at the current NBU’s discount rate of 7%, the penalty is approximately 0.02% per day) may be levied for each day of delay in payment.
- Tax assessed by the tax authorities based on the tax return may be subject to a 25%/50% penalty.
- Criminal responsibility exists for the avoidance of tax payment.
12.1 Introduction
Ukraine first introduced a value-added tax (VAT), or podatok na dodanu vartist (PDV) as it is known in Ukrainian, in 1992. Ukraine operates the input-output model of VAT. VAT-registered persons deduct the VAT paid on their inputs from the VAT charged on their sales and account for the difference. If output VAT exceeds input VAT, the difference is paid to the budget. Otherwise, it is subject to a refund (if eligible) or could be carried forward to offset future liabilities.

For 2013, the standard rate of VAT on domestic sales of goods and services and the importation of goods is 20%. Starting from 1 January 2014, the VAT rate will be reduced to 17%. Exported goods and certain types of services are zero-rated. Other services provided to non-residents could be outside of scope of VAT or subject to VAT at the standard rate depending on their nature.

12.2 Taxable activities
Unless there is an express exemption in the Tax Code, VAT applies to:
- the supply of goods and services where the place of supply is in Ukraine, including when the supply is made free of charge
- the transfer of the object of a financial lease to the lessee
- the import of goods into Ukraine
- the export of goods out of Ukraine, and
- international transportation services.

Place of supply for goods
The place of supply for goods is determined by the following rules:
- If the goods do not need to be transported, the supply takes place where the goods are located at the moment of their sale.
- When goods that require assembly or installation are sold, the supply occurs at the place of such assembly or installation.
- The supply of goods to sea, air or railroad vessels occurs at the place of their departure.

12.3 Zero-rating
The export of goods under certain customs regimes (i.e. export, free customs zone, duty-free trade, re-export in case of non-fulfilment of the cross-border contract) is zero-rated. Zero-rating also applies to the supply of international transportation services and inward processing services (if the finished goods are then exported from Ukraine).

Refunds are available according to the law, but obtaining them is very difficult and is a major issue for many investors. The automatic refund procedure has alleviated this issue for exporters. There are certain limitations to refunds during the first year of VAT registration.

For 2013, the rate of VAT on domestic sales of goods and services and the importation of goods is 20%. Starting from 1 January 2014, the VAT rate will be reduced to 17%. Exported goods and certain types of services are zero-rated. Other services provided to non-residents could be outside of scope of VAT or subject to VAT at the standard rate depending on their nature.

The general rule is that the place of supply for services is the place of the supplier’s VAT registration. In respect of certain services, there are specific rules for determining the place of supply. In particular, the place of supply of the following services could be defined as follows:

- Place of services provision: services related to transportation of cargoes and passengers as well as auxiliary to transportation services, expertise and valuation of movable property, repair and processing services, services involving organising chargeable exhibitions, conferences, seminars and other similar activities
- Place of customer’s registration: transfer of intellectual property rights; advertising, consulting, engineering, accounting, legal, audit, and actuarial services; services involving the development, supply and testing of software; data processing and IT consulting; the provision of information and other services in the sphere of informatisation; telecommunication; radio and telecasting; forwarding services; and leasing of movable property (except for vehicles and bank safes)

For 2013, the standard rate of VAT on domestic sales of goods and services and the importation of goods is 20%. Starting from 1 January 2014, the VAT rate will be reduced to 17%. Exported goods and certain types of services are zero-rated. Other services provided to non-residents could be outside of scope of VAT or subject to VAT at the standard rate depending on their nature.
12.4 Exempt supplies
Ukrainian law distinguishes VAT-exempt transactions from transactions that are outside the scope of VAT, but, from a practical perspective, the distinction is not important. In either case, a person making such sales will not be entitled to claim an input tax credit against those sales. A number of transactions are specifically exempt from VAT, including:
- re-export of goods
- most financial services and the transfer of certain financial instruments (as exemptions are defined with respect to specific transactions, the transactions must be reviewed individually to confirm whether an exemption applies)
- depository, clearing and registrar activities in the securities market, as well as brokerage and dealer services for securities transactions
- the issue, sale and exchange of securities and corporate rights, the payment of dividends and royalties in cash or securities
- the sale/supply by banks and other financial institutions of collateral (however, the transfer of property and duties payable at the time of import are considered as a tax base if it exceeds the transaction price by more than 20%).

For further sale of previously imported goods, VAT is based on the higher of the contract price or the customs value stated in the customs declaration increased by the cost of bringing those goods into Ukraine and the excise taxes and duties payable at the time of import (effective until 1 September 2013 - see Chapter 10.6).

12.6 Input tax credits
The general rules for crediting input VAT are as follows:
- VAT paid on goods and services that will be used to make taxable sales may be claimed as an input tax credit.
- VAT incurred to purchase or import goods and services that will be used to make sales that are VAT-exempt or outside of scope of VAT may not be claimed as a credit.
- When goods and services are used to make partly taxable and partly non-taxable sales, the input tax credit is apportioned between the taxable and non-taxable sales. The pro-rata coefficient is calculated based on the volume of sales of the previous calendar year and is applicable within the whole current calendar year. At the end of the year it should be re-calculated based on the actual taxable and non-taxable transactions of the current year. In respect of non-current assets, such recalculation should be done annually within the first three years of usage.
- A claim for input tax must be supported by a valid VAT invoice issued by a VAT-registered person or a duly executed import customs declaration.

In most cases, input tax credits should be based on the transaction price (for controlled transactions [see Chapter 10.6] – not exceeding the market price). Until 1 September 2013, the market price should be the base for input VAT credit if the transaction price exceeds the market price by more than 20%.

For further sale of previously imported goods, VAT is based on the higher of the contract price or the customs value stated in the customs declaration increased by the cost of bringing those goods into Ukraine and the excise taxes and duties payable at the time of import (effective until 1 September 2013 - see Chapter 10.6).

12.7 VAT compliance
Registration
An entity engaged in taxable supplies is required to register for VAT if its sales for the past 12 months exceed UAH 300,000. Such registration should be done with the tax authorities at the place where its business is located. The application for registration should be submitted by the director or an authorised representative of the legal entity within 10 days following the month in which the registration threshold was reached.

The local tax authorities should issue a VAT registration certificate to the applicant within 5 calendar days. VAT registration takes effect from the date specified on the registration certificate.

A taxpayer engaged in business with taxable sales below this threshold may register voluntarily. The application for VAT registration should be submitted to the tax office not later than 20 calendar days before the beginning of the month from which a taxpayer will be considered as a VAT payer.

Accounting requirements
VAT-registered persons are required to issue VAT invoices, to keep electronic registers of input and output VAT invoices, and to keep separate accounts for taxable and VAT-exempt sales and purchases.

Information on VAT invoices
A VAT-registered person is required to provide a VAT invoice for all supplies (except for supplies outside the scope of VAT).

The invoice must include the following information:
- the number of the VAT invoice and the date the invoice was issued
- the full name and registration number of both the buyer and the seller
- the address of the supplier
- the type and quantity of the goods and services provided
- the sales price (excluding VAT), the tax rate, the amount of VAT and the total amount payable
- the type of civil agreement
- product code per the Customs tariff (in case the supply relates to excludable goods and goods that have been previously imported into Ukraine), and
- the number and date of the customs declaration for the supply of goods that have been previously imported into Ukraine.

Separate invoices are required for taxable and exempt transactions. Invoices for exempt transactions must include the words ‘exempt/IL’ or ‘bez PDV’ without VAT and a reference to the appropriate article of the Tax Code. Buyers need to pay particular attention to the information contained in the VAT invoices, especially when significant amounts are involved. The tax authorities may close attention to the details on invoices when they conduct audits and will disallow input tax credits even if the defects in the invoice are relatively minor.

Taxpayers are obliged to account for all issued and received VAT invoices in the special electronic Register of input and output VAT invoices which should be submitted to the tax authorities on a monthly basis.

Suppliers should register VAT invoices with amounts of VAT in excess of UAH 10,000 in the Unified Register of tax invoices. VAT invoices related to the supply of excludable or imported goods are subject to such registration irrespective of the VAT amount.

A VAT invoice should be registered in the Unified Register within 15 calendar days of its issuance.

If the VAT invoice is not registered with the Unified Register, the customer is not entitled to credit input VAT unless it submits a claim to the tax authorities.

The VAT invoice may be included to the customer’s VAT credit within 365 days from the date of its issuance.

Date of VAT Output and VAT Input recognition
VAT Output is accounted for as follows:
- VAT on the sale of goods is generally accounted for on the date the goods are delivered to the customer or the date that the payment is received from the customer, whichever comes first.
- VAT on the sale of services is generally accounted for at the time a document is executed evidencing delivery of the service (‘act of acceptance’) or receipt of payment from the customer, whichever comes first. It is usual commercial practice for both the supplier and the customer to sign a formal document evidencing the delivery of the service.
- VAT liabilities for imported goods arise on the date of customs clearance.

VAT Input is accounted for as follows:
- Entitlement to an input tax credit for purchases arises on the date of payment to the supplier or the date on which the goods/services are received, whichever comes first.
- Entitlement to an input tax credit for imported goods or services arises on the date the tax is paid.

12.5 Tax base
In most cases, the amount of VAT should be determined based on the transaction price for the supply of goods or services

According to the law, for an application for a refund to be eligible, the tax authorities are required to check and confirm the entitlement within 65 days. The State Treasury should then remit the money to the applicant’s bank account or issue a treasury promissory note within five business days after receiving approval from the tax authorities.

An automatic VAT refund procedure is technically available for eligible taxpayers (exporting companies). Under this procedure, the tax authorities are required to check and confirm the entitlement for a VAT refund within 23 days. The State Treasury should then
remit the money to the applicant’s bank account or issue treasury promissory note within three business days after receiving approval from the tax authorities.

In order to qualify for an automatic VAT refund, the following criteria should be met:

- The volume of zero-rated transactions of the taxpayer should not be less than 40% of the total supply during the preceding twelve consecutive tax reporting periods (months)/four quarters.
- The total discrepancies between the VAT credit of the taxpayer and the VAT liabilities of its contractors, based on the VAT invoices issued during the three preceding months, should not exceed 10% of the total amount of the VAT claimed for refund.
- The average employee salary for the last four reporting quarters should exceed the minimum level by at least two and a half times.
- The taxpayer should not have a tax debt.
- The taxpayer should not be undergoing the bankruptcy procedure.
- The State Unified Register of Legal Entities and Individuals-entrepreneur should not contain information about:
  - the taxpayer’s absence from its legal address
  - unconfirmed details about the taxpayer
  - decision on a spin-off or termination
  - invalidity (including partial) of the statutory documents, or
  - termination of the state registration.
- One of the following criteria should be met:
  - During the last four reporting quarters the number of employees exceeded 20
  - The net book value of fixed assets exceeds the VAT refund for the previous 12 calendar months
  - The ratio between CPT liabilities and income received in the previous reporting year is higher than the average within the industry.

Large taxpayers are not entitled to apply for an automatic VAT refund if they claim losses for the previous reporting year.

If the taxpayer does not meet the criteria, the tax authorities should notify them within 17 days of the deadline for the VAT return submission. If the tax authorities don’t notify the taxpayer on time, the taxpayer is considered as having met the mentioned criteria.

In case of a VAT refund delay, the government shall pay a daily fine of 120% of the National Bank of Ukraine discount rate.

Obtaining VAT refunds has been a major problem area for investors. As an alternative to a cash refund, the legislation allows them to be obtained in the form of a promissory note or to be offset against future VAT liabilities.

VAT-registered persons are specifically not entitled to refunds if:

- they have been registered for VAT for less than 12 calendar months before the month from which a refund is sought, except where a refund relates to input tax paid on the purchase or construction of fixed assets, or
- the amount of the refund claimed exceeds the taxable sales for the last 12 calendar months, except for a refund of input tax on the purchase or construction of fixed assets.

Introduction to PwC
Coopers & Lybrand and Price Waterhouse established their Ukrainian operations in 1993, respectively before merging in 1998. Having continued to expand its services and knowledge of Ukraine’s business environment, PwC provides the highest level of professional services to international and Ukrainian enterprises. Overseen by 23 partners and directors and employing more than 450 specialists and support staff, PwC operates in Ukraine from its offices in Kyiv, Donetsk, Dnipropetrovsk and Lviv. The combination of local experience and a one-firm culture enables PwC to provide advice that is consistent. In addition, its global standards are responsive to local conditions and requirements.

Engagements are generally staffed by a combination of Ukrainian specialists, with knowledge of local conditions and regulations, and international consultants, who have expertise in tackling issues faced by international enterprises and who are practised in dealing in the Ukrainian environment. The key element of PwC success in Ukraine is the quality of its staff, to which partners are committed to providing the most up to date management training throughout their careers.

Our reputation lies in building lasting relationships with our clients and delivering value in all we do. Let us apply our world-class capabilities to your business goals.

PwC in Ukraine

Coopers & Lybrand and Price Waterhouse established their Ukrainian operations in 1993 and 1995 respectively before merging in 1998. Having continued to expand its services and knowledge of Ukraine’s business environment, PwC provides the highest level of professional services to international and Ukrainian enterprises. Overseen by 23 partners and directors and employing more than 450 specialists and support staff, PwC operates in Ukraine from its offices in Kyiv, Donetsk, Dnipropetrovsk and Lviv.

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PwC has been present on the Ukrainian market since 1993. PwC Ukraine is a member of the PwC network of firms, a network which exists in 158 countries and draws on the talents of close to 180,000 people. Our clients benefit from working with our staff’s combination of Ukrainian experts and expatriate professionals that bring knowledge and experience from PwC firms worldwide.

We’re committed to delivering quality in assurance, tax, legal and advisory services. Our goal of building an iconic professional services firm is underpinned by our business strategy and performance goals. We set the standard and drive the agenda for our profession.

Our reputation lies in building lasting relationships with our clients and delivering value in all we do. Let us apply our world-class capabilities to your business goals.

PwC in Ukraine


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Our audit is aligned with business functions, not just financial processes. Businesses need auditors and advisors who understand their strategy and can reflect this in their audit approach. Using our approach and working alongside our clients, our lead partner provides strong control from the centre. We put great emphasis on understanding our clients’ strategies and the need to address all risks. This approach represents, we believe, an important step forward in client service, audit quality and efficiency.

**Accounting and regulatory advice** – corporate structures, technical accounting advice (supported by Global Corporate Reporting (GCR)), review of treasury operations, compliance with current and new regulations.

**Attest and attest-related services** – independent assessment of financial and non-financial data.

**Public services audit and advisory** – audit, internal audit and associated services for government, education and other non-profit organisations.

**Capital Markets group** - provides support at every stage of the listing process. We provide services either as an advisor to management and owners, or as an independent auditor responsible for providing opinions and verifying financial information in the prospectus.

**PwC Academy** – business training and development services in the area of finance and accounting, IT systems, risk management and management development.

**Advisory services**

The Advisory Services practice provides two main types of services:

- **Deals**: Deals Services refers to assistance with and execution of all types of financial transactions, providing advice on mergers and acquisitions, privatisations, financial and operational due diligence, value advisory and business valuation including real estate and asset valuation, feasibility studies and business plans, market analysis, project finance (including Public-Private Partnership schemes), finance raising and post-deal services.

- **Consulting**: Consulting provides a full range of services to guide clients through complex business transactions, and supports companies through every aspect of a transaction, from identifying the appropriate acquisition or divestiture candidates to assisting with deal structuring and capital sourcing. A wide range of privatisation services including lead advisory, target identification, company profiles, analysis of privatisation options, and transaction support are available, as well as assistance and support for companies seeking new capital, or companies involved in an acquisition, divestiture, restructuring or shareholder buyout. Services in relation to transactions, such as identification and evaluation of a transaction through due diligence, structuring services, market analysis and post-deal services are provided.

**Corporate tax**

Our Tax and Legal Services practice is divided into six main areas of expertise:

- **Corporate tax**: Our team has extensive experience in advising clients based on Ukrainian laws and their interpretation by tax authorities, as well as their interrelation with international regulations and treaties. Our specialists are highly qualified to advise on all aspects of inward investments into Ukraine, and the structuring of those investments in terms of corporate profits tax, withholding tax, dividend taxation and local tax regulations. The team provides proactive advice on international tax planning and structuring, mergers and restructuring, and undertakes company health checks and due diligence projects, as well as...
provides assistance with tax authorities (during tax inspections and the lodging of objections). Within the corporate tax team, we have a large number of staff dedicated to transactions services, mergers and acquisitions and international tax structuring.

VAT and other indirect tax: Our indirect tax specialists have extensive experience in resolving complex issues related to indirect taxes, customs procedures and foreign trade. Services available include VAT consultancy and tax reviews, VAT planning and developing efficiency schemes for domestic and cross-border operations, assistance during tax inspections and support and advice during appeals.

Customs and international trade: We have a broad experience in customs related activities including: developing customs legislation, understanding the relevant requirements, and negotiating with the customs authorities. Customs consulting includes tax planning for minimising import duties, assistance in complying with customs procedures, use of bonded warehouses, intellectual property rights, obtaining import/export licences, assistance during customs clearance and audits and support during customs litigation or complaints.

Human Resources Services (HRS): HRS brings together all of the professionals working in the human resource consulting arena – specialists in individual tax, payroll, benefits, assessment, education, equity, reward, staffing, regulatory, legal, and process management – offering clients an unmatched breadth and depth of local and global expertise. Available services include individual advice, ranging from assistance with obtaining work and residence permits, to advice and assistance with all matters regarding Ukraine’s personal income taxation legislation, salary surveys, outplacement and human resources audit.

Accounting, Payroll and Tax Compliance Services: In today’s challenging economic environment in which the regulatory landscape is rapidly changing, accounting and compliance management have become increasingly important areas associated with inherent difficulties and risks. Operating successfully in different countries requires coordinating subsidiaries that may have diverse accounting practices, legislative environments and local business customs.

We provide the services for international corporations and Ukrainian companies to meet your governance and regulatory obligations: accounting compliance, intercompany reporting, corporate profit tax compliance, value added tax compliance, payroll services, payroll taxes and reporting, tax function consulting and other services.

Legal services: Transactions, contracts, employment and competition are just a few of the many aspects of business that require appropriate consideration of the legal issues involved. Close cooperation of lawyers within the PwC Global Legal Services network enables us to render legal services to our clients on an international scale. This is particularly important in cross-border transactions as well as for MNCs.

PwC in Ukraine provides the following legal services: tax litigation, incorporation, structuring investments, corporate changes, merger and acquisition, real estate, financial sector, labour, and antitrust and competition.

PwC Ukraine
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Appendix A
Hints for business visitors

Visas and other entry formalities
Citizens of the USA, Canada, countries of the Commonwealth of Independent States (except Turkmenistan), countries of the European Union, Andorra, Iceland, Japan, Liechtenstein, Monaco, Mongolia, Montenegro, Norway, San Marino, Serbia and Switzerland do not need a visa to enter Ukraine if the duration of their stay does not exceed 90 days from the first entry within a last 6-month period, unless a shorter period is specifically indicated in the agreement. However, they do need to hold a passport that is valid for at least six months from the date of their entry into Ukraine. For citizens of other countries, an entry visa is obligatory.

Countries whose citizens require a visa to enter Ukraine need an invitation certificate for business and private visits, which should be duly issued by the State Migration authority. The original invitation is submitted with the appropriate application to the Ukrainian Embassy/Consulate abroad. An invitation is not required to obtain a work visa, as working visas are issued on the grounds that the original of the work permit is available.

The specific documents to be submitted together with the visa application are consistent across all embassies and consulates. Generally, it is required to come to the embassy or consulate in person in order to obtain a visa. Persons travelling to Ukraine should confirm the visa rules from a reliable source before departure.

Additionally, the citizens of some African, Asian and CIS countries, e.g. Moldova, Afghanistan, Tajikistan, Turkmenistan, the Republic of South Africa, India, etc. (excluding ethnic Ukrainians with confirming documents) should have proof of their financial security for the period of their stay in Ukraine. Citizens from ‘risk countries’ must have available funds (or guarantees) in the amount of 20 subsistence salaries (for 2013 – UAH 23,480, approximately USD 2,935) per person for every full or incomplete month of their stay in Ukraine.

Currency
Currently, the National Bank of Ukraine (NBU) adopts a de facto peg of the Ukrainian currency (Ukrainian Hryvnia) against the US dollar. The official US dollar/UAH exchange rate was fixed to 5.05 from April 2005 until May 2008. The global financial crisis hit the stability of the national currency and the hryvnia devalued by more than 70% against the dollar by the end of 2008. As of 1 July 2013, the US dollar/UAH exchange rate amounts to approximately 8 UAH.

It is common practice in Ukraine for some prices to be set in US dollars, and to a lesser extent Euros, particularly for high-value items. Property rentals, for example, will typically be expressed in dollars. In most cases, however, settlement will still be made in hryvnia.

Public holidays
In 2013, the following public holidays are in place:
• New Year’s Day (1 January)
• Orthodox Christmas (7 January)
• International Women’s Day (8 March)
• Labour Days (1 & 2 May)
• Orthodox Easter (5 May)
• Victory Day (9 May)
• Orthodox Holy Trinity (23 June)
• Constitution Day (28 June)
• Independence Day (24 August)

If a holiday falls on a Saturday or Sunday, the following Monday will be a non-working day. If a holiday falls on a Tuesday or a Thursday, it is common for the parliament to recommend that the Monday or Friday be declared as a holiday as well, and for a Saturday of another week to be made a working day to compensate (such recommendations are not applied to the post, treasury and banking institutions and are not compulsory for private entities).

Appendix B
Useful sources of information

Government websites
Many government websites have pages written in English. These can be useful to get a flavour of government policies and initiatives in various areas of the economy. Caution should be exercised, however, before relying on information in English. Although the Ukrainian web pages are generally well maintained and up to date, the same cannot be said for the English version. To obtain current information, the only real solution is to have someone review the Ukrainian and provide a translation.

At the time of writing, the following of the major state agencies have English pages on their websites:
• Cabinet of Ministers
• National Agency of Ukraine on Civil Service
• Ministry of Economic Development and Trade
• Ministry of Finance
• Ministry of Foreign Affairs
• Ministry of Revenues and Duties
• National Academy of Sciences
• National Bank
• President of Ukraine
• State Statistics Service
• State Property Fund

The following government websites have pages written in English:
• kmu.gov.ua/control/en
• nads.gov.ua/control/en/index
• me.gov.ua/control/en/index
• minfin.gov.ua/control/en/index
• mfa.gov.ua/mfa/en/news/top.htm
• minrd.gov.ua (under development)
• nas.gov.ua/en/Pages/default.aspx
• bank.gov.ua/Eng/default.htm
• president.gov.ua/en/
• ukrstat.gov.ua/
• spfu.gov.ua/spfu.gov.ua/default.aspx
• rada.gov.ua/en

Business groups
American Chamber of Commerce (Amcham)
Horizon Park Business Centre, 12 Amosova Str.
15 Floor, Kyiv 03038
Tel.: +380 44 490 5800
Fax: +380 44 490 5801
www.chamber.ua

British-Ukrainian Chamber of Commerce
Suite 7, 18/1 Prorizna Str.
Kyiv 01034
Tel.: +380 44 278 1000
Fax.: +380 44 278 6508
www.bucc.com.ua

European Business Association (EBA)
1A Andrijivskyi Uzviz Str.
1st Floor, Kyiv 04070
Tel.: +380 44 496 0601
Fax: +380 44 496 0602
www.eba.com.ua

German Economic Club (DWK)
Horizon Tower, 42-44 Shovkovychna Str.
15 Floor, Kyiv 01601
Tel: +380 44 498 49 96
Fax: +380 44 498 55 29
www.dwk.org.ua

European Business Association (EBA)
1A Andrijivskyi Uzviz Str.
1st Floor, Kyiv 04070
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Doing business and investing in Ukraine
## Appendix C
### Withholding taxes as at 1 July 2013

<table>
<thead>
<tr>
<th>Country</th>
<th>Dividends (%)</th>
<th>Interest (2) (%)</th>
<th>Royalties (3) (%)</th>
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<td>(1)</td>
<td>(2)</td>
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<td>Domestic rates:</td>
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<td>Non-resident individuals</td>
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<tr>
<td>Non-resident corporations</td>
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<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Vietnam</td>
<td>10</td>
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<td>10</td>
</tr>
</tbody>
</table>
1) The ownership threshold for the non-portfolio rate is 10%, 20%, 25% or 50%, depending on the specific provisions in the treaty.

2) Several treaties contain a rate of 0% on interest paid to or guaranteed by a government or one of its agencies.

3) If more than one rate is shown, this means that the rate will depend on the type of royalties paid.

4) Dividend income is subject to tax at a rate of 5%. The 15% applies to dividends from privileged shares or other fixed payments on shares, as well as to disguised employment income.

5) The lower rate will apply to interest on current or deposit bank accounts, certificates of deposit and contributions to credit unions starting from 1 January 2015. Until this date such types of income are exempt from taxation.

6) The lower rate applies to interest paid on certain credit sales, and on loans granted by a financial institution.

7) The treaties with Cyprus, Japan, Malaysia and Spain were entered into by the USSR before it dissolved. Ukraine will continue to honour these treaties, unless they are superseded.

8) The new treaty with Cyprus has been recently ratified by both Cyprus and Ukraine; it is most likely that the exchange of the ratification notices will happen in 2013 and, thus, the provisions of the new treaty will apply from 1 January 2014.

9) The lower rate applies to interest paid in connection with the sale on credit of any industrial, commercial or scientific equipment, unless the indebtedness is between associated enterprises.

10) The 0% rate applies if the investor holds at least 50% of the capital of the company paying the dividends and the capital invested is at least USD 1,000,000; the payer of the dividends should not operate in the field of gambling, show business or intermediation business, or auctions.

11) The 0% rate will apply if a French company or companies hold directly or indirectly at least 50% of the capital of the Ukrainian company, and the aggregate investments exceed 5 million French francs.

12) The lower rate applies to interest paid on any loan granted by a bank.

13) The 0% rate applies if the investor holds directly at least 50% of the capital of the company paying the dividends, and the capital invested is at least USD 300,000.

14) The 10% rate applies if the company receiving the dividend has, for an uninterrupted period of two years before the dividend is paid, owned at least 25% of the capital stock of the company paying the dividends.

15) The 5% rate applies if the capital invested is at least USD 50,000.

16) The 0% rate applies if the Swedish company holds directly at least 25% of the voting power of the company paying the dividends, and at least 50% of the Swedish company is held by Swedish residents.

17) The 0% rate applies only if the royalties are taxable in the United Kingdom.

18) The 5% rate applies if the investor (other than partnership) being a beneficial owner holds at least 25% of the capital of the company paying the dividends.

19) The 5% rate applies if the investor being a beneficial owner holds at least 20% of the capital of the company paying the dividends.

---

**Appendix D**

Selected customs duties and excise tax rates

**Selected customs duties rates as of 1 July 2013**

<table>
<thead>
<tr>
<th>Product or Group of Products</th>
<th>Reduced rate, %</th>
<th>Full rate, %</th>
<th>Products originating in CIS, %</th>
</tr>
</thead>
<tbody>
<tr>
<td>IT equipment</td>
<td>0 – 10</td>
<td>0 – 10</td>
<td>exempt</td>
</tr>
<tr>
<td>Cars</td>
<td>6 – 10</td>
<td>10</td>
<td>exempt</td>
</tr>
<tr>
<td>Office equipment, including paper</td>
<td>0 – 10</td>
<td>0 – 10</td>
<td>exempt</td>
</tr>
<tr>
<td>Coffee, tea</td>
<td>0 – 10</td>
<td>0 – 10</td>
<td>exempt</td>
</tr>
<tr>
<td>Beer</td>
<td>EUR 0.05 per litre</td>
<td>EUR 0.05 per litre</td>
<td>exempt</td>
</tr>
<tr>
<td>Chocolate products</td>
<td>10 – 15</td>
<td>10 – 15</td>
<td>exempt</td>
</tr>
<tr>
<td>Pharmaceuticals</td>
<td>0</td>
<td>0</td>
<td>exempt</td>
</tr>
<tr>
<td>Agricultural equipment</td>
<td>0 – 10</td>
<td>0 – 10</td>
<td>exempt</td>
</tr>
</tbody>
</table>

**Selected excise tax rates**

<table>
<thead>
<tr>
<th>Product</th>
<th>Excise duty rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Beer</td>
<td>UAH 0.87 per 1 litre</td>
</tr>
<tr>
<td>Wine base of grapes</td>
<td>UAH 0.01 per 1 litre</td>
</tr>
<tr>
<td>Fortified wine</td>
<td>UAH 2.51 per 1 litre</td>
</tr>
<tr>
<td>Wine, sparkling wine, vermouth</td>
<td>UAH 2.51 – UAH 3.65 per litre</td>
</tr>
<tr>
<td>Fermented fruit beverages with added alcohol</td>
<td>UAH 49.49 per litre of 100% alcohol</td>
</tr>
<tr>
<td>Fermented fruit beverages without added alcohol</td>
<td>UAH 0.50 per litre</td>
</tr>
<tr>
<td>Ethyl alcohol and other spirits, liqueurs and other spirituous beverages</td>
<td>UAH 49.49 per litre of 100% alcohol</td>
</tr>
<tr>
<td>Spirit distillates and other spirit beverages from grape wine</td>
<td>UAH 49.49 per litre of 100% alcohol</td>
</tr>
<tr>
<td>Tobacco raw materials, tobacco wastes</td>
<td>UAH 217.60 per 1 netto kilogram</td>
</tr>
<tr>
<td>Cigars, cigarillos</td>
<td>UAH 217.60 per 1 netto kilogram</td>
</tr>
<tr>
<td>Cigarettes without filter</td>
<td>UAH 72.70 per 1000 sticks and 12% of sale turnover</td>
</tr>
<tr>
<td>Cigarettes with filter</td>
<td>UAH 162.60 per 1000 sticks and 12% of sale turnover</td>
</tr>
<tr>
<td>Tobacco for smoking, chewing tobacco or snuff</td>
<td>UAH 217.60 per netto kilogram</td>
</tr>
<tr>
<td>Other Tobacco</td>
<td>UAH 217.60 per netto kilogram</td>
</tr>
<tr>
<td>New cars</td>
<td>EUR 0.03 – EUR 1.09 per cubic centimetre</td>
</tr>
<tr>
<td>Used cars</td>
<td>EUR 1.09 – EUR 3.81 per cubic centimetre</td>
</tr>
<tr>
<td>Other vehicles</td>
<td>EUR 0.65 per cubic centimetre; EUR 109 per 1 unit</td>
</tr>
<tr>
<td>Car bodies</td>
<td>EUR 109 – EUR 436 per 1 unit</td>
</tr>
<tr>
<td>Motorcycles, motor bikes</td>
<td>EUR 0.22 per cubic centimetre; 11 EUR per 1 unit</td>
</tr>
<tr>
<td>Petrol and diesel and gas</td>
<td>EUR 30 – EUR 198 per 1000 kilograms</td>
</tr>
</tbody>
</table>
# Appendix E
## Short form Chart of Accounts under Decree No. 291

<table>
<thead>
<tr>
<th>Synthetic Accounts (1st Tier Accounts)</th>
<th>Name</th>
<th>Sub-accounts Code</th>
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<tbody>
<tr>
<td>Class 1. Non-current Assets</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10 Fixed Assets</td>
<td>100-109</td>
<td></td>
</tr>
<tr>
<td>11 Other Non-current Tangible Assets</td>
<td>111-117</td>
<td></td>
</tr>
<tr>
<td>12 Intangible Assets</td>
<td>121-127</td>
<td></td>
</tr>
<tr>
<td>13 Depreciation of Non-current Assets</td>
<td>131-135</td>
<td></td>
</tr>
<tr>
<td>14 Long-Term Financial Investments</td>
<td>141-143</td>
<td></td>
</tr>
<tr>
<td>15 Capital Investments</td>
<td>151-155</td>
<td></td>
</tr>
<tr>
<td>16 Long-Term Biological Assets</td>
<td>161-166</td>
<td></td>
</tr>
<tr>
<td>17 Deferred Tax Assets</td>
<td>181-184</td>
<td></td>
</tr>
<tr>
<td>18 Long-Term Account Receivables and other Non-current Assets</td>
<td>191-193</td>
<td></td>
</tr>
<tr>
<td>Class 2. Stock (Inventories)</td>
<td></td>
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<tr>
<td>20 Inventories</td>
<td>201-209</td>
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</tr>
<tr>
<td>21 Current Biological Assets</td>
<td>211-213</td>
<td></td>
</tr>
<tr>
<td>22 Low-Value Items</td>
<td>231-233</td>
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<tr>
<td>23 Production (Manufacture)</td>
<td>241-243</td>
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<tr>
<td>24 Production Wastage</td>
<td>251-253</td>
<td></td>
</tr>
<tr>
<td>25 Semi-finished Goods</td>
<td>261-263</td>
<td></td>
</tr>
<tr>
<td>26 Finished Goods</td>
<td>271-273</td>
<td></td>
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<tr>
<td>27 Agricultural Produce</td>
<td>281-286</td>
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<tr>
<td>28 Goods (Stock)</td>
<td>291-293</td>
<td></td>
</tr>
<tr>
<td>Class 3. Cash, Settlements and Other Assets</td>
<td></td>
<td></td>
</tr>
<tr>
<td>30 Cash in Hand</td>
<td>301-302</td>
<td></td>
</tr>
<tr>
<td>31 Bank's Accounts</td>
<td>311-314</td>
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<tr>
<td>32</td>
<td>331-334</td>
<td></td>
</tr>
<tr>
<td>33 Other Funds</td>
<td>341-342</td>
<td></td>
</tr>
<tr>
<td>34 Short Term Promissory Notes Receivable</td>
<td>351-352</td>
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<tr>
<td>35 Current Financial Investments</td>
<td>361-364</td>
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<tr>
<td>36 Settlements with Buyers and Customers</td>
<td>371-379</td>
<td></td>
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<tr>
<td>37 Settlements with Various Debtors</td>
<td>381-383</td>
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</tr>
<tr>
<td>38 Provision for Doubtful Debts</td>
<td>391-393</td>
<td></td>
</tr>
<tr>
<td>39 Deferred Expenses</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Synthetic Accounts (1st Tier Accounts)</th>
<th>Name</th>
<th>Sub-accounts Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class 4. Equity and Provision for Liabilities</td>
<td></td>
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</tr>
<tr>
<td>40 Statutory Capital</td>
<td>411-413</td>
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<tr>
<td>41 Share Capital</td>
<td>421-423</td>
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<tr>
<td>42 Additional Capital</td>
<td>431-433</td>
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<tr>
<td>43 Reserve Capital</td>
<td>441-443</td>
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<tr>
<td>44 Retained Earnings (Losses)</td>
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<tr>
<td>45 Withdrawn Capital</td>
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<tr>
<td>46 Unpaid Capital</td>
<td>471-473</td>
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<tr>
<td>47 Provision for Future Expenses and Payments</td>
<td>481-483</td>
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<tr>
<td>48 Targeted Finance</td>
<td>491-493</td>
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<tr>
<td>Class 5. Long-Term Liabilities</td>
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<tr>
<td>50 Long-Term Borrowings</td>
<td>511-513</td>
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<tr>
<td>51 Long-Term Promissory Notes payable</td>
<td>521-523</td>
<td></td>
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<tr>
<td>52 Long-Term Liabilities in Respect of Bonds issued</td>
<td>531-533</td>
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<tr>
<td>53 Long-Term Lease Liabilities</td>
<td>541-543</td>
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<tr>
<td>54 Deferred Tax Liabilities</td>
<td>551-553</td>
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<tr>
<td>55 Other Long-Term Liabilities</td>
<td>561-563</td>
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<tr>
<td>Class 6. Current Liabilities</td>
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<tr>
<td>60 Short-Term Loans</td>
<td>611-613</td>
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<tr>
<td>61 Current Debt on Long Term Liabilities</td>
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<td>62 Short-Term Promissory Notes payable</td>
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<tr>
<td>63 Settlements with Suppliers and Contractors</td>
<td>641-643</td>
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<tr>
<td>64 Settlements on Taxes and Payments</td>
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<tr>
<td>65 Settlements on Payments to Employees</td>
<td>661-663</td>
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<tr>
<td>66 Settlements with Participants (or shareholders)</td>
<td>671-673</td>
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<tr>
<td>67 Other settlements</td>
<td>681-683</td>
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<tr>
<td>68 Deferred Income</td>
<td>691-693</td>
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<tr>
<td>Class 7. Revenue and Results of Operations</td>
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<td>70 Sale Revenue</td>
<td>711-713</td>
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<td>71 Other Operating Income</td>
<td>721-723</td>
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<tr>
<td>72 Income from Interest in Equity</td>
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<td>73 Other Financial Income</td>
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<td>74 Other Income</td>
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<td>75 Extraordinary Income</td>
<td>761-763</td>
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<td>76 Insurance Payments</td>
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<td>791-793</td>
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<td>79 Financial Results</td>
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<td>Sub-accounts Code</td>
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<tr>
<td>80</td>
<td>Material Expenses</td>
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<tr>
<td>81</td>
<td>Labour Costs</td>
<td>811-816</td>
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<td>82</td>
<td>Social Payments</td>
<td>821-824</td>
</tr>
<tr>
<td>83</td>
<td>Depreciation and amortisation</td>
<td>831-833</td>
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<td>84</td>
<td>Other Operating Expenses</td>
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<td>85</td>
<td>Other Costs</td>
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<td>86-89</td>
<td>Class 9. Operating expenses</td>
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<tr>
<td>90</td>
<td>Cost of Sales</td>
<td>901-904</td>
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<td>91</td>
<td>Production Costs (Overheads)</td>
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<td>92</td>
<td>Administrative expenses</td>
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<td>93</td>
<td>Selling Expenses</td>
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<td>94</td>
<td>Other Operating Expenses</td>
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<td>95</td>
<td>Financial Expenses</td>
<td>951-952</td>
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<td>96</td>
<td>Loss from Interest in Equity</td>
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<td>Other Expenses</td>
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<td>Income tax expense</td>
<td>981-982</td>
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<td>Extraordinary Expenses</td>
<td>991-993</td>
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<td>Class 10. Off balance sheet accounts</td>
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<td>01</td>
<td>Leased Non-current Assets</td>
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<td>02</td>
<td>Third-party Assets in Store</td>
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<td>Contractual Liabilities</td>
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<td>Contingent Assets and Liabilities</td>
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<td>Guarantees and Security Given</td>
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<td>Guarantees and Security Received</td>
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<td>Strict Accounting Forms</td>
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<td>Depreciation Charges</td>
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