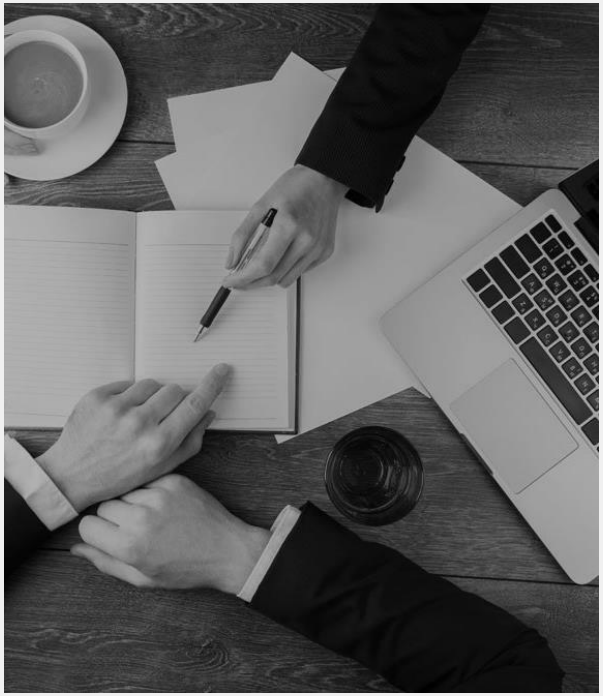
# EBS QUARTERLY REVIEW

## REVIEW OF LEGISLATIVE CHANGES

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## OTHER NEWS


QUARANTINE NEWS

# HOW CHARITABLE ORGANIZATIONS DETERMINE THE SCOPE OF TRANSACTIONS FOR THE VAT REGISTRATION DURING QUARANTINE

The Law of Ukraine "On changes to certain legislative acts of Ukraine aimed at providing additional social and economic guarantees in connection with the spread of the coronavirus (COVID-19)" dated 30 March 2020 No. 540-IX (Law No. 540), easing of some requirements was temporarily implemented for public associations and charitable organizations which have not been registered as the VAT payers yet.

During the period starting from 17 March 2020 and ending on the last day of the month in which the quarantine ends, **during the calculation of the registration amount in accordance with cl. 181.1 of the Tax Code of Ukraine (the TCU), public associations and charitable organizations do not take into account the following**:

- the transactions provided for by cl. 71 of sub-section 2 p. XX of the TCU, the transactions on the import into the customs territory of Ukraine and/or the transactions on the supply in the customs territory of Ukraine of the goods (including medicinal products, medical devices and/or medical equipment) necessary to take measures aimed at the prevention of occurrence and dissemination, localization and liquidation of breakouts, epidemics and pandemics of the coronavirus (COVID-19) the list of which is established by the Cabinet of Ministers of Ukraine (the CMU) dated 20 March 2020 No. 224;
- the transactions, determined by cl. 197.1.15 of the TCU, provision of charitable aid, in particular, supply of goods/services to charitable organizations established and existing pursuant to the legislation free of charge and provision of such aid by charitable associations to acquirers (subjects) of charitable aid. Moreover, the requirements of this sub-clause concerning the supply free of charge must be followed.

# THE VERKHOVNA RADA APPROVED NEW “ANTI-CRISIS LAWS” IN THE STATE BUDGET FOR 2020 AND OTHER LAWS

On 13 April 2020, the Law “On Amending the Law of Ukraine ‘On the State Budget of Ukraine for 2020’” was adopted. As part of the State Budget, it provided for the fund for defeating COVID-19 and its consequences for the period of the quarantine and during 30 days from its termination.

The finances from this fund will be directed, in particular, at:

- the purchase of goods, works and services, including the purchase of healthcare services pursuant to the program on the state guarantees of the healthcare of the population;
- additional payments to the salary to healthcare and other workers directly engaged in the events on the liquidation of COVID-19;
- surcharges to certain categories of the workers which provide for life activities for the period of combating the spread of the disease;
- providing for financial aids to citizens, in particular to elderly people, in connection with negative consequences of COVID-19 spread;
- non-recurrent financial aid to members of the families of healthcare and other workers of healthcare establishments who died (diseased) of COVID-19;
- providing the transfer of the Pension Fund of Ukraine;
- financial aid from the Social Insurance Fund and the Unemployment Social Insurance Fund of Ukraine in case of unemployment.

Besides, the Law contains the standards which are not directly connected to changes in the State Budget for 2020. Among them:

1. Maximal amounts of remuneration for employees, officials and officers of the budget-funded institutions (including state authorities) are limited.

2. The term of the submitting of declarations for 2019 is delayed for persons authorized to perform the functions of the state or local self-government within the period not later than the last day of the month following the month when the quarantine is terminated. And in accordance with the previous standard, they must have been submitted before 1 June 2020.

3. Competitions to seats in the state service and appointments to such offices pursuant to the results of the competition are suspended for the time of the quarantine and for 30 days after the quarantine is over, special requirements of the respective assignments in this period are also established.

4. Certain standards of the aid on the partial unemployment and aid on the unemployment for the quarantine period are specified.

5. Payment of the disability pension in case of defaulting a term of the repeated examination of a disabled person receiving a pension is elongated for the quarantine period.

6. The standards concerning the payment for the use of the real estate are specified during the quarantine.

7. Possibility for the state financial control of the enterprises and business companies the share capital of which contain a share belonging to an economic operator of the public sector of the economy is implemented.

# LIST OF MEDICINES AND MEDICAL DEVICES EXEMPTED FROM DUTIES AND VAT WAS UPDATED

Resolution No. 271 dated 08 April 2020 amends the **List of goods (including medicinal products, medical devices and/or medical equipment**) required to counteract COVID-19 **(changes are effective from 15 April 2020).**

**Goods from the List are exempt from the import duty**, and the transactions on the import of such goods into the customs territory of Ukraine and/or the transactions on their supply in the territory of Ukraine **are exempt from VAT taxation.**

As a result, the number of positions of goods in the following sections:

- medicinal products;
- medical devices, medical equipment and other goods;
- personal protective equipment;
- consumables for the provision of healthcare aid to people with COVID-19, was increased.

The indicated list included also a specialized ambulance car for an emergent (first) medical aid.

Now, it is also allowed to confirm the conformity of medical devices, equipment and personal protective equipment to technical regulations both pursuant to the standard and existing documents (the declaration of conformity) and by receiving letters of confirmation by the Ministry of Healthcare of Ukraine and the State Labour Service of Ukraine.

# HOW TO MAKE A TAX DECLARATION ON THE PREFERENTIAL SUPPLY OF MEDICINAL PRODUCTS AND MEDICAL DEVICES

The State Tax Service reported the specific requirements concerning the making of goods included into the list of medicinal products and medical devices required to prevent the coronavirus approved by Resolution of the CMU dated 20 March 2020 No. 224 (hereinafter referred to as “List No. 224”).

While executing such a tax declaration:

- in the upper left part of the tax declaration in the field “Made on the tax-exempt transactions”, a note is made “Excluding VAT”;
- in field 8 of section Б (a table part) of the tax declaration, a tax rate code “903” is indicated;
- in field 9, a benefit code determined by the Benefits Manual is indicated. Pursuant to Manual No. 98/2 as of 02 April 2020, to the transactions on the supply of goods included into List No. 224, the benefit code **14060544** applies.

If the taxpayer has no possibility to register the tax declaration in the URTI indicating the benefit code 14060544 in field 9 of this tax declaration, the taxpayer has the possibility to indicate a conditional code “99999999” therein.

In case of the simultaneous supply of goods included into List No. 224 (the tax-exempt supply transactions) and any other goods and services the transactions on the supply of which are subjected to taxation at the rate of 7 % or 20 %, the taxpayer must compile individual tax declarations for the supply of goods within VAT transactions which are subjected to or exempt from the taxation. Since the simultaneous inclusion of these two types of transactions in one tax declaration is not provided for.

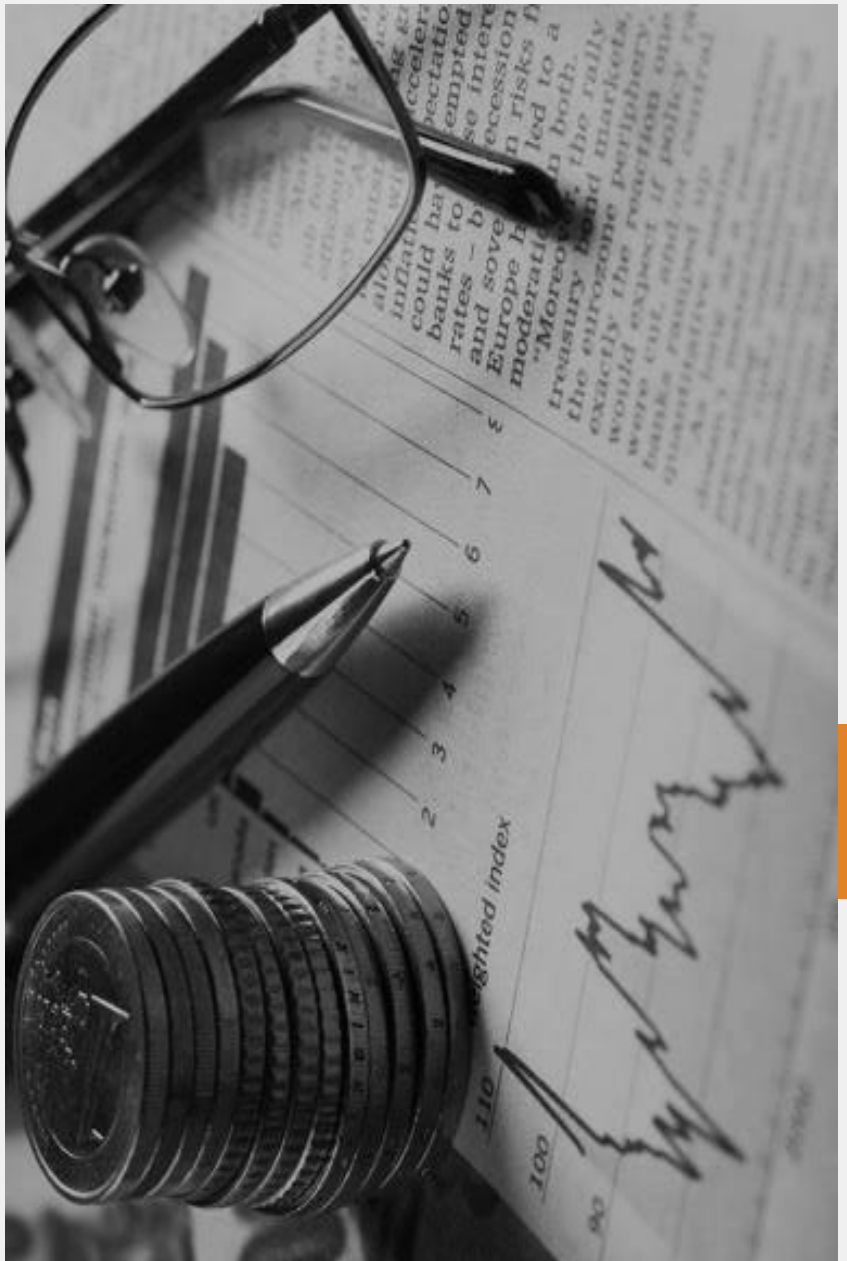
# THE STATE LABOUR SERVICE OF UKRAINE ON THE SPECIFICS OF THE DISMISSAL OF THE EMPLOYEES IN TERMS OF THE DOWNSIZING

Due to the economic situation resulting from the coronavirus pandemic, currently, employers more frequently have issues concerning the dismissal of employees based on the downsizing.

Article 40 of the Labour Code of Ukraine (the LCU) provides for the possibility of terminating an employment agreement entered into for an indefinite time and a time-expiring employment agreement before its expiration at the employer's initiative in case of changes of the manufacturing and work, as well as downsizing in the organization. This also includes the cases of liquidation, reorganization, bankruptcy or conversion of the enterprise, institution, organization.

**If a dismissal is performed based on downsizing, the employee is paid a dismissal compensation of not less than the average monthly income.**

The employer must follow an established algorithm of actions. In accordance with article 49-4 of the LCU, the liquidation, reorganization, change of the form of ownership or partial suspension of manufacturing resulting in the downsizing, deterioration of working conditions can be performed only after the anticipatory provision of trade unions with the information on this issue. In particular, on the reasons of the forthcoming dismissals, quality and category of the workers which can be affected by it, the terms of conducting the dismissal. Within three months after making the decision, the employer consults with the trade unions on the measures to prevent the dismissal or on the mitigation of unfavourable conditions of any dismissal.



Article 49-2 of the LCU envisages that **the employees are personally informed of the forthcoming dismissal not later than two months in advance.** Simultaneously with the warning about the dismissal due to the changes of the manufacturing and work in the organization, the employer suggests to the employee another work in the same enterprise, institution, organization, except for cases provided for in the LCU. If the work on the respective occupation or specialist is absent, and if the employee refuses to get transferred to another work in the same enterprise, institution, organization, the employee, at their discretion, asks for the assistance of the state employment service or finds employment on their own.

If the dismissal is mass, then, pursuant to article 50 of the Law of Ukraine "On Employment of Population", **the employer informs the state employment service of the planned dismissal of the employees in connection with the changes of manufacturing and work in the organization two months before the dismissal.**

The important factor while making decisions concerning the dismissal of the employees in case of changes of manufacturing and work in the organization is taking into account the pre-emptive right to be kept at the working place provided for by the legislation.

# THE STATE LABOUR SERVICE OF UKRAINE ON THE PROVISION OF THE EMPLOYEES WITH THE PERSONAL PROTECTIVE EQUIPMENT.

Due to the implementation of the quarantine in the whole territory of Ukraine, to ensure the safety and security of the health of the employees engaged in the working process, the employees must provide them with the personal protective equipment (the PPE) pursuant to the Minimal requirements of the health and safety during the employees' use of the personal protective equipment in the workplace. Specifically:

- the employer must, at their cost, provide for the purchasing, configuring, issuing and maintenance working hygienic condition) of the PPE;
- in works with harmful and dangerous working conditions and works connected with pollution or performed in unfavourable meteorological conditions, the employees are given special clothing, special footwear and other PPE pursuant to the established standards free of charge which, for the employer, are a mandatory minimum of the issue of the PPE free of charge with the indication of their protective qualifications and terms of use;
- the PPE must be used if it is impossible to avoid or to sufficiently limit the risks for the life and health of the employees with technical measures of collective protection or by means of events, methods or regulations of organizing the work;
- the PPE are used exclusively as intended in accordance with the manuals which have to be clear for the workers.

**The principal tasks of the safety service in the quarantine conditions should include the following:**

- the organization of conducting preventive measures aimed at the elimination of harmful and dangerous productive factors, prevention of job-related accidents, occupational diseases and other events of a threat to life or health of employees;
- the studying and promoting the implementation of achievements of science and technology, progressive and safe technologies, contemporary means of the collective and individual protection of the workers into production;
- informing and giving explanations to the employees of the enterprise concerning working safety;


- participation in compiling the sanitary and hygienic characteristics of the working conditions of the employees which are examined for the occupational diseases (poisoning), performing the internal audit of the occupational safety and the attestation of working places on their conformity to the laws and regulations on labour protection;
- interaction with other structural departments, services, specialists of the enterprise and the trade union representatives, and in case of its absence, with the authorized persons for the occupational safety.

# AID ON THE PARTIAL UNEMPLOYMENT FOR THE PERIOD OF THE QUARANTINE

The Cabinet of Ministers of Ukraine by its resolution dated 22 April 2020 No. 306 approved “The procedure for providing and returning the funds aimed at the financial aid on the partial unemployment for the period of the quarantine established by the Cabinet of Ministers of Ukraine to prevent the dissemination of the acute respiratory disease COVID-19 caused by SARS-CoV-2 in the territory of Ukraine”.

The procedure establishes the mechanism for providing the funds aimed at the financing the aid on the partial unemployment for the period of the quarantine, returning the indicated funds in case of the breaching of the guaranties of employing the persons who received such aid, and its amount.

The aid on the partial unemployment for the period of the quarantine is the finances provided for in the budget of the Fund of Compulsory State Social Insurance in Case of Unemployment which is provided by the city, district and city-and-district employment centres and branches of regional employment centres to the employments of the small and medium enterprises to pay out the aid to the employees in case of losing the part of the salary as a result of the forced reduction of the provided by the legislation duration of the working hours due to the termination (reduction) of the activity resulting from the quarantine.

The amount of the aid is provided to the employers including the individual entrepreneurs which are insured persons from small and medium enterprises for the term of the termination (reduction) of the activity and during 30 calendar days after the termination of the quarantine in case of the payment by the employer or the individual entrepreneur which is an insured person a unified social tax within six months preceding to the date of the termination (reduction) of the activity.

The payment of the aid on the partial unemployment for the period of the quarantine to individual entrepreneurs which are insured persons is performed by the employment centre.

To receive the aid, the employer of the individual entrepreneur which is an insured person must apply to the employment centre at the place of their registration as the unified social tax payer and submit the corresponding documents.

# UNTIMELY PAYMENT OF THE SALARY: CALCULATION OF THE COMPENSATION

*The financial crisis caused by the coronavirus led to the situation where the increasing number of employers are not able to timely pay the salary to the employees. Due to this, the issues related to the accrual and accounting of the compensation for untimely payment of the salary arise.*

When the compensation is paid.

The procedure for the calculation of the compensation of the salary due to the breach of the terms of its payment is regulated by the Law of Ukraine dated 11 February 2003 No. 2050-III "On the compensation to the citizens of the loss of parts of their income in connection with the breach of their payment" (Law No. 2050) and the Procedure for compensation to citizens the losing of a part of monetary income in connection with the breach of the terms of their payment approved by the CMU dated 21 February 2001 No. 159 as amended (Procedure No. 159).

The compensation is paid in case of the delay for one or more calendar months of the payment of monetary incomes, including salary (cl. 2 of Law No. 2050, cl. 2 of Law No. 159).

Thus, **the first condition** for the payment of the compensation is **the delay of the salary for the term of more than one month**. Besides, such delay must arise through the fault of the employer, but it is irrelevant on which conditions (either the employer have no finances or an account with the bank is blocked, or the enterprise does not work during the quarantine etc.). However, the income which was not timely received through the fault of a citizen is not subject to the compensation (cl. 5 of Law No. 2050, cl. 6 of Law No. 159).

Meanwhile, **other conditions** for the payment of the compensation is **the existence of the increase of the consumer price index in the accounting period** (inflation index). And if during the period of the delay of the payment of the compensation there was no inflation (an increase of the inflation index did not exceed 1), then the amount of the compensation equals to zero.

# To what income the compensation is accrued

Among the income which is subject to the compensation, salary is directly indicated (cl. 5 of Law No. 2050, cl. 3 of Procedure No. 159).
The structure of the salary is determined based on section 2 “Instruction on the statistics of the salary” approved by order of the Ministry of Statistics of Ukraine dated 11 December 1995 No. 323, registered in the Ministry of Justice of Ukraine on 21 December 1995 under No. 465/1001 (Instructions No. 5).
Only those incomes are subjected to the compensation which are of non-recurring nature (art. 2 of Law No. 2050, cl. 3 of Procedure No. 159).
The Compensation is accrued to the amount of the salary after retaining the taxes and mandatory payments, that is **to the net amount of the salary** (cl. 3 of Law No. 2050, cl. 4 of Law No. 159).
The amount of the compensation is calculated as a sum of the net salary for the respective month and the increase of the consumer price index (inflation index) in per cents to determine the amount of the compensation divided by 100.
The consumer price index to determine the amount of the compensation is calculated by means of multiplying the monthly indices of consumer prices for the period of non-payment of the monetary income. At that, the consumer price index in the month for which the income is paid is not included in the calculation (cl. 3 of Law No. 2050, cl. 4 of Law No. 159).
The indicated above can be reflected in the following formula:

$$A_c = S_p \times (I_i \times I_{i+1} \times \ldots \times I_{ip} \times 100 - 100) / 100,$$

where:
$A_c$ is the amount of compensation;
$S_p$ is the amount of the salary which was not paid timely after the deduction of all mandatory retains (net salary), UAH;
$I_i$ is the consumer price index (inflation index) of the month following the month of the accrual of the salary (divided by 100);
$I_{ip}$ is the consumer price index (inflation index) of the month before the month of the payment of the debt (divided by 100).
The amount of the compensation of the salary is paid in the same month in which the payment of the debt for the respective month is performed.
For the violation of the requirements of Procedure No. 159 the legal persons and individual entrepreneurs which use hired labour **are liable in the form** of a penalty pursuant to paragraph 8 of Part 2 of Article 265 of the LCU in the amount of minimum salary (in 2020, **UAH 4,723**).
Besides, the official which allowed such violation can be brought to administrative account in accordance with part 1 of Article 41 of the Code of Administrative Offences (CAO) which provides the imposing of a fine of 30 to 100 of tax-exempt minimum incomes of individuals (UAH 510 to 1700).
Thus, to prevent these negative consequences, the employers should follow the legal standards and accrue the compensation *for the untimely payment of the salary*.

# NEWS OF THE TAX LEGISLATION

# CHANGES AND INNOVATIONS IMPLEMENTED BY THE LAW OF UKRAINE DATED 16 JANUARY 2020 NO. 466-IX “ON AMENDMENTS TO THE TAX CODE OF UKRAINE CONCERNING THE IMPROVEMENT OF ADMINISTERING THE TAXES, ELIMINATING TECHNICAL AND LOGICAL DISAGREEMENTS IN THE TAX LEGISLATION”.

# CHANGES ON THE COMPILING THE INCOME TAX DECLARATION

## The submission of the financial reporting together with the auditor conclusion

According to the changes to cl. 46.2 of the TCU, the income tax payers which pursuant to Law of Ukraine "On accounting and financial reporting in Ukraine" dated 16 July 1999 No. 996-XIV (Law No. 996) must make public their annual financial reporting and their annual consolidated financial reporting together with the auditor report, shall submit to the regulatory authority the following:

- together with the tax declaration for the respective annual period the Statement of Financial Position (balance sheet) and the Profit and Loss and other comprehensive income Statement (Statement of Financial Results) **compiled before the inspection of the financial reporting by the auditor**;
- the annual financial reporting together with the auditor report which must be made public not later than **on 10 June** of the year following the reporting one.

In case of non-submission (delayed submission) of the annual financial reporting together with the auditor report which must be made public, the liability provided for by cl. 120.1 of the TCU for the submission of tax declarations (calculations) applies. That is, if the financial reporting approved by the auditors is not submitted, then the declaration (to which such financial reporting is an integral appendix) is deemed not to be submitted.

However, amendments to cl. 46.2 of the TCU came into force on 23 June 2020, and the final term for the submission of the invoice and the financial reporting for the reporting period (2019) has already expired.

**Consequently, the standard of this clause concerning the mandatory submission of the annual financial reporting together with the auditor report prior to 10 June of the year following the reporting one applies in 2021 based on the results of the 2020 reporting year.**

That is, this standard is not required to be performed in 2020. However, it should be noted that financial reporting not yet approved by the auditors are to be submitted to the tax authorities first, and then (separately) followed by the one already approved.

**What is to be done if the data of the financial reporting have discrepancies (that is, due to the audit of the financial reporting, the changes were made)?**

**In this case, in the opinion of the State Tax Service of Ukraine, the taxpayer will have to submit a specifying declaration.**

For example, in this situation concerning the financial reporting for 2020, the specifying information must be submitted on or before 10 June 2021.

This specifying information must be submitted only if **such changes affected the indicators of the annual declaration**.

Pursuant to cl. 49.4 of the TCU, the financial reporting, the Statement of Financial Position (balance sheet) and the Profit and Loss Statement and other comprehensive income (Statement of Financial Results) together with the auditor conclusion are submitted electronically if the tax declarations are submitted electronically.

# New limit amount of the income for mandatory tax differences

Law No.466 amended cl. 134.1.1 of the TCU in part of the raising the value criterion of the annual income for non-application of differences from UAH 20 to 40 mln (effective from 23 June 2020) and to cl. 137.5 of the TCU concerning raising the value criterion of the annual income for the application of the annual reporting period (effective from 1 January 2021).

The income tax payers **whose annual income for the 2020 reporting period does not exceed UAH 40 mln:**

1. can make decisions **on non-applying the adjustments of the financial result** before the taxation to all differences (except for the negative value of the taxation object of the previous tax (reporting) years) established in accordance with cl. III of the TCU **in the tax declaration for 2020;**
2. apply **in 2021 the annual tax (reporting) period on the income tax.**

**Attention! In 2020, the annual reporting period for the income tax is applied by the taxpayers whose annual income for the 2019 reporting year does not exceed UAH 20 mln.**

# The new “old” reporting period for agricultural manufacturers

Law No.466 amended cl. 137.4.1 of the TCU and eliminated the collision concerning the reference to a non-existing article 209 of the TCU concerning the definition of the agricultural products as the criterion for the application of the special tax (reporting) period by the manufacturers of such products (from 1 July of the previous year to 30 June of the following year).

Thus, the agricultural manufacturers who wish to transfer to a new reporting period submit the tax declaration for the reporting period, a half-year of 2020. Further, they can apply the special annual period. It starts from 1 July 2020 and ends on 30 June 2021.

# The productive method for tax depreciation

From 23 May 2020, it is allowed to apply the productive method to determine the tax depreciation.

Accordingly, we shall describe the transition to such a method of depreciation from Q II of 2020 by the taxpayers who submit tax declarations quarterly.

If the taxpayers who submit the tax declarations quarterly decided **from Q II of 2020** to apply the productive method of calculation of the tax depreciation to the depreciation of the fixed assets to which they had to calculate by other method before, they have to conduct an inventory of these fixed assets objects as of 1 April 2020. Depreciation, calculated under the permitted productive method, in this case for the first time can be **reflected in the addendum AM to the tax declaration for the HY I of 2020.**

**The value of the FA is increased up to UAH 20,000**

Law No. 466 dated 23 May 2020 changes the value criterion of determining the fixed assets **from UAH 6,000 to 20,000**.

- This criterion shall be used to the fixed assets which are commissioned after 22 May 2020;
- The fixed assets commissioned before 23 May 2020 continue to be depreciated in the accounting, even if their residual book value does not exceed UAH 20,000**.**

**Accelerated depreciation**

The income tax payers are entitled to apply the accelerated depreciation established by cl. 43-1 of sub-section 4 of section XX of the TCU starting from the reporting period, HY of 2020 and reflect the amounts of the accelerated depreciation in the addendum AM to the tax declaration for this period.

# The reporting of the unified tax in case of the paying incomes to non-residents

From 23 May, it is established that the legal persons and individual entrepreneurs who elected the simplified taxation system, individual entrepreneurs and individual persons who perform the individual occupational activity **are the income tax payers in case of the paying income (revenues) to a non-resident with the source of their origin in Ukraine**.

For such subjects, in case of paying income to non-residents, the changes to cl. 137.5 of the TCU (**coming into force from 1 January 2021**) provide for the applying of the annual reporting period on the income tax.

Accordingly, as our tax specialists explain: in case of paying of income to non-residents in 2020, legal persons and individual entrepreneurs who selected the simplified taxation system, individual entrepreneurs and individual persons who perform individual occupational activity submit for the 2020 reporting period the tax declaration with the addendum PN which reflects such incomes of non-residents and the respective amounts of the tax.

# Dividends from non-residents

Law No.466 from 23 May 2020 supplements cl. 140.4 of the TCU with a new difference.

Specifically: cl. 140.4.3 of the TCU was added concerning the decrease of the financial result to the amount of income from the share in the capital of non-residents which is subjected to the payment in their favour from such non-resident, upon the conditions that the share in the capital of the non-resident is at least 10 % during the calendar year and such resident is not included in the list of the states (territories) determined in accordance with cl. 39.2.1.2 of the TCU (except for the states (territories) which have valid international agreements of Ukraine on the avoidance of double taxation of income).

Before making changes to the form of the tax declaration on the income, the tax specialists recommend reflecting the new difference **in any convenient line of the addendum PI** to the tax declaration.

But having indicated this fact **in the addendum to the tax declaration** on the submitting of which a note should be made in the special field of the tax declaration (section “Existence of an addendum”).

# Loss transferred to the inheritance

From 01 January 2021, the legal successor’s possible decrease of the financial result by the amount of the negative value of the taxation object of the taxpayer which is reorganized by the following means:

- accession, merge, transformation, during the period of the approval of the transfer statement;
- split, section, during the period of the approval of the distribution balance sheet proportionally to the received part of the property in accordance with the distribution balance.

The legal successor payers, before making changes to the tax declaration can reflect the amount of the negative value of the taxation object of the taxpayer which is being reorganized in line 3.2.4 of the addendum PI to the tax declaration.

# Penalties on the contract relations and inspections

According to the new wording of cl. 140.5.11 of the TCU, the financial result increases by the amount of the expenses from the reimbursement of damages, compensation of the non-received income, including on the foreign economic activity contracts and by the amount of penalties, fines accrued by the regulatory authorities and other state bodies for the violation of the requirements of the legislation. These changes are effective from 23 May 2020.

The taxpayers can reflect this increase of the pre-tax financial result in line 3.1.11 of the addendum PI to the tax declaration.

# The difference in case of transactions with non-residents without a business purpose

According to new cl. 140.5.15 of the TCU, the financial result increases by the amount of the expenses incurred by the taxpayer during the transactions with non-residents, if these transactions have no business purpose. These changes became effective on 23 May 2020.

Before making changes to the form of the declaration, the new difference should be reflected **in any convenient line of the addendum PI** to the tax declaration to increase the financial result. But having indicated this fact **in the addendum to** the tax declaration on the submitting of which a note should be made in the special field of the tax declaration (section “Existence of an addendum”).

# The accounting of the capitalization of interests

The new norm of paragraph 6 of cl. 138.3.2 of the TCU introduces the new accounting of the interests to conform to the accounting.

For the purposes of calculating the difference under cl. 140.2 of the TCU, the taxpayer shall perform the separate accounting of the interests which were capitalized (were subjected to be included in the prime cost of the non-current asset) pursuant to the provisions of the IFRS and IAS.

The capitalized interests which increased the prime cost on the non-current assets will be taken into account during the calculation of the amount of the excess pursuant to cl. 140.2 of the TCU during the period of the accrual of the depreciation of the respective objects of the FA.

According to cl. 53, sub-section 4, section XX of the TCU, the rules of the accounting of the interests provided for in paragraph 1 of cl. 140.2 of the TCU apply **from 1 January 2021** to **all** credits, loans and other payables accounted in the balance of the taxpayer as of **1 January 2021**.

From **01 January 2021**, in accordance with the new wording of cl. 140.2 of the TCU for the taxpayer whose amount of payables determined by cl. 140.1 of the TCU which emerged under the transactions with non-residents exceeds the amount of the own capital by more than 3.5 times, **the pre-tax financial result increases by the amount of the excess of the interests calculated in the accounting** on the credits, loans and other payables (except for the interests subject to the capitalization according to NAR(S) of the IFRS before the moment of the commissioning of the respective asset) **over 30 % of the amount of the calculated object** of the income tax of the reporting (tax) period in which the calculation of such interests is performed, **increased by the amount of the financial expenses** according to the data of the financial reporting **and the amount of the depreciation deductions** according to the tax reporting of the same reporting (tax) period.

The taxation object mentioned in this standard shall be determined in accordance with cl. 134 of the TCU with the adjustment of the pre-tax financial result of all the differences determined in accordance with the provisions of this section, except for the following:

- the negative value of the taxation object of the previous tax (reporting) years;
- the difference determined by cl. 140.2 of the TCU.

If in the reporting (tax) period the indicator calculated in accordance with paragraph one of this clause is negative, the financial pre-tax result will increase by the whole amount of the interests accrued in this reporting (tax) period.

To the amount of the interest expenses accrued during the reporting (tax) period, a part of the depreciation deductions is added which falls to the amount of the interest expenses capitalized as part of the value of the non-current asset before its commissioning. Thus, in each separate reporting (tax) period, the taxpayer shall determine a part of the depreciation deductions from the value of the respective non-current asset which falls to the amount of capitalized interests based on the applicable method of depreciation and the term of the effective use of the corresponding non-current asset.

Norms of cl. 140.2 of the TCU **shall not apply** and the pre-tax financial result will not increase by the amount of the interests which are subjected to capitalization pursuant to the NAR(S) and the IFRS and shall not impact the pre-tax financial result of the taxpayer in the reporting (tax) period to the moment of the commissioning the respective non-current asset.

The norms of this clause **shall not apply** to financial institutions and companies performing the leasing activity only.

The adjustments provided for by cl. 140.2 of the TCU shall not be performed to the amount of the interests recognized as non-conforming to the arm's length principle as well.

**If a transaction with a non-resident on which the interests are paid is controlled, an individual rule will be effective.** If an amount of the interest expenses on the controlled transactions exceeds the level determined pursuant to the arm's length principle, the provisions of this clause will apply to the amount of the interest expenses conforming to the arm's length principle. In this case, this rule will apply based on the consequences of the reporting (tax) year.

# The difference concerning the provision for expected credit losses

From 23 May 2020, a standard concerning the provision of the expected credit losses was added to the tax difference on the receivables (cl. 139 of the TCU). This provision is created under IFRS 9 “Financial Instruments”.

**Credit loss** is a difference between the flows provided for by the agreement which belong to the organization and the cash flows which it expects to receive. That is, this specifying information will impact the applying of the tax differences by the income tax payers who compile the financial reporting under the IFRS.

The mechanism of applying the tax difference is the following:

– The financial result will be increasing by the amount of expenses for the provision of the expected credit losses and by the amount of losses from writing-off the receivables exceeding this provision.

– The financial result will be decreasing:

- by the amount of adjusting the provision of the expected credit losses (depreciation of assets) by which the pre-tax financial result increased pursuant to the IFRS;
- by the amount of the written-off receivables (including the provision of the expected credit losses (depreciation of assets) which corresponds to the indications determined by cl. 14.1.11 of the TCU.

# 30 % difference concerning the exports by non-residents

Pursuant to new cl. 140.5.5-1 of the TCU, **from 23 May 2020**, the income tax payers will have to increase their financial result by 30 % of the value of the exported goods including non-current assets, works and services (except for the transactions recognized as non-controlled pursuant to art. 39 of the TCU sold in favour of the “low-tax” non-residents).

The requirements of this sub-clause are not applied by the taxpayer if the transaction is non-controlled and the amount of this income is confirmed by the taxpayer on the prices established by the arm’s length principle in accordance with the procedure established by cl. 39 of the TCU but without the submission of the Report on the controlled transactions.

In case of preparing the documentation and submitting the Report on controlled transaction it turned out that the disposal price is lower than the price determined in accordance with the arm’s length principle; the adjustment of the financial result is performed by the amount of **the difference between these prices**.

# Changes to VAT taxpayers. Law No. 466

Most of the standards of the Law of Ukraine dated 16 January 2020 No. 466-IX “On amendments to the Tax Code of Ukraine concerning improvement of administering taxes, eliminating technical and logical disagreements in the tax legislation” became effective on 23 May 2020, in particular, the following:

- a unified reporting period for the reporting on the VAT is implemented, which is **a calendar month** (including for the unified tax payers) for the purpose of simplifying the administration of the VAT, applying the unified approach to the forming of the reporting indicators and their reflection in the State Tax Service;
- the determination of the tax base is implemented for the transactions on the energy supply based on the price established at the energy market without the necessity of the additional accrual of the VAT liabilities if such market price for the energy is less than its purchase price;
- special aspects of the determining of the tax base are established for the transactions of the exporting goods outside the customs territory of Ukraine (an agreed (contract) value of such goods indicated in the customs declaration);
- the possibility is provided for the forming of the tax credit by the payers applying the cash method of the accounting if the payment for the purchased goods/services is performed for more than 1095 calendar days;

- the issue of the regulation of the accounting in the system of electronic administration of the VAT for the amount of funds withdrawn and carried by a regulatory authority to the taxpayer's account in accordance with art. 95 of the TCU towards the repayment of the tax debt on the VAT of the tax liabilities declared for payment is regulated;
- the final term of the registration of the consolidated tax declarations in the URTI between the 15th and the 20th day of each month is elongated;
- the temporary benefit is established on the VAT for the transactions on the transfer of vehicles to the low-income population and to the special state authorities (ambulance and the central executive authorities implementing the state policy in the spheres of the civil protection, rescue works, fire and technogenic safety) for the operative performance of the tasks aimed at the protection and safety of the health of the population;
- the application of the zero rate is restored for the transactions on the exports of soy and rapeseed (before the amendments to the transactions of the exports of soy and rapeseed, the regimen of exemption from the VAT taxation applied which included the possibility of declaration before the remuneration of the VAT amounts on such transactions);
- it was clarified that the cash method of the accounting on the VAT also covers the contractors and sub-contractors;
- the VAT benefit for the imports of the pedigree pure-bred animals distributed to an agricultural manufacturer.

# REPATRIATION TAX. LAW No. 466

From **23 May 2020,** amendments to art. 103, cl. 141.4 and the standards of the TCU related to them are effective:

**1. The text of "the main purpose"**

The tax benefits in the form of tax exemption or the application of the decreased tax rate provided for by the international agreement of Ukraine can not be applied, **if the main or the central purpose of the respective economic transaction of a non-resident with a resident of Ukraine is the obtaining of tax advantages provided by the international agreement.**

This is fixed in paragraph 3, cl. 103.2 of the TCU.

This rule is not applied if it is determined that the obtaining of such advantages conforms to the object and purposes of an international agreement of Ukraine.

Besides, if the international agreement establishes other rules, it is the international agreement that prevails.

**2. Beneficiary rights**

**2.1.** One of conditions for the application of a benefit in the form of tax exemption or the reduced tax rate for the income of non-residents by the person (tax agent) provided for by the respective international agreement of Ukraine **is a beneficiary status of the non-resident who is an income recipient**, that is they must be **an actual owner of such income** (hereinafter — "the beneficiary recipient").

Paragraph 1 of cl. 103.2 of the TCU specifies that this condition applies only if it is provided for by the respective international agreement.

**2.2.** The situation is regulated where the income is paid to a non-beneficiary recipient. In this case, the legislator allowed applying an international agreement of Ukraine with the country the resident of which is a respective beneficiary recipient of such income, in part of the tax exemption and application of the reduced tax rate. However, this is possible only upon the condition of providing the person (tax agent) with the following documents:

a) from the recipient of the income, the application in any form on the absence of the status of a beneficiary recipient of the income and the existence of such status with the non-resident who submitted the documents indicated below in cl. b;
b) from the beneficiary recipient of the income, an application in any form on the existence of the status of a beneficiary recipient of the income with such non-resident and the documents confirming such status (including, without limitation, licenses, agreements, official letters by competent authorities) and the document confirming the status of a tax resident pursuant to the requirements of cl. 103.4 of the TCU.

**2.3** The rules of cl. 103.3 of the TCU concerning the definition of a beneficiary recipient of the income were adjusted, for the purposes of applying decreased tax rate in accordance with the rules of an international agreement of Ukraine, concerning **dividends, royalty, remuneration etc. of a non-resident** received from the sources in Ukraine. This is deemed to be the person entitled to receive such incomes **and who is a beneficiary to them (is entitled to actually dispose of such income**). Again, the condition on the beneficiary rights must be provided for by the international agreement.
Besides, cl. 103.3 of the TCU contains **examples of indicators** which may indicate a non-beneficiary (nominally intermediary) status of the recipient of income.
This clause also establishes the following: if a non-resident who is a direct recipient of the income with the source of origin from Ukraine is not a beneficiary recipient of this income, during the payment the provisions of the international agreement of Ukraine with the country of the beneficiary owner of such income apply. In this case, the obligation to prove that the non-resident is a beneficiary concerning the respective income is held by such non-resident (or by the non-resident who submits an application to the regulatory authority on the return of the tax retained in excess).
In contrast to cl. 103.2, cl. 103.3 of the TCU for the applying the international agreement of Ukraine with the country of a beneficiary recipient of the income does not put forward the requirement of the tax agent's receiving applications and other documents mentioned above from a nominal and beneficiary recipients. Although, of course, the document confirming that the non-resident is a resident of the country with which Ukraine entered into the international agreement is utterly mandatory (cl. 103.2, 103.4 of the TCU).

**3. The payers of the repatriation tax**

**3.1.** The obligation to retain the repatriation tax during the payment of incomes in favour of the non-resident or the person authorized by them with the source of their origin from Ukraine determined by cl. 141.4.1 of the TCU is now assigned to:

— the resident;

— the other non-resident who performs the economic activity through the permanent representative office in the territory of Ukraine (paragraph 1, cl. 141.4.2 ).

Meanwhile, it is clearly indicated that such requirement, the obligation to retain the repatriation tax, **is not applied to the income of non-residents which they receive through the permanent representative offices in the territory of Ukraine**.

In this regard, the list of incomes received by the resident with the source of their origin from Ukraine has been clarified, in cl. 141.4.1 of the TCU.

Besides, p. a of cl.14.1.54 of the TCU containing the definition of *income with the source of its origin from Ukraine* (see also "freight" cl. 141.4.4 and "insurance" cl. 141.4.5 of the TCU) has been somewhat changed.

Thus, the problem of the double taxation of the income of non-residents from the Ukrainian sources earned by them through permanent representative offices in Ukraine (one time, at the level of the representative office, and the other time, during the permanent representative office's recalculation in favour of the non-resident) is eliminated.

**3.2.** The legal persons who are the unified tax payers, individual entrepreneurs, including the payers of the unified tax, and the individual persons performing the independent occupational activity are defined in section III of the TCU as the taxpayers during the payment of income (revenues) to the non-resident with the source of their origin from Ukraine in the order established by cl. 141.4 of the TCU (cl. 133.1.1, 133.1.4, cl. 137.5 of the TCU).

It is to be recalled that previously cl. 297.5 of the TCU established that the payer of the unified tax who performs any payments from the income with the source of their origin from Ukraine in favour of the non-resident who is a legal person of the person authorized by them (except for the permanent representative office in the territory of Ukraine) received by such non-resident performs the accruals and payments of the tax from the income of the non-resident by the order, to the amount and in terms established by section III of the TCU.

**From 01 January 2021** all indicated persons provide reports concerning income (revenues) paid to the non-resident with the source of their income from Ukraine (cl. 141.4 of the TCU) based on the results of the annual (reporting) period, in accordance with cl. 137.5 of the TCU.

Besides, the economic operators who are legal persons paying the unified tax are the taxpayers in case of receiving of the adjusted income of the controlled foreign company subjected to taxation in accordance with the order established by cl. $39^2$ and section III of the TCU (cl. 133.1.1 of the TCU), from 01 January 2021.

**3.3.** Cl. n, cl. 141.4.1 of the TCU specifically points out such taxable income of the non-resident as *"income from the alienation of the rights for the extraction and development of fields of mineral deposits, mineral wells and other natural resources in the territory of Ukraine owned by the non-resident"* (cl. j of cl. 14.1.54 of the TCU). Correspondingly, other incomes of the non-resident contained in the known cl. j, cl. 141.4.1, now transferred to cl. o, cl. 141.4.1 of the TCU.

3.4. The mechanism of levying the resident with the tax of the repatriation of the “constructive dividend” (paragraphs 2, 3, cl. 141.4.2 of the TCU).
3.5. The procedure for the calculation of the repatriation tax was determined for the cases when the income is paid to the non-resident in any form different from monetary, or when the tax on the income on the non-resident was not retained from the respective income during the payment (including during the payment of the income equaled to the dividends by the TCU) (paragraph 3, cl. 141.4.2 of the TCU).
Paragraph 1 which in the course of entering into an agreement with non-residents prohibited including tax reservations thereto pursuant to which the enterprises paying income assume the liabilities to pay taxes on the income of non-residents was deleted from cl. 141.4.9 of the TCU.

**4. Sale of investment assets**

From **01 July 2020**, in the stand of ordinary rules of levying tax on the repatriation of the income of a non-resident from the transactions of sale or other alienation of the securities, derivatives or other corporate rights, a new approach will be implemented concerning the taxation **of the income** from the sale or other alienation of **investment assets by non-residents** (cl. g, cl. 141.4.1, cl. k, cl. 14.1.54 of the TCU) in the form of:
— securities, derivatives or other corporate rights in the share capital **of the resident legal persons** (except for those in circulation on the stock exchange approved by the Cabinet of Ministers);
— shares, corporate rights, participation interest **in foreign companies, organizations established under the legislation of other states** (foreign legal persons) (except for those circulating on the stock exchange approved by the Cabinet of Ministers in accordance with cl. a, cl. 141.4.11 of the TCU) complying with the following conditions:
a) any time during 365 days preceding the sale or other alienation, the cost of shares, corporate or other analogous rights **of a foreign legal person** to 50 and more per cent is created for the account of *shares in a Ukrainian legal person owned by the indicated foreign legal person directly or indirectly*,
and
b) any time during 365 days preceding the sale or other alienation, the cost of shares **in the Ukrainian legal person** to 50 and more per cent is created for the account of the real estate situated in Ukraine **and owned by this Ukrainian legal person or is used by this Ukrainian legal person** based on the agreement on a long-term lease, financial leasing or a similar agreement.
Cl. g, cl. 141.4.1 of the TCU determines that **income** from the sale or other alienation of an investment asset is calculated as a positive difference between the income received from the sale or other alienation of the investment asset and the documented losses on its acquisition.
If at the request of a person who in accordance with cl. 141.4.2 of the TCU is responsible for the payment of the tax on income from performing this transaction, the non-resident alienating the investment asset does not provide documents confirming the losses on the acquisition of such asset; the tax base for this income is the cost of the transaction on the alienation of the investment asset.

From **01 July 2020**, the liability to levy tax on the income from the non-resident's sale of the investment assets is placed not only upon the resident and non-resident purchasers who perform the economic activity through a permanent representative office in Ukraine.

Under certain conditions, this obligation is placed upon **non-residents as well**.

Namely, it is indicated that **the non-resident** who acquires the title to an **investment asset determined by** paragraphs 3–5 of cl. g, cl. 141.4.1 of the TCU **from another non-resident who does not have a registered permanent representative office in Ukraine** is liable to retain tax on the income from the alienation of such investment asset paid in favour of such other non-resident at the rate of 15 % and at the cost of such other non-resident. It is transferred to the budget during such payment (unless other rules are not provided for by the provisions of a current international agreement of Ukraine with the country of residence of the person in favour of which the payments are made).

At that, not later than on the date of performing the first payment for the investment asset being purchased, such non-resident purchaser must register in the regulatory authority at the place of residence of the Ukrainian legal person the shares, corporate rights of which form the investment asset which is a subject of this deal. The registration of such non-residents is performed in accordance with the procedure established by cl. 64.5 of the TCU.

In other words, liability is placed on the non-resident **to levy tax on the income of another non-resident** (without the registered permanent representative office in Ukraine) from the sale (alienation) of shares, corporate rights, participation interest in the foreign legal person the value of which during 365 days preceding the sale is by 50 percent and more formed by the shares (participation interest) in the Ukrainian legal person.

In its turn, the value of shares in the Ukrainian legal person any moment during 365 days preceding the sale must be by 50 percent and more formed by the Ukrainian real estate of such Ukrainian legal person (paragraphs 3–5, cl. g, cl. 141.4.1 of the TCU, cl. 14.1.54 of the TCU).

**5. The income of non-residents from state securities.**

Cl. 141.4.10 of the TCU is edited.

The main innovation is that non-taxable income of non-residents includes income from the sale or other alienation of government securities or local bonds, or debt securities, the fulfilment of obligations under which is secured by state or local guarantees.

Meanwhile, this exemption does not cover the income from the mentioned transactions of the non-residents registered in the "low-tax" jurisdictions from the list approved by the Cabinet of Ministers pursuant to cl. 39.2.1.2 of the TCU. This list is approved by resolution dated 27 December 2017 No. 1045.

**Payment of income to a non-resident in a non-monetary form**

If income is paid to a non-resident in any form different from monetary, or if tax to the income of a non-resident was not retained from the respective income during the payment, such tax is subject to accrual and payment, considering such calculations:

**TP = IP * 100 / (100 - TR) - IP**, where:

TP is the amount of tax payable;

IP is the amount of income paid;

TR is a tax rate established by this sub-clause.

This formula appeared in cl. 141.4.2 of the TCU dated 23 May 2020. Thus, it must be applied now, and the consequences of its applying, that is the amount of the tax paid must be reflected in the tax declaration for 2020 (or the respective quarter of 2020).

**6. Mutual Agreement Procedure**

The TCU is amended by adding cl. $108^1$ which establishes the procedure for performing mutual agreement.

If a person believes that as a result of an action or a decision of the regulatory authority of Ukraine or the respective authority of another country it is or will be taxable which does not conform to the provisions of an international agreement of Ukraine on avoiding double taxation, they may, regardless of the remedies provided for by the TCU, file an application for the review of the case in accordance with the procedure of the mutual agreement in the order established by cl. $108^1$ of the TCU.

# PERMANENT REPRESENTATIVE OFFICES. LAW No. 466

**From 23 May 2020, only the method of direct calculation of the taxable income from the activity in the territory of Ukraine is left to permanent representative offices, taking into account the rules of the transfer pricing**.

That is the method of a separate balance sheet of the financial-and-economic activity and the non-direct method (the determination of expenses by means of multiplying the income by 0.7) do not apply henceforth.

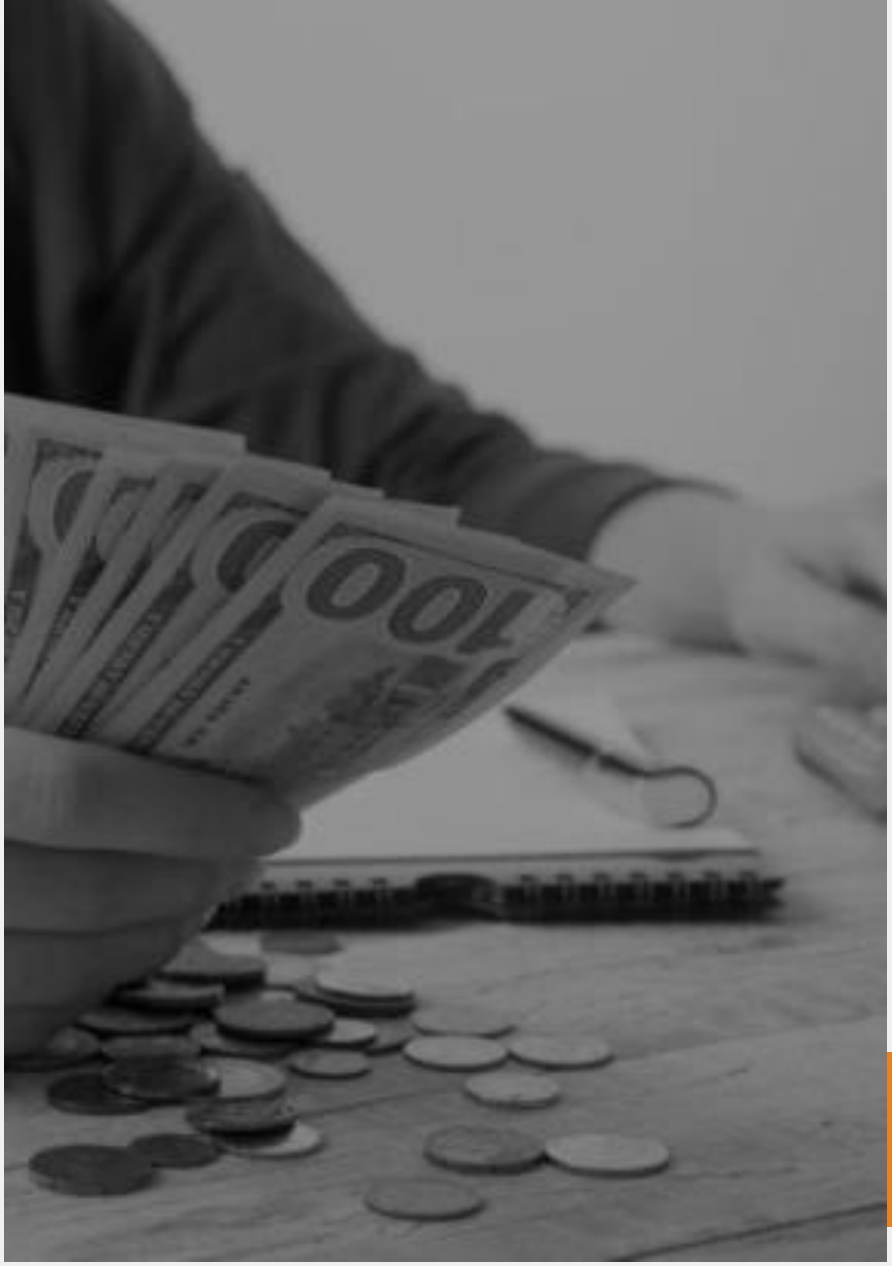
Today, the main provisions concerning the taxation **of permanent representative offices** are the following:

— the amounts of incomes of non-residents who perform their activity in the territory of Ukraine through the representative office **are levied in the general order**. Further, for the purpose of taxation, such representative office is set equal to the taxpayer who performs their activity regardless of such non-resident (paragraph 1, cl. 141.4.7 of the TCU);

— **permanent representative office establishes the amount of the taxable income received during the reporting (tax) period in accordance with the arm's length principle**. That is, the taxable income of the permanent representative office must conform to the income of an individual enterprise which performs the same or analogous activity in the same or analogous conditions and acts absolutely independently from the non-resident of which it is a permanent representative office (new);

— **the amount of taxable income of the permanent representative office is calculated in accordance with the provisions** of cl. 39 of the TCU (new).

Besides, a definition of *"permanent representative offices"* from cl. 14.1.193 of the TCU has been corrected.



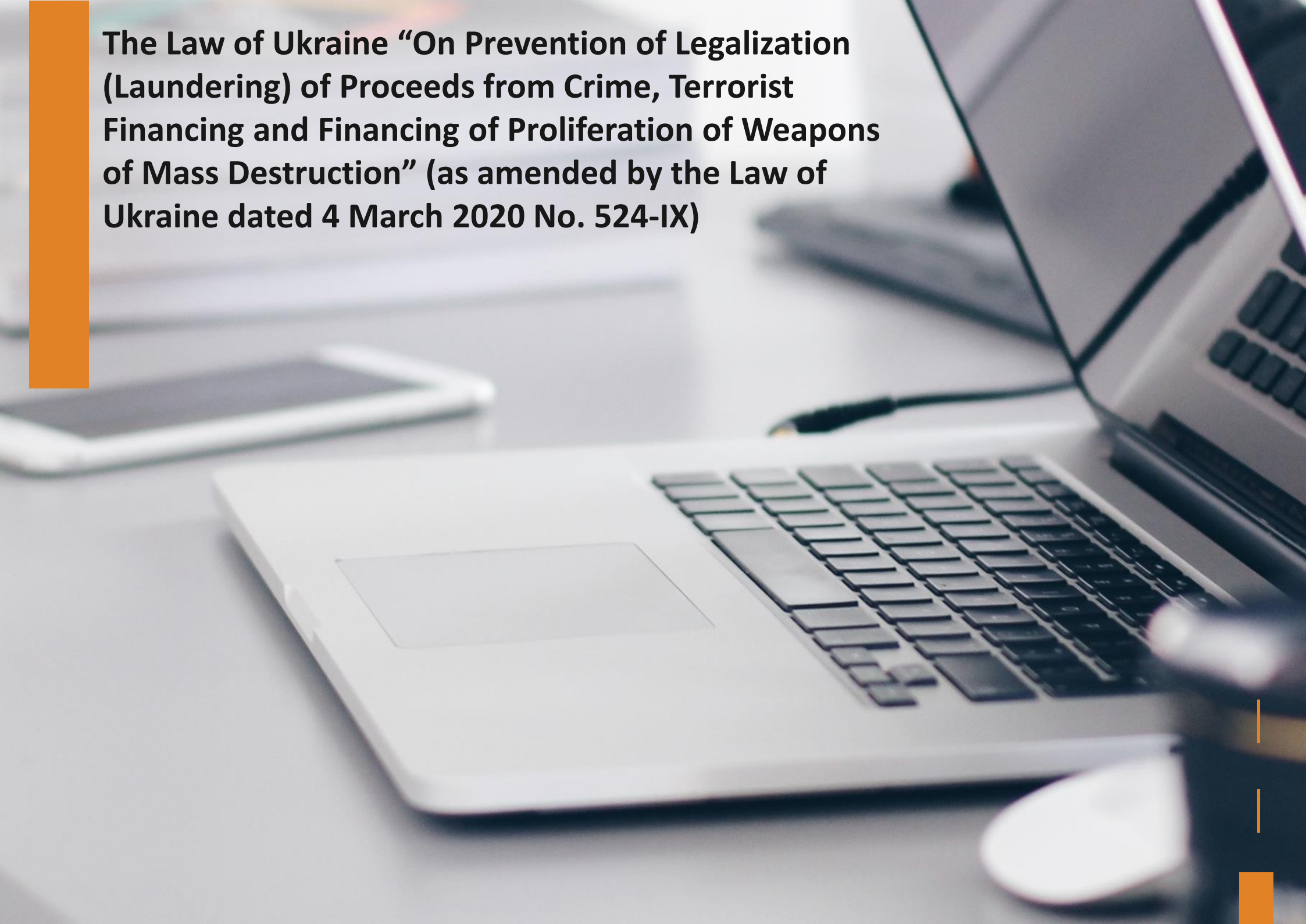
**Besides, Law No. 466 implements important changes, in particular:**

- the implementation of taxation of controlled foreign companies (cl. 39–2 from 2021);
- the definition of the term of the reasonable economic cause (business purpose) (cl. 14.1.231 of the TCU);
- the introduction of the principle of the fault-based liability of the taxpayer for committing tax violations, the tax authorities' establishing the fault of the person (cl. 109.1, 109.30 of the TCU);
- the implementation of the 3-level reporting on the transfer pricing (cl. 39 of the TCU);
- considerable increase of penalties for the taxpayers for certain violations in the sphere of the tax administration, the implementation of new penalties (for the untimely registration of tax declarations, including on the deliveries excluding VAT and exempt from the taxation (art. $120^{1)}$ of the TCU, the accrual of penalties and levies in case of non-payment of a part of the net income (cl. 19-1.1.51, 19-1.1.52, cl. 46.2, 49.19 of the TCU), the 2-times increase of penalties for the violation of the tax legislation (cl. 117, 118, 119, 119-1, cl. 120.1, 121.1 of the TCU);
- change from 20 % to 25 % of the share in the corporate ownership when determining the related person (cl. 14.1.159 of the TCU);
- introduction of the quoted market prices for the transactions with the primary commodities (cl. 14.1.94 of the TCU);
- implementation of assessment to determine the price in the controlled transactions on the acquisition of intangible assets and other (cl. 39.3.10 of the TCU);
- expansion of the list and requirements to the contents of the documentation on transfer pricing (cl. 39.4.6 art. 39 of the TCU) applies for the first time for 2021;

- implementation of the mutual agreement procedure in accordance with the international agreements of Ukraine on avoiding double taxation (cl. 108-1 of the TCU);
- expansion of the term “dividends” (cl. 14.1.49 of the TCU);
- determining that the source of the funds from Ukraine and, consequently, the one that is taxable is the non-resident’s sale of shares/corporate rights of a foreign legal person possessing the real estate in Ukraine during 365 days before the sale date (cl. 14.1.54 the TCU);
- application of the procedure of automatic registration of the non-resident based on the results of compiling the revision certificate and providing the possibility of an administrative attachment of its assets (cl. 64.5 of the TCU, cl. 94.2.9 of the TCU);
- change of the term “permanent representative office” (cl. 14.1.139 of the TCU);
- implementation of the possibility of performing inspection of the non-resident (cl. 78.1.22 of the TCU);
- new foreign companies, payers of the income tax, which have a place of effective management in the territory of Ukraine (cl. 133.1.5 of the TCU);
- rate increase from 5 % to 18 % of the income tax of individuals from the sale of the third or more motor vehicle during the year (cl. 173.2 of the TCU).

# OTHER NEWS

# The Law of Ukraine “On Prevention of Legalization (Laundering) of Proceeds from Crime, Terrorist Financing and Financing of Proliferation of Weapons of Mass Destruction” (as amended by the Law of Ukraine dated 4 March 2020 No. 524-IX)



All legal persons must inform about the beneficiaries.

**On 28 April 2020,** the Law of Ukraine “On Prevention of Legalization (Laundering) of Proceeds from Crime, Terrorist Financing and Financing of Proliferation of Weapons of Mass Destruction” (hereinafter referred to as “the Law”) enters into force.

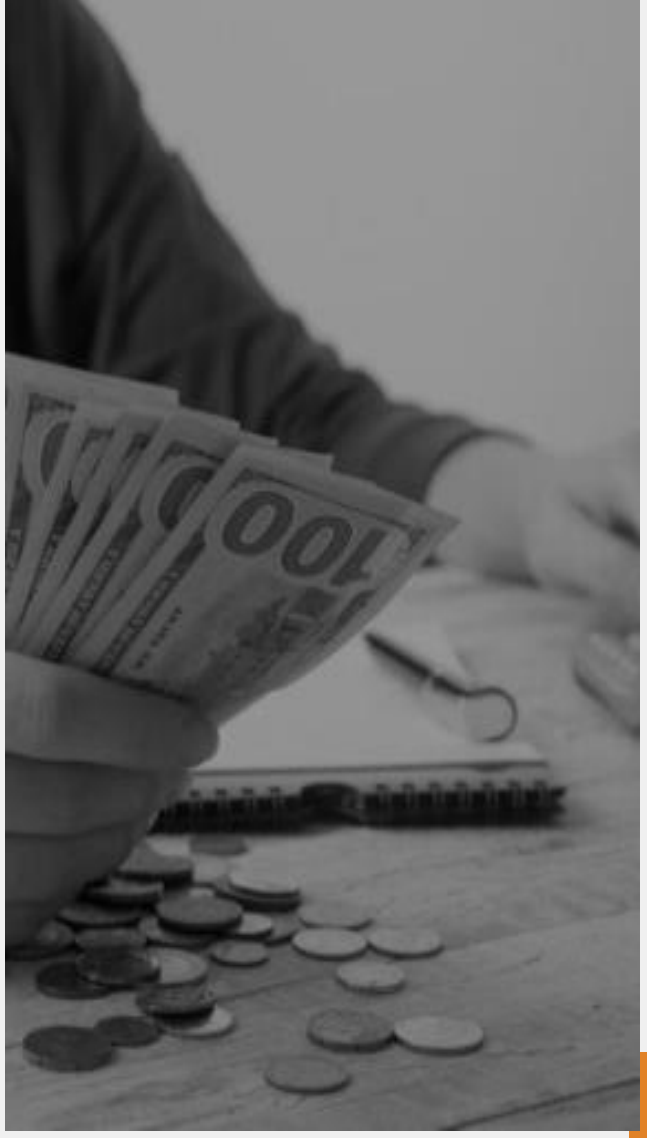
**Within three months** from the effective date of the Law, the registered legal persons must submit the information on the final beneficiary owner and the structure of the ownership to the state registrar.

This information must be maintained relevant; the state registrar must be submitted with the supporting documents on the changes **within 30 working days**.

Moreover, the Law provides for **the annual submission of the corresponding documents to confirm the information on the end beneficiary owner within 14 calendar days** starting from the following year from the date of the state registration of the legal person.

For non-provision or delayed provision of the state registrar with the information on the end beneficiary owner of the legal person or on its absence, or the documents to confirm this information, a penalty is envisaged for the director of the legal person or a person authorised to act on behalf of the legal person (an executive body), **from 1,000 to 3,000 personal tax-exempt minimum income (UAH 17,000.00 to 51,000.00)**

# The National Bank of Ukraine explained what aspects shall change for the citizens and the business in connection with the new Law on financial monitoring



From 28 April 2020:

- **a risk-oriented approach in the work with the clients of banks is implemented**. High-risk clients will be inspected more thoroughly. For example, this refers to politics or tycoons. That is those who can perform transactions to big amounts. The transactions of ordinary people, students, pensioners, clients in terms of the salary project and the legal business paying taxes will be inspected to a lesser extent;
- **the increasing of the limit of transactions of the mandatory financial monitoring**. Previously, the banks obligatory informed the State Financial Monitoring Service of Ukraine on all transactions from UAH 150 thousand, there were as much as 17 indicators among the reasons for it. The Law increases the limit to UAH 400 thousand and reduces the list of indicators for the transactions. Now, there are only four of them. The following transactions must be reported: cash, funds transfer abroad, transactions of politicians, transactions of clients from the countries working in the anti-money-laundering sphere, for example, South Korea;
- the Law gives essential advantage to the banks' clients, for example, remote identification. This means, that now, **to open an account with a bank, a client does not have to go to a bank branch**. Person's identification is possible through video conferencing or through the BankID system. There are other models;
- the **requirements to the identification of those who transfer money** are expanded. **This does not apply to the money transfer from a card to a card.** The bank card is already an identified product, and the bank has the information of the cardholders. This mainly refers to transfers without opening an account, for example, replenishing an amount via a terminal. That is, in case of replenishing the amount via a terminal in the amount of UAH 5,000 and more, the identification will be required. These rules do not apply to the following: payment for utility services, payment of taxes and other mandatory state payments, payment for goods and services, replenishing credit cards in the amount of up to UAH 30 thousand. In this case, the identification is not required.
- **the list of the subjects of the primary financial monitoring**, that is those who actually perform the identification of a client, is expanded. Now, this list is increased by postal operators, realtors, lawyers, representatives of gambling industry and providers of consultative services.

# Transactions on cyber assets are subject to financial monitoring pursuant to the new rules

From **28 April 2020**, due to the Law of Ukraine "On Prevention of Legalization (Laundering) of Proceeds from Crime, Terrorist Financing and Financing of Proliferation of Weapons of Mass Destruction" dated 06 December 2019 No. 361-IX, **in Ukraine there is officially a term "cyber assets" which became the object of financial monitoring.**

Now, the Ministry of Digital Transformation of Ukraine is a subject of state financial monitoring and is responsible for the development of the market of the cyber assets.

**The financial operations with cyber assets in the amount equaling or exceeding UAH 30 thousand are subject to due diligence on the part of the subject of the primary financial monitoring.** At the same time, the financial monitoring covers the limit financial operations in the amount equaling or exceeding UAH 400 thousand.

The Ministry of the Digital Transformation of Ukraine develops a field-specific law concerning the implementation of cyber assets. It will clearly establish the following:

- the legal status and the classification of cyber assets;
- the requirements to the issue and circulation of certain categories of cyber assets;
- the subjects of the market of cyber assets and the corresponding criteria of the state financial monitoring;
- issues of the state regulation and counteracting the abuse in the sphere of cyber assets.

# THE UNIFIED ACCOUNT FOR PAYING TAXES, CHARGES AND THE UNIFIED SOCIAL TAX

Resolution of the Cabinet of Ministers dated 29 September 2020 No. 321 approved procedure for the functioning of the unified account for paying taxes and charges, the unified social tax and other payments controlled by the State Tax Service.

The unified account will be effective from 1 January 2021 which simplifies procedures for settlements for the taxpayers.

The main advantages of the use of the unified account for a taxpayer are unhampered managing of the overpaid amounts and erroneously paid funds which will emerge from 01 January 2021 through the electronic cabinet, avoiding negative consequences of erroneous payment, saving of funds in the form of a bank fee.

For the payers who will use the unified account, the liability on paying taxes and charges will be deemed performed from the moment of depositing funds to the unified account. All payments (the unified social tax, corporate income tax, individual income tax, rent payment and tax payable on these taxes) can be deposited in one amount.

The unified account is not used for the payment of monetary liabilities and/or tax debt payable on VAT and excise tax on fuel and alcohol, part of net income (revenue) of state and municipal enterprises and their associations.

The unified account will be opened in the Treasury. To transfer to this account, the payer will have to inform the State Tax Service electronically via electronic cabinet.

The State Tax Service will daily form registers of the taxpayers and send them to the Treasury. Based on the received registers, the Treasury will distribute the funds between the budgets and funds.

The taxpayers will be able to familiarize themselves with the register formed by the State Tax Service on its payment in the electronic cabinet and independently determine the direction of using the funds paid erroneously or overpaid.

# CAN THE CERTIFICATE OF NON-RESIDENT STATUS BE SUBMITTED ELECTRONICALLY?

**The State Tax Service explained whether the certificate confirming that the non-resident is a resident of the country with which an agreement is entered into on the avoiding the double taxation can be submitted electronically.**

According to cl. 103.2 and 103.4–103.6 of the TCU, the person (tax agent) is entitled to independently apply tax exemption or decreased tax rate provided for by the corresponding international agreement if they provided a certificate confirming their residential status in the corresponding country. Such certificate must be duly legalized and translated in accordance with the legislation of Ukraine.

At the same time, **providing the certificate in the form of an electronic document is not envisaged by the legislation of Ukraine**.

# THE AMOUNTS OF INCOME FOR INDIVIDUAL ENTREPRENEURS (THE UNIFIED TAX) FOR 2020 TAKING INTO ACCOUNT CHANGES DATED 02 FEBRUARY 2020

The State Tax Service (STS) gave explanations concerning the application of the norms of **Law 540-IX** dated 30 March 2020 effective from 02 April 2020 “On changes to certain legislative acts of Ukraine aimed at providing additional social and economic guarantees in connection with the dissemination of the coronavirus (COVID-19)” concerning the amounts of income of individual entrepreneurs of the unified tax for groups 1, 2 and 3.

From 02 February 2020, the amounts of income during the calendar year for individual entrepreneurs:

- Group 1, up to UAH 1 mln (previously UAH 300.0 thousand),
- Group 2, up to UAH 5.0 mln (previously up to UAH 1.5 mln),
- Group 3, up to UAH 7 mln (previously up to UAH 5.0 mln).

The STS made a calculation of the limit amounts of income of individual entrepreneurs for 2020 based on the following:

- the previous standard was effective during **92 days of 366 calendar days** in 2020.
- The new standard is effective during **274 days of 366 calendar days** in 2020.

The explanation of the STS concerning the limit amounts of the income of individual entrepreneurs for 2020:

| Group of payers of the unified tax | The amount of income of individual entrepreneurs (Regulation of the TCU before 02 April 2020), UAH | The amount of the income of individual entrepreneurs (Regulation of the TCU from 02 April 2020), UAH | The remaining limit (the amount of the income) before the end of 2020, UAH |
|---|---|---|---|
| Group 1 | 300,000 | 1,000,000 | 824,043.72 |
| Group 2 | 1,500,000 | 5,000,000 | 4,120,218.58 |
| Group 3 | 5,000,000 | 7,000,000 | 6,497,267.76 |

# THE RIGHT OF PAYERS OF THE UNIFIED TAX OF GROUPS I AND II TO TAKE A LEAVE OF ABSENCE AND SICK LEAVE

The State Tax Service of Ukraine reminded that payers of the unified tax of groups I and II which do not use hired labour are exempt from the unified tax during one calendar month per year for the period of leave of absence and for the period of sick leave confirmed by the copy of a temporary disability certificate(s) if it lasts for 30 and more calendar days (in accordance with cl. 295.5 of the TCU).

**If an entrepreneur has already paid an advance payment for the month when they took a sick leave or plans to take a vacation (for example, in case of payment of the unified tax in advance for a quarter), this amount is applied towards the future payments of the unified tax**.

The accrual of advanced deposits for the payers of the unified tax of group I and II is performed by the tax authorities based on (cl. 295.2of the TCU):

- the application of such payer of the unified tax concerning the amount of the selected rate of the unified tax;
- the application concerning the period of an annual leave of absence;
- the application concerning the term of the temporary disability.

The information on the period of an annual leave of absence and terms of temporary disability with the obligatory addition of a copy of the temporary disability certificate is submitted upon the application in any form (cl. 298.3.2 of the TCU).

Besides, **tax specialists paid attention to a number of significant aspects:**

- it is recommended to submit an application concerning the period of an annual leave of absence to the regulatory authority before the start of leave of absence;
- standards of the TCU do not provide for the termination of the terms of leave of absence;
- if the duration of the leave of absence is less than one calendar month, then the reasons for exemption from paying the unified tax during one calendar month are absent;
- if an entrepreneur was sick during the period of leave of absence selected by them (indicated in the application) and such disease lasted for 30 and more calendar days, they are entitled to withdraw the application;
- if a payer of the unified tax was sick for 30 and more calendar days and the disease started before the 20th day of the month and ended the next month, such payer is exempt from paying the unified tax only for the calendar month (in which they got sick), and for the next calendar month in which, in accordance with the temporary disability certificate, the disease ended, they pay the unified tax in accordance with the norms of the TCU;
- for the period of the leave of absence or sick leave, the activity must be terminated and income must be absent. If funds come to the current account during leave of absence or sick leave, the individual entrepreneur must have documentary evidence that these funds are for the goods (services) delivered before the start of leave of absence or sick leave, or an agreement was previously entered into which provides for the transfer of the advanced payment;
- for the period of leave of absence, payers of the unified tax are not exempt from paying other tax payments and submitting the reporting.

# Taxation of charitable aid given to individual persons in 2020

Personal income does not include the amount of the untargeted charitable aid which does not exceed UAH 2,940

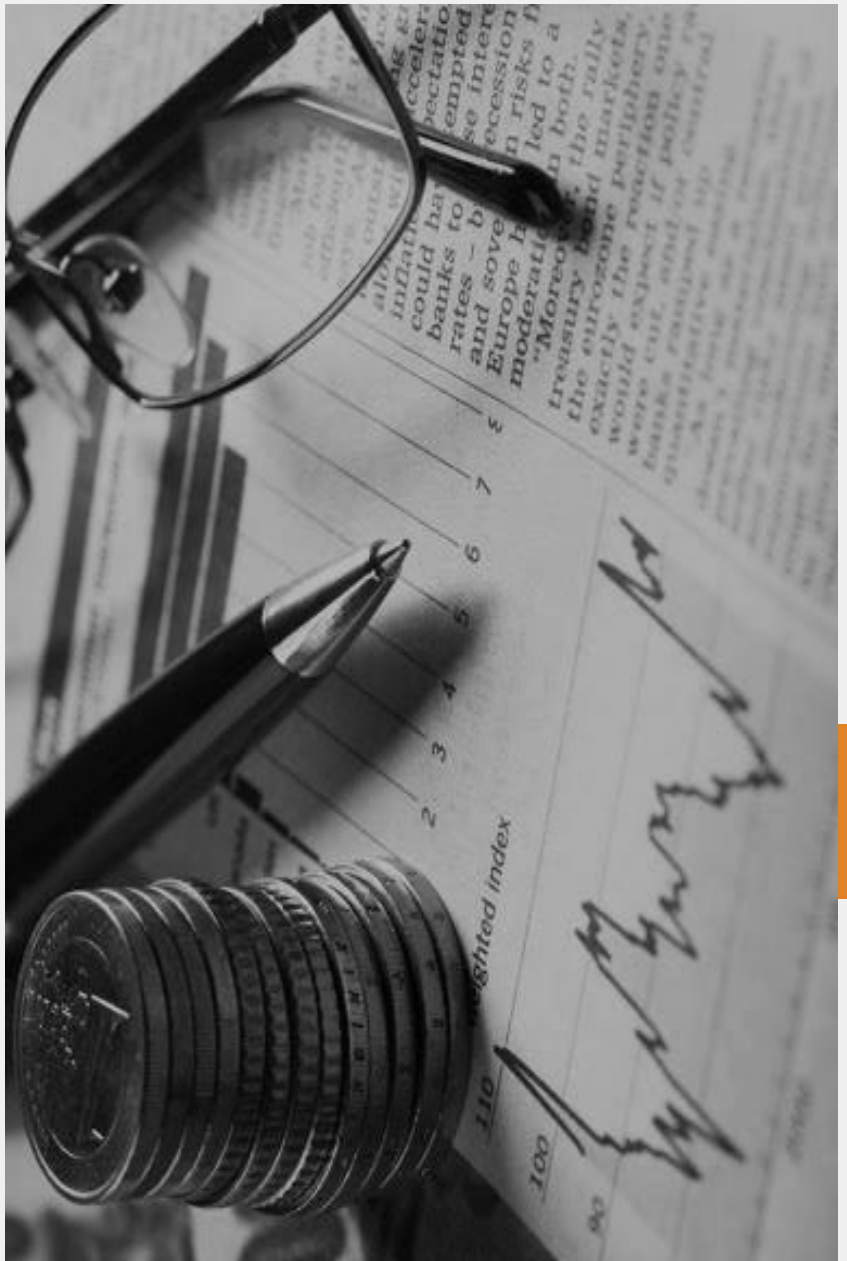
In accordance with the TCU for the purposes of taxation, the charitable aid is divided into targeted and untargeted.

The targeted charitable aid is provided under the determined conditions and directions of its spending, the untargeted aid is provided without establishing such conditions or directions (cl. 170.7.1 of the TCU).

According to cl. 170.7.2 of the TCU, the targeted or untargeted charitable aid provided to the taxpayer who suffered from the following is not included into the taxable income:

- ecological, industrial and other disasters in the regions announced in accordance with the Constitution of Ukraine the zones of an emergency ecological situation within the limit amounts determined by the Cabinet of Ministers;
- natural disaster, accidents, epidemics and epizootics of the state-wide nature which caused damage or threaten the life of population, environment, triggered or can trigger human losses or loss of ownership in connection with which the decision on engaging (providing) the charitable aid was taken respectively by the Cabinet of Ministers of Ukraine or self-government local bodies within limits determined by the Cabinet of Ministers of Ukraine or self-government bodies, respectively.

The charitable aid provided for the determined purposes must be distributed through a state or a local budget or through bank accounts of charitable organizations, the Red Cross of Ukraine, included into the Register of non-profitable organizations and institutions.



According to cl. 170.7.4 of the TCU the taxable income does not include the targeted charitable aid provided by non-residential legal persons or individuals in any amount, in particular to a healthcare institution to compensate the cost of paid services on medical treatment of a taxpayer or their family members of the first degree of kinship, a disabled person, a disabled child or a child at least whose one parent is a disabled person; an orphan, a half-orphan; a child from a large or low-income family; a child whose parents' parental rights are withdrawn, including to acquire medicines (donor components, prosthetic and orthopedic devices, medical devices for the individual use of a disabled person) within limits not covered by payments from the Fund of Compulsory State Social Healthcare Insurance, except for the expenses on cosmetic treatment or cosmetic surgery (including cosmetic prosthetic repair not related to medical indications); the purchase of medicines, medical devices and accessories not included into the list of vital ones approved by the Cabinet of Ministers of Ukraine.

Besides, the taxable income of a taxpayer does not include a charitable aid provided in accordance with cl. 165.1.54 of the TCU (cl. 170.7.8 of the TCU).

At the same time, in accordance with cl. 170.7.3 of the TCU, the taxable income does not include the amount of untargeted charitable aid including the material aid provided by residential legal persons or individuals in favour of the taxpayer during the reporting tax year in aggregate in the amount that does not exceed the amount of a maximum income determined in accordance with paragraph one of cl. 169.4.1 of the TCU established as of 1 January of such year.

In 2020, this amount is UAH 2,940. Thus, the total monthly (annual) taxable taxpayer's income does not include an amount of untargeted charitable aid not exceeding UAH 2,940, that is such amount is not taxable.

# THANK YOU FOR YOUR ATTENTION!

**The issue is prepared for release by the experts of the practice of the Outsourcing of the financial management and accounting**

In case of any questions on the provided material, please send your comments or proposals to the e-mail: info@ebskiev.com

We appreciate your feedback!