EBS QUARTERLY REVIEW

LEGISLATIVE CHANGES REVIEW

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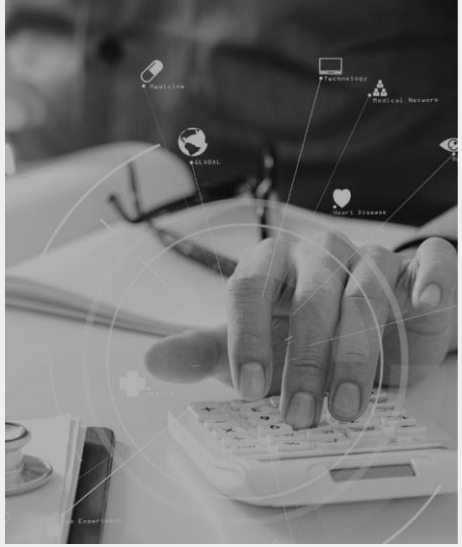

QUARANTINE NEWS

TAXES

- Salaries and other payments
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OTHER NEWS (CHANGES IN LEGISLATION)

QUARANTINE NEWS

THE WAY THE EMPLOYERS SHOULD INDICATE IN FORM 1DF THE ASSISTANCE ON PARTIAL UNEMPLOYMENT

The tax authorities specified the feature of income according to which the amounts of assistance on partial unemployment within the duration of measures related to prevent the emergence and spread of coronavirus illness (Covid-19) should be indicated in form No.1DF, as foreseen by a quarantine. It involves the amounts of assistance obtained by the employers from the Fund of obligatory national social insurance of Ukraine on unemployment case (hereinafter referred to as the Fund) and paid to the employees.

It is worth reminding that such assistance during quarantine can be received, in particular, by employers from among small and medium enterprises for the period of suspension (reduction) of activity, as well as within 30 calendar days after the end of quarantine.

Physical persons-entrepreneurs have been recently provided with step-by-step instruction for receiving partial unemployment assistance and all the employers were informed how many days they would have to wait for partial unemployment assistance.

The tax authorities underlined that though the partial unemployment assistance is exempt from personal income tax, military tax and single social security tax, it needs to be fixed in form No.1DF.

According to the Handbook of Income Features, given in the appendix to Procedure No.4, social benefits from the respective budgets are reflected in form No.1DF under the sign of income "128".

Therefore, the tax authorities indicate that the amount of partial unemployment assistance for the period of quarantine, which the employer received from the Fund and paid to the employee, should be recorded in form No. 1DF on the basis of income feature "128" as a social payment from the relevant budget.

The source: explanation of the State Tax Service from category 103.25 of the section "Questions - answers from the Knowledge Base" ZIR (zir.tax.gov.ua)

Letter of the State Treasury Service of Ukraine dated 22.05.2020 N16-11-12/8891

THE EMPLOYEES ON A QUARANTINE AND ON AN ORDINARY LEAVE SHALL OBTAIN PARTIAL UNEMPLOYMENT ASSISTANCE

The government has decided to financially support enterprises that have declared downtime, as well as employers who have been forced to send employees on unpaid leave due to reduction of the production, works and services.
Resolution of the Cabinet of Ministers of Ukraine as of 15.07.2020 No. 600 changed the norms of the Procedure approved by the Resolution of the Cabinet of Ministers dated 22.04.2020 No. 306. - according to which the employment centers pay the employers partial unemployment assistance for the period of quarantine, which they transfer to the employees.
Therefore, partial unemployment assistance for the period of the quarantine will also be provided to employees with whom the employer has an employment relationship, including those who during the quarantine period, as well as within 30 calendar days after the end of quarantine:

- receive payment for downtime in accordance with Art. 113 of the Labor Code (except for the period of development of new production (products);
- are on leave without pay in accordance with paragraph 31 of Part 1 of Article 25 and Art. 26 of the Law of Ukraine "On Holidays" (except for persons receiving a pension).

The assistance shall be provided in case of a loss by these employees of a part of their wages or income due to the forced reduction of statutory working hours in connection with the suspension (reduction) of activities at the request of the employer or physical person-entrepreneur, who is an insured person (except for persons receiving a pension) and does not receive partial unemployment assistance for the period of quarantine as an employee.

Will the administrative fines be imposed for late payment and reporting of the single social security tax (SST) during quarantine

Employers are released from administrative liability for violations of the legislation on SST, committed in the period from the 1st of March to the last calendar day of the month of quarantine.

The tax authorities in subcategory 201.09 "ZIR" noted that in accordance with Art. 165-1 of the Code of Ukraine on Administrative Offenses liability shall be applied to the officials of enterprises and institutions for violation of the procedure of accrual, calculation and terms of payment of SST, non-submission, untimely submission, submission not in accordance with the established form of reporting on SST.

Article 38 of the Code of Ukraine on Administrative Offenses stipulates that an administrative penalty may be imposed no later than two months as of the date of the offense, and in case of a continuing offense - no later than two months from the date of detection, except in cases where administrative offenses are under court (judge) jurisdiction according to the CUAO.

According to items 9-11.1 of chap. VIII "Final and Transitional Provisions" of the Law of Ukraine as of 08.07.2010 No. 2464-VI "On the collection and accounting of a single social security tax to the obligatory state social insurance" with changes and amendments (hereinafter - the Law No.2464) the penalties defined by part eleven of Art.25 of the Law No. 2464 do not temporarily apply to the following violations committed in the period from the 1st of March to the last calendar day of the month (inclusive) when the quarantine expires, set forth by the Cabinet of Ministers of Ukraine throughout Ukraine to prevent the spread of coronavirus disease in Ukraine (COVID -19) (hereinafter – the quarantine):

- late payment (late transfer) of the single social security tax;
- incomplete payment or late payment of the amount of the single social security tax simultaneously with the issuance of the amounts of payments for which the single social security tax is accrued (advance payments);
- untimely submission of reports provided for by Law No. 2464 to the controlling authorities.

In addition, during the period from the 1st of March till the last calendar day of the month (inclusive) when the quarantine expires, the payers of the single social security tax shall not be charged a penalty, and the accrued penalty for this period is subject to writing off (items 9-11.2 of Section VIII “Final and transitional provisions” of the Law No. 2464).

QUARANTINE PENALTIES AND INDIVIDUALLY IDENTIFIED ERRORS

The State Tax Service of Ukraine informs that the introduction of certain relaxation in payment of fines for violations committed during the quarantine period shall not be deemed as the time of permissiveness for taxpayers.

In particular, no quarantine exemptions are provided for VAT violations.

As in pre-quarantine times, in case of self-correction of errors identified in value added tax declarations, the taxpayer must accrue to the amount of the understated tax liability:

- penalties: depending on the method of correction - 3% (through the clarifying calculation) or 5% (in current declaration);
- a fine (after the expiration of 90 calendar days following the last day of the deadline for payment of tax liability).

All this fully applies to errors in VAT declarations for the I quarter of 2020, identified during the quarantine period.

The punishment for non-compliance with the law shall also act in full in part of:

- accrual, declaration and payment of rent and excise tax;
- circulation of fuel, alcoholic beverages and tobacco products;
- long-term insurance, etc.

Source: explanation of the State Tax Service from the category 132.01 of the section "Questions and answers from the Knowledge Base" ZIR (zir.tax.gov.ua)

THE SIMULTANEOUS PAYMENT OF PARTIAL UNEMPLOYMENT ASSISTANCE FOR THE PERIOD OF QUARANTINE AND TEMPORARY DISABILITY ASSISTANCE

The Office of Supervision of the Ministry of Social Policy reports.

According to Article 47^1 of the Law of Ukraine "On Employment", partial unemployment assistance for the period of the quarantine set forth by the Cabinet of Ministers of Ukraine to prevent the spread of acute respiratory disease COVID-19, is given to the insured persons in case of loss of wages or income caused by the involuntary reduction of statutory working hours in connection with the suspension (reduction) of activities because of measures preventing the occurrence and spread of coronavirus disease (COVID-19).

That is, partial unemployment assistance for the period of the quarantine is provided to the insured person in the form of compensation for the lost earnings for the period when he/she did not work due to the circumstances beyond his/hers control.

In accordance with Articles 22 and 25 of the Law of Ukraine "On Compulsory State Social Insurance" (hereinafter - the Law), temporary disability assistance and maternity benefits are provided to the insured person in the form of material support, which fully or partially compensates for loss of wages (income) in case of the insured event and during the maternity leave correspondingly.

According to the abovementioned, each type of assistance is deemed as compensation to the insured person for the lost earnings in case of occurrence of the relevant circumstances (insured event) and their simultaneous payment is not provided for by the law.

Therefore, **during the period of temporary disability or maternity leave, partial unemployment assistance is not provided, instead the temporary disability assistance and maternity benefits are paid pursuant to the terms and procedures specified by Law**.

Source: The Office of Supervision of the Ministry of Social Policy - letter dated August 26, 2020 No. 8076/0/290-20.

WHAT KIND OF ECONOMIC CLASSIFICATION OF BUDGET EXPENDITURES CLASSIFIES THE PURCHASE OF MASKS

The State Treasury emphasizes the need for correct identification of economic characteristics of operations in accordance with the economic classification of expenditures.
In particular, the purchase of medical masks for the employees by the institutions that **do not have a medical office** should be classified according to the category 2210 "Items, materials, equipment and inventory".
It is this code that **budgetary institutions** use in case of purchase of the first aid kits and their replenishment (including travel kits), as well as when incurring expenses in order to purchase medicines, medical devices used by medical schools during the educational process.
In general, the payment of current expenses, payment for services, purchase of materials and items that are not taken into account as fixed assets, is carried out under category 2200 "Use of goods and services".

TAX LEGISLATION NEWS

ABOUT WAGES AND OTHER PAYMENTS

THE MINIMUM WAGE FROM THE 1ST OF SEPTEMBER AMOUNTS TO UAH 5000

On August 31, 2020, the Voice of Ukraine published the Law "On Amendments to the State Budget for 2020" No. 822.
The minimum wage from September 1 is set at UAH 5,000

On August 29, President V. Zelensky signed the Law "On Amendments to the State Budget for 2020" No. 822-IX (Bill No.3963).
The law enters into force on the day following the day of its publication.
The law No. 822 was promulgated in the "Voice of Ukraine" dated 31.08.2020 No. 157.
Accordingly, it entered into force on **September 1, 2020**.

From September 1, 2020, the minimum wage is:
in the monthly amount - UAH 5,000 (before September 1 it was UAH 4,723);
in the hourly rate - UAH 29.2 (until September 1 it was UAH 28.31).

Thus, from September 1:

- the maximum base for accrual of SST is UAH 75,000;
- the amount of the minimum insurance premium with SST equals to UAH 1,100,
- it will be necessary either to increase the salary of employees to UAH 5,000 or to pay them a supplement to the new level of the minimum wage;
- there are new fines for violations of labor legislation: a fine for each undocumented employee and each salary in "envelopes" amounts to UAH 50,000 (10 min wages) for the first violation.

NEW SIGNS OF INCOME FOR FORM No. 1DF FROM JULY 1, 2020

The Ministry of Finance approved changes to the Directory of the signs of income. The current names of income signs are brought in line with the norms of the TCU, as well as new signs 153 and 197 are introduced for the given and received repayable financial assistance.

The Ministry of Finance by its order dated 26.05.2020 No. 241 (registered in the Ministry of Justice on 12.06.2020 under No. 514/34797) approved changes to the annex to the Procedure for filling in and submission by tax agents of the Tax calculation of the amounts of income accrued (paid) in favor of individuals, and the amount of tax withheld from them.

Please note that **the content of the form No. 1DF will not change**.

The order makes changes only to the appendix to the Procedure No. 4.

What has changed?

In Section 1 "Directory of the signs of income of individuals" the current names of signs of income are brought in line with the rules of the TCU, as well as:

1) generalized sign 153 "The principal amount of repayable financial assistance provided by the taxpayer to other persons, which is returned to him, the principal amount of repayable financial assistance received by the taxpayer" is **divided into two**:

153 "The amount of repayable financial assistance provided by the taxpayer to other persons, which is returned to him";

197 "The amount of repayable financial assistance received by the taxpayer."

2) the types of income from sign 106 (it reflected all types of income from the lease of real estate and land) were **divided into attributes**:

106 "Granting a land share (interest) in leasing, rent or sublease";

195 "Granting agricultural land, property share in leasing, rent, sublease, emphyteusis";

196 "Provision of property (except for land share (interest), agricultural land, property share) in leasing, rent or sublease".

3) from the content of the sign of income **125** the mentioning of contributions under long-term life insurance contracts is removed;

4) new wording of the sign of income 128. This sign will indicate the amount of state and social material assistance, state assistance (including cash benefits for persons with disabilities, for children with disabilities in the implementation of individual rehabilitation programs for persons with disabilities, maternity benefits and childbirth), rewards and insurance payments received by the taxpayer from the budgets and funds of compulsory state social insurance and in the form of financial assistance to persons with disabilities from the Fund of Social Protection of the Disabled. That is, it will no longer be necessary to indicate the amount of housing and other subsidies or dotations. For ordinary employers the rules for using this feature will not change. As before, pregnancy and childbirth assistance will need to be indicated under this sign.

When did the changes take effect?
This order came into force on **July 1, 2020**.
The new signs of income need to be applied starting with the reporting for the third quarter of 2020.

MINISTRY OF SOCIAL POLICY AND LABOR ABOUT SALARIES AND OTHER PAYMENTS

Quarterly bonus and payment for a business trip

In a letter dated 09.09.2019 No. 1288/0/206-19, the Ministry of Social Policy of Ukraine provided clarification as for the correctness of determining the payment for the business trip (daily earnings or average salary), as well as how to take into account the quarterly premium when calculating the average salary for a business trip, or adjust the quarterly premium by an increase factor.

Remuneration during a business trip:

According to Art. 121 of the Labor Code of Ukraine (hereinafter - Labor Code), the work performed by the employees sent on business trips, is paid in accordance with the conditions specified in the employment or collective agreement, and the amount of such remuneration may not be lower than the average earnings.

Therefore, the employer must act according to the following algorithm:

1) calculate the daily wage of the employee in the month of a business trip. The wages should be calculated in accordance with the conditions specified in the employment agreement (based on salary, tariff rate, etc.). For example, an employee's salary is taken and divided by the number of working days in the month of a business trip according to the schedule of such an employee;

2) calculate the average daily salary of the employee in accordance with the Resolution of the Cabinet of Ministers of Ukraine as of 08.02.1995 No. 100 "On approval of the Procedure for calculating the average salary" (hereinafter - the Procedure No. 100);

3) compare the daily and the average daily wages. After all, an employee has the right to be paid during a business trip based on the higher of such salaries.

If the average daily wage is higher, the employee will be paid this time based on the average daily wage, if lower he/she will be paid the wages in accordance with the terms of the employment agreement.

Thus, the average salary for a business trip is a secondary value, which is compared with the daily earnings paid in accordance with the terms of the employment agreement.

The average salary for a business trip

According to the Procedure No. 100, in case of calculating the average salary for a business trip, the average daily salary is calculated based on payments for the last two calendar months of work preceding the event to which the corresponding payment is related.

If the period of business trip is not within one month, for example, from 15.09 to 10.10, the calculation period will be two calendar months preceding the start of the business trip. That is July-August.

Payments that are taken into account when calculating the average salary

The composition of payments that are taken into account when calculating the average salary in all cases of its preservation, include:
• basic salary;
• surcharges and bonuses;
• recurring bonuses;
• remuneration based on the results of work for the year and years of service;
• indexation, etc.

According to paragraph 2 item 3 of the Procedure No. 100, when calculating the average salary for the last two months, payments for the time during which the average salary of the employee is maintained (for the period of state and public duties, annual and additional leave, business trips, etc.) as well as the assistance for the temporary incapacity for work are not calculated.
The inclusion of bonuses in the calculation of the average salary during a business trip has some features.

The peculiarities of bonuses accrual in case of a two-month billing period and the rate of increase:

One-time bonuses for holidays, professional dates and anniversaries are not taken into account when calculating the earnings to determine the average salary for the last two months.

Let us consider several options of calculating the bonuses:

1. Bonuses shall be included in the earnings of the month in which they occur in accordance with the payroll. But this is a general rule, which was pointed out by experts from the Ministry of Social Policy in a commented letter, as well as the Ministry of Labor in a letter dated 13.09.2010 No. 804/13/84-10.

2. If in the current month the bonus for the previous month is paid, the working days of the calculation period are not fully worked out, when calculating the average salary for the last two months this bonus is taken into account in proportion to the time worked in the calculation period (paragraph 1 of item 3 of the Procedure No. 100, letter of the Ministry of Labor dated 18.04.2012 No. 283/13/155-12).

3. When the bonus is paid on a "month by month" basis and is calculated in proportion to the time worked, it shall be included in the earnings in the actually accrued amount (letter of the Ministry of Labor dated 18.04.2012 No. 283/13/155-12).

4. If the bonus is accrued in a fixed amount and working days in the calculation period are not fully worked out, it is included in earnings in proportion to the working days (letter of the Ministry of Labor dated 18.04.2012 No. 283/13/155-12).

5. Bonuses paid for a quarter or for a longer period of time, when calculating the average salary for the last two calendar months are included in the earnings in the part corresponding to the number of months in the calculation period.

That is, when calculating the average salary for two months, the quarterly premium paid in the calculation period is taken into account in part 2/3 of the accrued amount, namely by adding to each month of the calculation period 1/3 of the accrued quarterly premium. This was emphasized by the specialists of the Ministry of Social Policy in the commented letter dated 09.09.2019 No. 1288/0/206-19, and even earlier it was stated in the letter of the Ministry of Labor dated 21.09.2012 No. 991/13/84-12 (see “Debit-Credit” No. 43 / 2012).

Quarter bonus and adjustment ratio: what is the relationship?

Experts of the Ministry of Social Policy in a commented letter dated 09.09.2019 No. 1288/0/206-19 also mentioned the increase coefficient.

According to item 10 of the Procedure No. 100, in case of increase of tariff rates and official salaries due to legislative acts, as well as according to the decisions provided for by collective agreements (contracts) both in the settling period, and in the period during which the average salary retains for the employee, wages, including bonuses and other payments that are taken into account when calculating the average wage for the period before the increase shall be adjusted by the coefficient of increase of tariff rates, salaries.

Therefore, the quarter bonus should also be adjusted by a coefficient of increase, but with one small peculiarity: only those payments that fall on the period before the salary increase are adjusted, including the part of the quarter bonus that is attributed to this period.

For example, if an employee who goes on a business trip in October, retains the average salary, the calculation period will be August - September. Moreover, his/her salary has been raised since September 1.

If in September the bonus for the III quarter was accrued, it will be taken into account for remuneration of a business trip only in the amount of 2/3 (1/3 for each month of the settling period). And these 1/3 in August when calculating the average daily wage will need to be adjusted by the rate of increase of tariff rates (the ratio of salaries in September and August).

Terms of vacation allowance

Everyone knows the rule about payment of vacation allowance 3 days before the vacation. But how to act in uncommon cases? For example, if the decision to grant vacation allowance was made the day before. What days are meant - calendar or working days?

According to Art.115 of the Labor Code and Part 1 of Art. 21 of the Law "On Leaves" wages for employees during the vacation are paid no later than three days before its start. What happens if the employer violates these deadlines?

The State Labor Service of Ukraine emphasizes that in case of late payment of wages to the employee during the annual vacation, the vacation must be postponed to another period at the request of the employee.

The Ministry of Social Policy in a letter dated 31.03.2020 No. 3512-06/21620-07, in particular, provides the procedure for the postponing of vacations. It reminds that Art. 10 of the Law "On Leaves" defines the procedure for granting annual vacation to employees.

Pursuant to the above article, the order of granting annual vacation is determined by schedules approved by the owner or his authorized body in an agreement with the elected body of the primary trade union organization (trade union representative) or other authorized body of the labor collective, and is communicated to all employees. When drawing up schedules, the interests of production, personal interests of employees and opportunities for their recreation are taken into account.

If the vacation is granted according to the schedule, the employee does not need to write an application for it. The specific period of granting annual vacation within the established schedule is agreed between the employee and the employer, who must notify the employee in writing of the start date of vacation no later than two weeks before the scheduled date. And, of course, to pay the vacation allowance in due time.

If the vacation allowance is not paid in time and in full, the employee has the right to postpone the vacation. And if the employee has such a desire, the employer is obliged to postpone such vacation. The Law “on Leaves” does not determine the term when the vacation should be postponed in such a case. Therefore, the parties to the employment agreement (between the employee and the employer) should resolve this issue.

In this case, the applicant must write a vacation request letter and the employer endorses an application, agreeing to grant annual vacation within the time specified in it, or due to certain circumstances proposes to postpone it to another period. Then, based on this vacation request letter, an order (instruction) on granting vacation is issued, or changes are made to an existing order regarding such vacation (as for the terms of its granting).

Penalties for late payment of vacation allowance or payment not in full:

What if the employee does not want to postpone the vacation, but he/she received the vacation allowance? This is a violation that makes the employer liable to a fine. And the amount of such fine will depend on the delay in payment. This is provided for by Art. 265 of the Labor Code.

For example, if the delay in the payment of leave (which is considered as a salary during the vacation) is less than a month, the employer faces a fine amounting to 1 minimum wage (now UAH 5,000). If the delay is more than 1 month, the fine will be 3 minimum wages (currently UAH 15,000).

The same penalty awaits for the employer if the vacation allowance was paid, but not in full.

Is vacation allowance paid for three calendar or working days?

The three-day period should be counted in calendar days. This is stated by the Ministry of Social Policy in letters dated 31.03.2020 No. 3512-06/21620-07 and 02.10.2019 No. 1432/0/206-19. In this case, the day of vacation allowance is not taken into account.

State Labor Service provides the following examples.

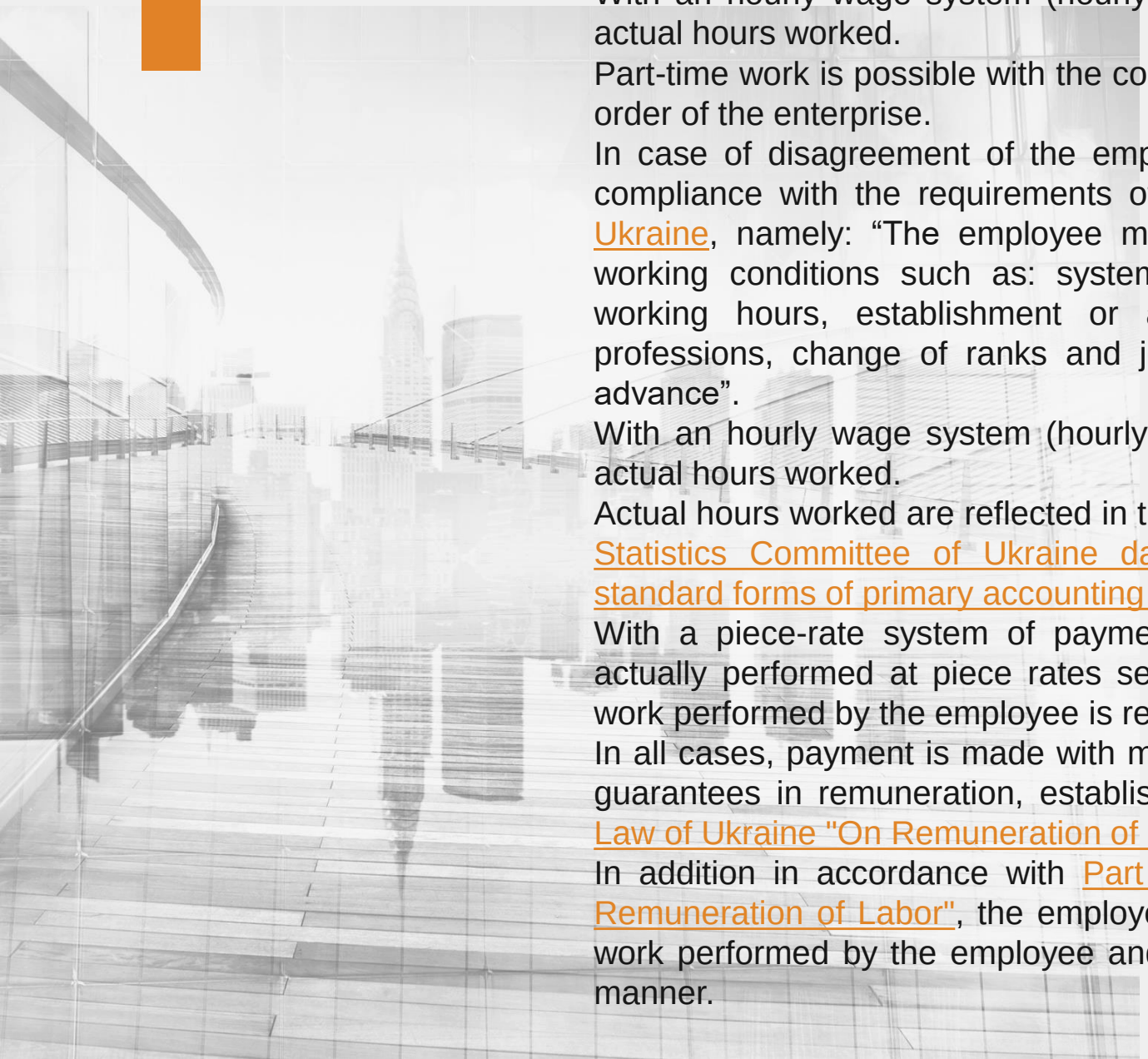
Example 1. If the first day of the vacation is on 27.04.2020 (Monday), the vacation allowance should be paid no later than on 23.04.2020 (Thursday). In this case, the payment of wages for the vacation period can be made earlier, for example, on Wednesday (22.04.2020), as the provision of law (Article 21 of the Law "On Leaves") states that the payment must be made "not later than three days before its beginning."

However, if the last day of the vacation pay period falls on a day off, the vacation allowance must be paid no later than on the last working day of the week before the vacation begins.

Example 2. If the first day of the vacation is on 30.04.2020 (Thursday), then the last day of payment of the vacation allowance is on 26.04.2020 (Sunday). Since Saturday and Sunday are days off during the five-day working week (Part 2 of Article 67 of the Labor Code), vacation allowance is paid on April 24, 2020 (Friday). During the six-day working week, payment must be made no later than on April 25, 2020 (Saturday).

What if the employee has to go on vacation literally the day after submitting the application and drawing up the order?

As explained by the State Labor Service, in exceptional cases in the event of circumstances that led to the employee's use of annual leave or part thereof in the period **when it is impossible to pay it within the time** specified in Art. 115 of the Labor Code and in Part 1 of Art. 21 of the Law "On Leaves", the employee has the right to indicate in the application the receipt of wages for such leave **within the period determined by agreement between the employee and the employer**. In such cases this will not be considered as a violation of Labor law.
It means there are **two conditions to avoid a fine in case of late payment of leave**:
1. the impossibility of their timely payment (lack of funds is not considered a good reason, but the decision to grant leave the day before is a valid excuse);
2. an agreement between the employee and the employer that the vacation allowance will be paid in other terms than it is provided by law. It is desirable to document such an agreement and consent.
This is stated by the Ministry of Social Policy in a letter dated 05.01.2012 No. 7/13/133-12.



CASUALIZATION OF AN EMPLOYEE TO PART-TIME WORK: WHAT ABOUT PAYMENT?

The State Labor Service of Ukraine notes:

With an hourly wage system (hourly rate/monthly salary) wages are paid for the actual hours worked.

Part-time work is possible with the consent of the employee and is executed by the order of the enterprise.

In case of disagreement of the employee, such transfer must be carried out in compliance with the requirements of Part 3 of Article 32 of the Labor Code of Ukraine, namely: “The employee must be notified of the change of significant working conditions such as: systems and amounts of remuneration, benefits, working hours, establishment or abolition of part-time work, combining of professions, change of ranks and job titles, etc., no later than two months in advance”.

With an hourly wage system (hourly rate/monthly salary) wages are paid for the actual hours worked.

Actual hours worked are reflected in timesheets, regulated by the order of the State Statistics Committee of Ukraine dated 05.08.2008 No. 489 "On approval of standard forms of primary accounting documentation for labor statistics".

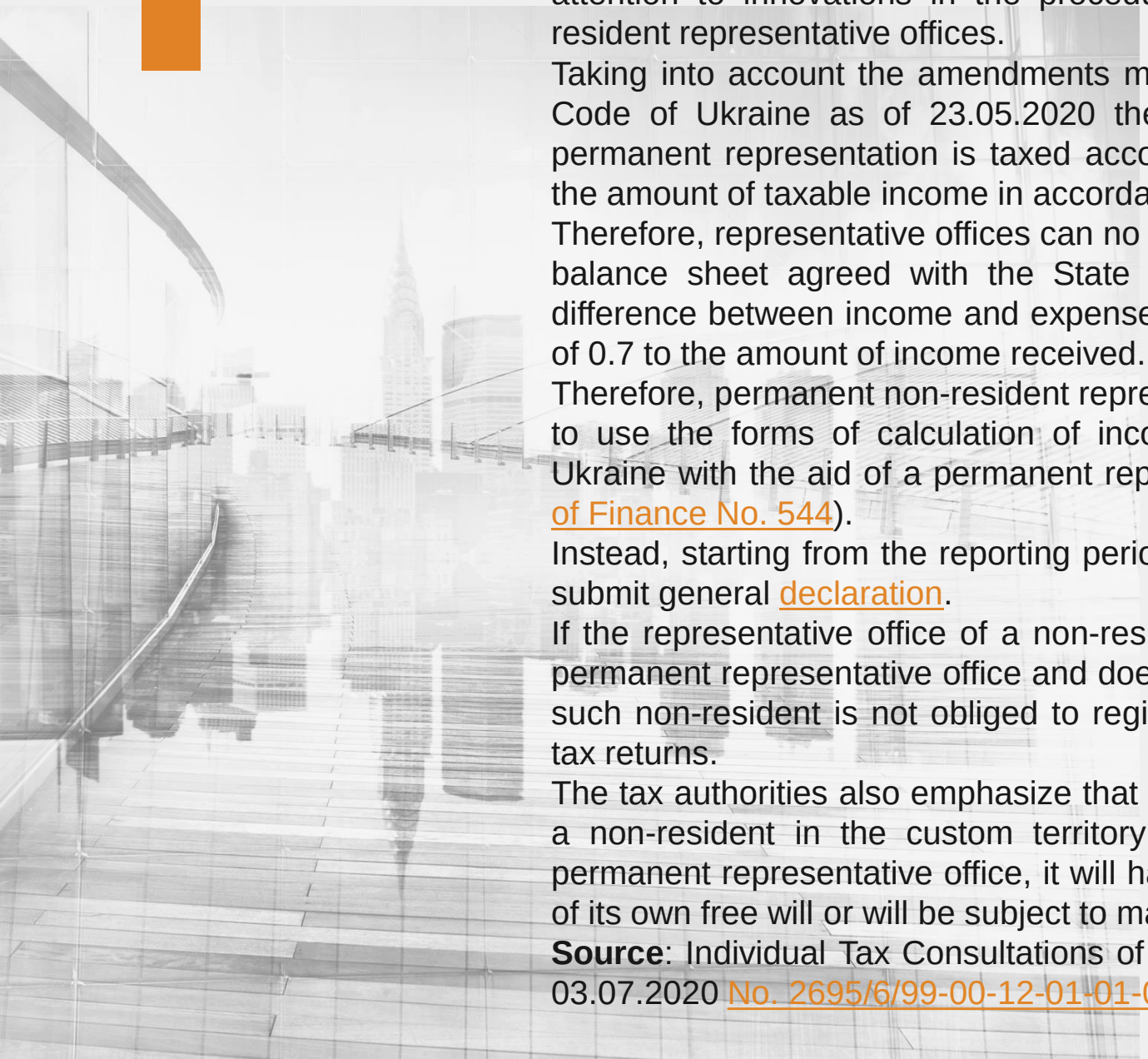
With a piece-rate system of payment for labour wages are paid for the work actually performed at piece rates set at the enterprise. The amount (volume) of work performed by the employee is reflected in work orders.

In all cases, payment is made with mandatory compliance with the minimum state guarantees in remuneration, established by the Labor Code of Ukraine and the Law of Ukraine "On Remuneration of Labor".

In addition in accordance with Part 2 of Article 30 of the Law of Ukraine "On Remuneration of Labor", the employer is obliged to ensure reliable accounting of work performed by the employee and accounting of labor costs in the prescribed manner.

ACTIVITY OF NON-RESIDENTS

REPRESENTATIVE OFFICES OF NON-RESIDENTS REPORT IN A NEW WAY



In the light of recent changes to tax legislation, the State Tax Service draws attention to innovations in the procedure of determining the profits of non-resident representative offices.

Taking into account the amendments made by the Law No. 466-IX to the Tax Code of Ukraine as of 23.05.2020 there is a single approach, saying that permanent representation is taxed according to general rules and determines the amount of taxable income in accordance with Article 39 of the TCU.

Therefore, representative offices can no longer report on the basis of a separate balance sheet agreed with the State Tax Service or the calculation of the difference between income and expenses, determined by applying a coefficient of 0.7 to the amount of income received.

Therefore, permanent non-resident representative offices are recommended not to use the forms of calculation of income tax of non-residents operating in Ukraine with the aid of a permanent representative office (order of the Ministry of Finance No. 544).

Instead, starting from the reporting period – the half of 2020, it is necessary to submit general declaration.

If the representative office of a non-resident does not meet the definition of a permanent representative office and does not carry out business activities, then such non-resident is not obliged to register as an income tax payer or submit tax returns.

The tax authorities also emphasize that if a representative office established by a non-resident in the custom territory of Ukraine receives the status of a permanent representative office, it will have the right to register as a VAT payer of its own free will or will be subject to mandatory registration as a VAT payer.

Source: Individual Tax Consultations of the State Tax Service of Ukraine as of 03.07.2020 No. 2695/6/99-00-12-01-01-06/IPC.

AUSTRIA AND UKRAINE TO MAKE CHANGES IN THE CONVENTION ON AVOIDANCE OF DOUBLE TAXATION

European integration aspirations of Ukraine intensify the processes of legal harmonization with European norms. In particular, a norm-setting work related to the implementation of BEPS, AML provisions and the revision of tax conventions has been actively carried out in recent years.

Another step in this direction was the revision of the terms of the Convention on avoidance of double taxation between Ukraine and Austria.

As stated by the main financial department, the Protocol signed on **June 15, 2020** amends its provisions in order to bring them in line with OECD Model Convention.

One of the key innovations is a change in tax rates.

The **dividend tax rate** has been increased from 10% to **15%**.

And there is an increase in **interest rate** from 2% to **5%**.

Royalty tax rates for the use of any copyright in **scientific** works, patent etc., increased from 0% (zero rate) to **5%**, and from 5% to **10%** for the use of copyright in **literary works** or works of art.

Apart from the increase in rates, new provisions are to be introduced: "The Right to Obtain the Benefit", which limits the application of preferential provisions of the Convention if the main purpose is to obtain such benefits, and "Information Exchange", which expands the possibilities of competent authorities of Contracting States to exchange tax information.

The Protocol will enter into force only after Ukraine and Austria ratify it in accordance with their domestic legislation.

The Protocol will enter into force thirty days after ratification and exchange of the relevant notifications.
The Protocol provisions on taxes to be collected shall enter into force in a calendar year following the entry into force of the Protocol.
The royalty provisions will take effect in another year.
Depending on how quickly Ukraine and Austria ratify the Protocol, the relevant changes may affect your business in 2021. Therefore, we recommend that you review your corporate structures and business models in terms of compliance with the new rules today, at least:
assess the possible impact of new rules of tax abuse response on your business model;
review the income tax rates of non-residents that will be applied to your payments under the relevant convention.

Source: report of the Press Center of the Ministry of Finance (mof.gov.ua)

NEW RULES OF TRANSFER PRICING WHICH YOU NEED TO KNOW TODAY

The Law of Ukraine “On amendments to the Tax Code of Ukraine regarding improvement of tax administration, elimination of technical and logical inconsistencies in tax legislation” (The Law No.466, known as Draft Law No. 1210) has recently entered into force.

Significant changes have also taken place in transfer pricing of Ukraine (TPU). The general conclusion arising upon analysis of the introduced changes lies in the gradual implementation of legal norms that are already applied in other countries in accordance with the steps of BEPS Action Plan.

Firstly, in order to avoid confusion, it is necessary to determine the time of entry into force of the changes that have occurred in the sphere of TPU.

In particular, the vast majority of amendments have already entered into force on general terms, that is from the day following the day of publication of the Law – from May 23, 2020.

Some other amendments will come into force on January 1, 2021, in particular, paragraphs 39.4.7 of TCU related to the sending a request to the taxpayer to submit global documentation (master file).

Let's take a closer look at the most important changes that are valid today

1. Value criterion to determine affiliated persons.

The value criterion for determining the affiliation of persons has been changed, namely: **20%** has been increased to **25%**, which is definitely a progressive norm that corresponds to the legislation of many countries of the world and international practice.

So, we have an interesting situation. If the company is owned directly or indirectly by another non-resident company with a share of 20%, than according to the tax legislation of Ukraine until 22.05.2020 such persons were considered affiliated, and from 23.05.2020 such affiliation is absent (unless other criteria are met).

Accordingly, only those transactions are considered controlled that were carried out before 22.05.2020 (if the jurisdiction and organizational and legal form of the non-resident were not in the relevant Lists No. 1045 and No. 480). It is logical to assume that the value criterion for recognizing transactions as controlled ones should also be determined for this period, and not for the whole year 2020.

2. Creditors who may be considered as affiliated persons

Persons should also be recognized as affiliated if the amount of all credits (loans, repayable financial assistance) received or guaranteed by one legal entity in relation to another legal entity exceeds the amount of equity more than by 3.5 times.

Henceforth, the provision of paragraph. 14.1.159 Transfer pricing is supplemented by a norm that excludes the affiliation between **banks and international financial organizations, which in accordance with international treaties of Ukraine are endowed with privileges and immunities**, and business entities whose significant share amounting to 75% or more belongs to such international financial organizations.

In fact, because of this norm the borrowing companies that used borrowed funds and had a low or even negative value of equity capital (Section 1 of the Liability side of the balance sheet), had to recognize the lenders as affiliated parties. In practice, there are many cases when the creditor was, for example, the European Bank for Reconstruction and Development, and according to this norm the company had to report on the controlled transactions with accrued interests, prepare documentation with Tranfer Pricing and prove compliance of interest rates with Arm's Length principle. Given the independent status of such organizations, it is not advisable to extend the Transfer Pricing requirements to them. Thus, from 23.05.2020 this issue was resolved in favor of taxpayers (in particular, on the example of the EBRD, there are relevant agreements on granting of privileges and immunities).

3. Expanding the list of controlled transactions

A new type of controlled transactions are transactions related to the transfer of functions, risks, benefits and opportunities (full or partial, irrevocable or temporary), resulting in the decrease of the amount of income and/or financial result of the taxpayer.

In this case, such transfer may occur both with tangible and/or intangible assets as well as without them. It does not matter whether such transaction was recorded in business accounts, it is sufficient that such transaction could not be carried out without compensation between unaffiliated parties. For example, this may apply to group decisions that result in the loss of a share of profits by the Ukrainian company in order for another group company to receive such profits (business structuring).

4. Cancellation of the general priority of TPU methods

Prior to the amendments made to paragraphs 39.3.2.1 the TCU clearly defined the priority in the application of TPU methods. In particular, the "hierarchy" of methods was as follows:

1) comparable uncontrolled price method (CUP);
2) method of the price of the resale or the "cost plus" method;
3) method of net profit or the method of profit distribution.

Therefore, it was possible to apply the least priority method (for example, the popular net profit method) only if there were no possibilities to apply methods of higher priority.

The Law No. 466 cancelled this norm, stating it in a new wording. Now the payer chooses the method that is most appropriate (unless the TCU requires a specific method to be used for the controlled transactions of a particular type, such as commodities, which will be discussed below).

It should be noted that the previous version of the norm was fully consistent with the OECD Guidelines (Section II, Part I, item A). Now, on the one hand, taxpayers are more free in choosing the method, on the other hand, the controlling authority is also more free to refute the method chosen by the taxpayer and apply another one.

According to experts, the logic of choosing the TCU method should continue to comply with the previous version of the norm and the OECD Guidelines.

For example, if a company exports goods in controlled transactions and also exports these very goods in uncontrolled transactions and the terms of the contracts do not differ significantly, it is obvious that the CUP method (comparison of price with price) gives more accurate result than, for example, the method of pure profit, on which the total profitability of controlled transactions is compared with the financial performance of other companies.

5. Reasoning of operations with exchange/primary commodities

Undoubtedly, the introduction of the concept of primary commodities instead of stock-exchange quotation is a progressive norm.

Primary commodities are goods for which unaffiliated persons use quotation prices as a benchmark for setting the price of uncontrolled transactions. The list of primary commodities must be determined by the Cabinet of Ministers of Ukraine.

Thus application of a comparable uncontrolled price method (CUP) for the controlled operations with primary commodities can be carried out:

- both with prices of comparable uncontrolled transactions (which are actually carried out by the taxpayer or other persons with unrelated persons),
- and with quotation prices.

If the price of uncontrolled transactions is used (rather than quotation prices), such uncontrolled transactions should be regular, with several counterparties and in amounts comparable to those used in the controlled transaction.

In fact, this means that the use of the payer's internal comparable transactions makes the comparison not possible if there are only a few uncontrolled transactions with one counterparty.

The State Fiscal Service publishes the recommended (non-exclusive) list of sources of information for obtaining quotation prices on its official web portal before the beginning of the reporting year.

At the same time, an effective tax planning mechanism is maintained which allows for comparing prices in the controlled transactions with quotations (prices) that were in effect **on the date of the contract** and not **on the date of the actual transaction** (transfer of ownership).

For this purpose, the taxpayer notifies the tax authority of the conclusion of the relevant agreement in the prescribed form.

If the information submitted in the notice is consistent with the actual conduct of the parties (that is actually executed), the comparison of the price of the controlled transaction with the quotation prices is made on the date closest to the pricing date. For example, in the agrarian business, this tool is essential, it is successfully used by companies to eliminate risks in the field of transfer pricing. After all, a lot of time usually passes between the date of price agreement (date of conclusion of the contract) and the date of the transaction, and high volatility of stock quotes leads to absolute incompatibility of prices at the time of the contract and delivery, thus leading to the unforeseen risks in the field of TPU.

If, for any reason, the payer does not apply the CUP method to transactions with primary commodities, he must justify in the transfer pricing documentation the impossibility (inexpediency) of the CUP method, as well as indicate information about all persons involved in the supply chain of such goods - from the manufacturer (supplier) to the first unaffiliated person or non-resident person who is not in the Lists No. 1045 and No. 480. Previously, such information had to be reflected not in the documentation, but in a separate notification by May 1 of the year following the reporting year.

Thus, the changed procedure gives taxpayers a number of advantages:

- the possibility of using information from recognized international agencies (for example, Platts), and not only from certain world exchanges;
- the list of such agencies (sources) is not exclusive, but only recommended;
- the list of adjustments that can be made to ensure the comparability of quotation prices is now not limited (only certain adjustments could be applied to stock quotes);
- the right to use internal comparable transactions of the payer in case of their sufficient quantity, instead of the quotation prices is fixed.

What is left is to wait for the relevant regulations.

Please note that now the rules for the exchange goods no longer apply, and the list of primary commodities is not yet available.

6. Mandatory information to be disclosed in the transfer pricing documentation

The list of information required for disclosure in the transfer pricing documentation has been expanded, namely in accordance with the updated version of paragraph 39.4.6 of the TCU the documentation should contain:

- information about individuals who are the ultimate beneficial owners of the taxpayer;
- description of the controlled operation with indication of the supply chain (value creation) of goods (works, services) in the controlled operation;
- substantiation of the economic expediency and availability of **business purpose** for transactions aimed at acquisition of works (services), intangible assets, other subjects of business transactions unlike goods;
- copies of material intra-group agreements that affect pricing in a controlled transaction (if the payer is part of an international group of companies);
- a copy of the auditor's report on the financial statements of the taxpayer for the reporting periods for which the documentation is submitted with TPU, if its availability is mandatory for the taxpayer.

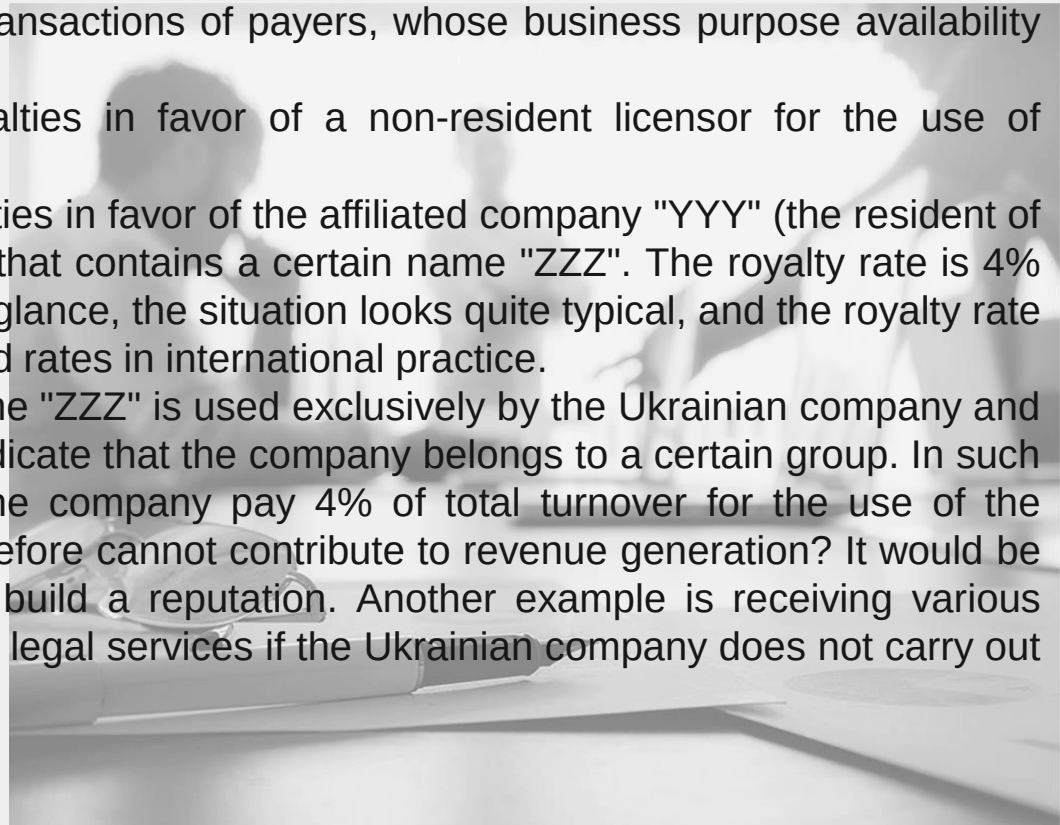
It is necessary to dwell on the implementation of the concept of **business purpose in the transfer pricing**. The general assumption is that controlled transactions, which would not make sense and could not be carried out between independent persons in similar circumstances, are devoid of business purpose.

In practice, we often have to deal with controlled transactions of payers, whose business purpose availability generates doubts.

The most striking example is the accrual of royalties in favor of a non-resident licensor for the use of trademarks.

Situation: The Ukrainian company "XXX" pays royalties in favor of the affiliated company "YYY" (the resident of the Republic of Cyprus) for the use of a trademark that contains a certain name "ZZZ". The royalty rate is 4% of the proceeds from this trademark. That is, at first glance, the situation looks quite typical, and the royalty rate is not inflated as compared to the generally accepted rates in international practice.

However, with a closer look, it turns out that the name "ZZZ" is used exclusively by the Ukrainian company and no one else in the world, and this name does not indicate that the company belongs to a certain group. In such circumstances, the question arises: why should the company pay 4% of total turnover for the use of the intangible assets that are not recognizable and therefore cannot contribute to revenue generation? It would be advisable to register its own name and gradually build a reputation. Another example is receiving various services from non-residents. For example, obtaining legal services if the Ukrainian company does not carry out foreign economic activity.



NEW TPU RULES: INTRODUCTION OF A THREE-LEVEL REPORTING SYSTEM

Transfer pricing in Ukraine in its current form is only the lowest step in the structure of the new three-level reporting with TPU.

Thus, within the scope of item 13 of the BEPS Action Plan the following reporting system with TPU, which already operates in many countries around the world, is provided:

I. Transfer pricing documentation (Local file in international practice);

II. Global transfer pricing documentation (Master file);

III. Country-by-country report (Country-by-country report or CbCR).

In addition, the payer is required to submit a notice of participation in an international group of companies.

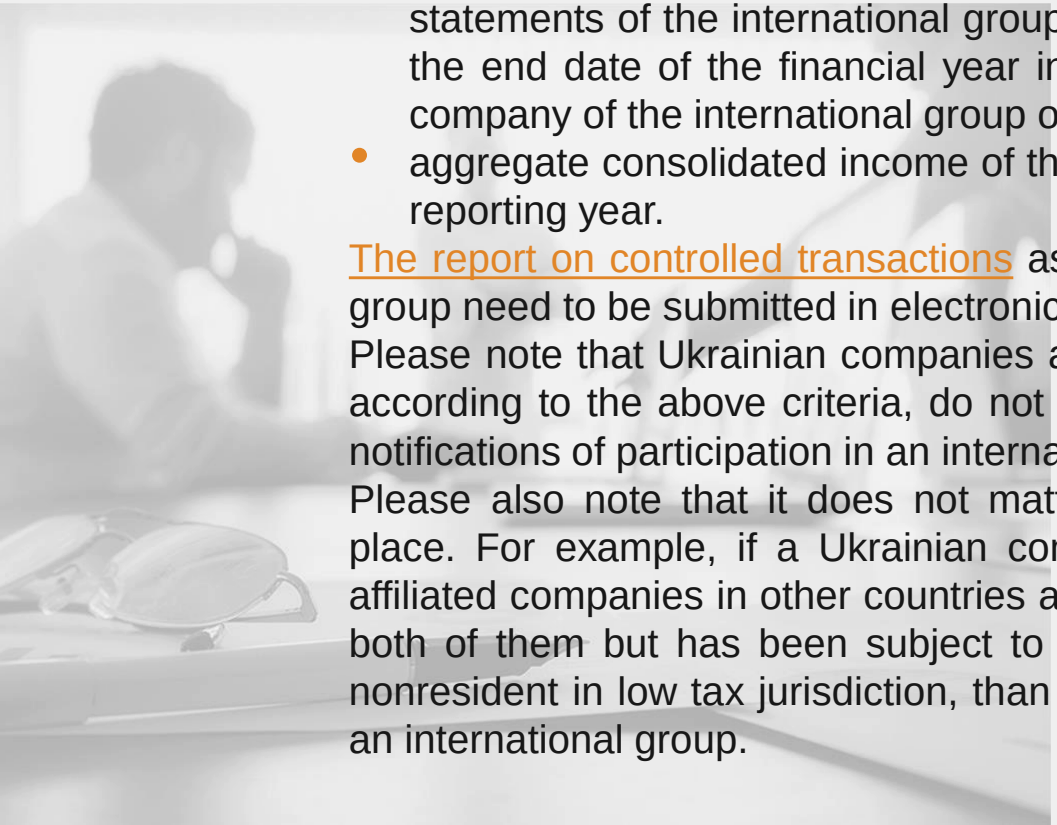
To whom it applies

The question arises as to whom this applies. The key point is the affiliation of the Ukrainian company to an international group of companies. Thus, according to a new version of the TCU (paragraph 14.1.1133 of the TCU), under the term **international group of companies** we understand two or more legal entities (or an entity without legal status), which are tax residents of different countries and are related to each other due to the criteria of ownership or control. And in accordance with the international financial reporting standards (IFRS) (or other internationally recognized financial reporting standards) the preparation of consolidated financial statements is mandatory or the preparation of consolidated financial statements would be mandatory if the shares (corporate rights) of one of these legal entities were in circulation on the stock exchange.

Therefore, the changes will not affect taxpayers who are otherwise related to foreign companies. For example, if a Ukrainian company and a foreign company have a common founder - an individual, as well as all other schemes built on a similar principle.

In addition, if the size of the ownership interests between the companies in different jurisdictions makes it impossible to exercise control (usually 50% or less) and therefore the need to prepare consolidated financial statements, such companies also do not meet the definition of a group.

It is clear that the changes do not apply to taxpayers who do not have affiliated legal entities registered in other states.



Notification of participation in an international group

Sending by a payer of a notice of participation in an international group is considered the first step in the implementation of a three-tier reporting system, as it is essentially informs the tax authorities about the range of payers to whom the TPU requirements apply.

Thus, taxpayers who carried out controlled transactions in the reporting year are required to submit a notice of participation in an international group of companies in the prescribed form by October 1 of the following year.

It is assumed that the notice shall contain the following information:

- data on the parent company of the international group, which includes the payer;
- data on the legal entity that is the authorized member of the international group to submit a report from a perspective of countries of the international group of companies (if any such legal entity);
- the date that is the last day of the financial year for which the consolidated financial statements of the international group are prepared, and if such statements are not prepared, the end date of the financial year in accordance with the internal regulations of the parent company of the international group of companies;
- aggregate consolidated income of the international group for the financial year preceding the reporting year.

The report on controlled transactions as well as notifications of participation in the international group need to be submitted in electronic form.

Please note that Ukrainian companies although belonging to international groups of companies according to the above criteria, do not carry out controlled transactions and should not submit notifications of participation in an international group.

Please also note that it does not matter with which entities the controlled transactions took place. For example, if a Ukrainian company belongs to an international group and has two affiliated companies in other countries and it has not carried out any controlled transactions with both of them but has been subject to transfer pricing through the purchase of goods from a nonresident in low tax jurisdiction, than such company has to submit a notice of participation in an international group.

Global documentation with TPU (Master file)

The global documentation allows the tax authorities to get a holistic view of the distribution of roles and resources of the international group participants.

Global documentation is submitted at the request of the State Fiscal Service of Ukraine (SFSU) by payers who are part of an international group of companies if the total consolidated income of such an international group for the financial year preceding the reporting year is equal to or exceeds the equivalent of EUR 50 million. As you can see, the request can be sent to any payer who had to submit a notice of participation in an international group, provided that the cost criterion is met. As noted above, such a statement should contain information on the aggregate consolidated income of the international group.

The request for submission of global documentation in the general case can be sent not earlier than 1 year and not later than 3 years from the date of the end of the corresponding financial year.

To provide global documentation, the taxpayer has 90 calendar days from the date of receipt of the request of the controlling authority.

If several Ukrainian companies belong to the same international group, the tax authority will choose only one of them to send the request.

Global transfer pricing documentation, which is compiled in any format, should contain:

- information on the organizational structure of the international group of companies;
- general description of the activities of the international group of companies (including the description of supply chains and value formation of the largest in terms of revenue of the international group of companies 5 goods / works / services, as well as supply chains of any other goods / works / services / other civilian objects rights, the share of which is more than 5 percent of the revenue of an international group of companies);
- list and brief description of significant agreements on the provision (receipt) of services, works concluded between the members of the international group;
- a concise functional analysis of the activities of members of an international group of companies that have a significant impact on the financial results of this group;
- information on the main agreements on business restructuring, acquisition and disposal of assets that took place during the financial year;
- intangible assets used by an international group of companies in its activities,
- general description of the transfer pricing policy related to the financing of the members of an international group of companies;
- consolidated financial statements of an international group of companies for the last financial year.

And this is by no means a complete list of information. In practice, international groups of companies prepare a Master file in accordance with the requirements of foreign legislation, but such documentation should at least be reviewed for compliance with Ukrainian legislation.
However, for companies that are part of an international group, life is complicated not only by the need to provide additional documents, but also by the need to reconcile the approaches used by the Ukrainian company with the group's approaches and the absence of contradictions. For example, if a Ukrainian company chooses to be the weakest party to be tested, a global report indicates that it is endowed with a wide range of functions, risks and assets compared to other members of the group.

Country-by-country report

The purpose of the Country-by-country report is to exchange information between countries on certain financial, tax and other indicators in the countries of location of each member of the group (income, profits, taxes, etc.)

A country-by-country statement is presented if the aggregate consolidated income of the international group of companies that includes the taxpayer for the financial year preceding the reporting year exceeds the equivalent of **EUR750 million** and given at least one of four circumstances:

- the taxpayer is the parent company of an international group of companies;
- the parent company authorizes the taxpayer - a resident of Ukraine to submit a country-by-country report to the controlling authority;
- in accordance with the requirements of the law of the parent company, the submission of a report from such an international group of companies is not required (at the same time the parent company does not authorize another member of the international group to submit a report in another foreign jurisdiction where it is required);
- an international agreement has been signed between Ukraine and the jurisdiction of the parent company (or authorized participant), which provides for the possibility of exchanging tax information, but the procedure for exchanging country-by-country reports has not entered into force or there have been cases of systematic non-compliance. The list of such countries should be published on the SFS website.

As we can see, the concept of the **parent company of an international group of companies** is important. Thus, in accordance with the new rule of paragraphs 14.1.1031 of the TCU it is a legal entity that is part of an international group of companies and at the same time meets the following requirements:
1) directly (indirectly) owns the corporate rights of other companies (or actually controls such companies), and the share of such ownership is sufficient to include the financial statements of other companies in the international group to the consolidated financial statements of such legal entity;
2) the financial statements of such legal entity are not subject to inclusion into the consolidated financial statements of any other legal entity within an international group in accordance with international financial reporting standards.

Thus, if the global reporting is a holistic picture of the distribution of functions and resources of group members, the country-by-country report reflects the distribution of financial performance between all member countries of such group.
Agree that having such a "panoramic picture" from above, the situation when the highest margin remains in countries with the lowest tax rates or if the bulk of profit belongs to a company that does not contribute significantly to the group will look quite badly in front of tax authorities.

When will it start working

According to the Final Provisions of the Law No. 466, the first reporting period for which the submission of participation in an international group of companies, global documentation and country-by-country reporting are to be submitted is **2021**.

Accordingly, notification of participation in an international group must be submitted by October 1, 2022.

In addition, the introduction of the exchange of country-by-country reports will be possible not earlier than Ukraine's accession to the relevant international convention*.

** Multilateral Agreement of Competent Authorities on Automatic Exchange of Interstate Reports as of January 27, 2016.*

Responsibility

Finally, the price of the question.

The updated norms of the TCU for non-compliance with the new legislation in the field of TPU established the liability in the amount of the subsistence minimum for able-bodied persons specified by law on January 1 of the tax (reporting) year in which the offense was committed (hereinafter - the subsistence minimum).

At the beginning of 2020, this amount is UAH 2,102, but, of course, as of January 1, 2021, it will be higher.

1. Failure to report to the TPU and notification:

50 subsistence minimums – for the failure to notify about the participation in an international group of companies;

300 subsistence minimums – for the failure to submit global documentation;

1000 subsistence minimums – for the failure to submit a country-by-country report of the international group of companies.

Warning! Payment of these sanctions does not release the payer from the obligation to submit all reports and notifications. If this is not done within 30 calendar days following the last day of the deadline for payment of the fine, the payer will receive another fine: 5 subsistence minimums for each day, but no more than 300 subsistence minimums. The good news is that previously (with regard to the report on the controlled transactions and TPU documentation) this repeated fine was not limited to a fixed amount, so it could increase indefinitely every day.

According to the same principle, penalties will now be applied for the failure of the payer to submit a clarifying report on controlled transactions after applying penalties: **1** subsistence minimum for each calendar day of failure to submit a clarifying report on controlled transactions, but not more than **300** subsistence minimums.

2. Incomplete display of information:

1% of the amount of income (revenue) of a member of an international group of companies, information about which is not reflected in country-by-country report of the international group of companies, but not more than **1000** subsistence minimums.

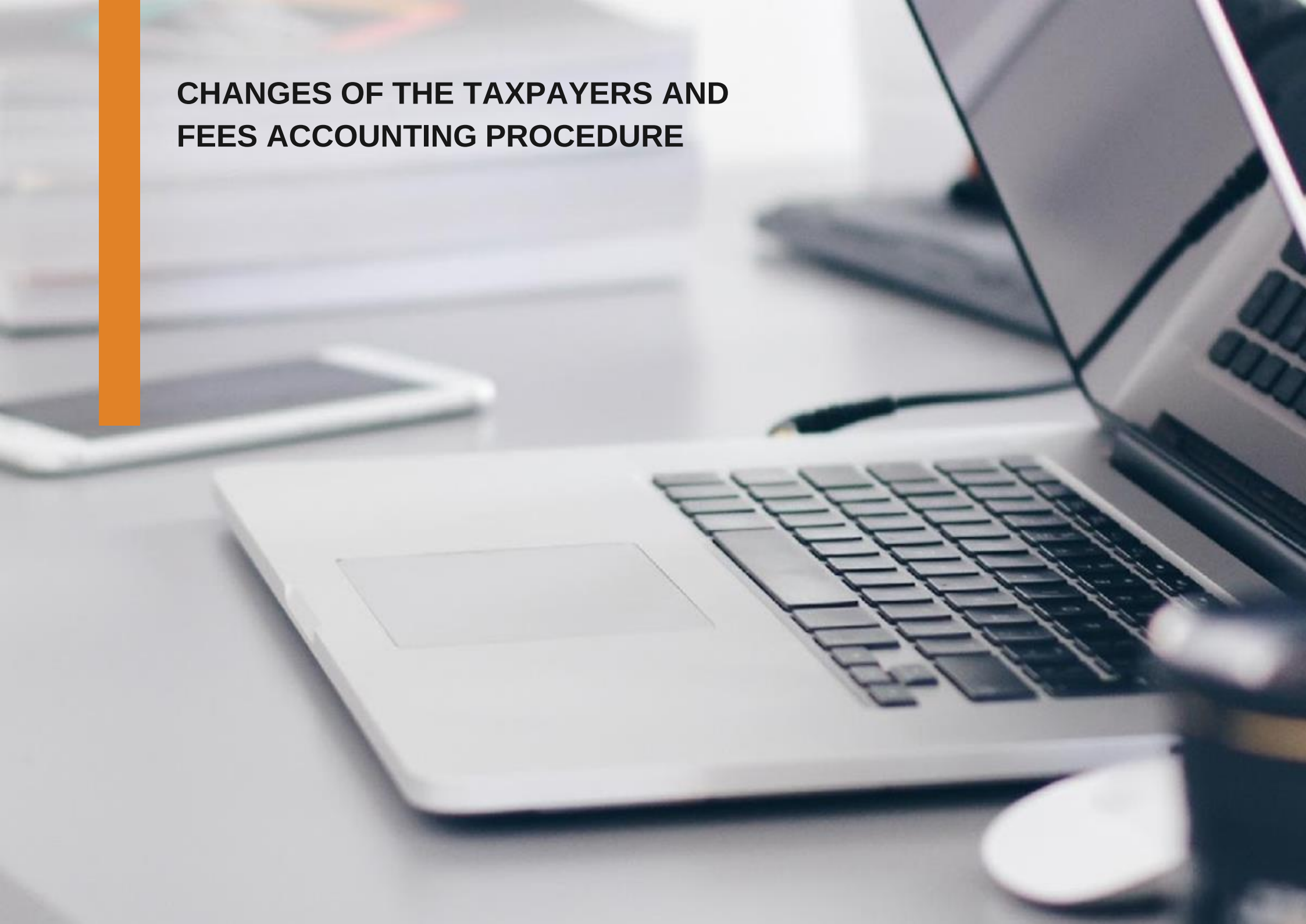
3. Providing inaccurate information:

50 subsistence minimums - in case of providing inaccurate information in the notification of participation in an international group of companies;

200 subsistence minimums - in case of providing inaccurate information in country-by-country report of the international group of companies regarding the member of the international group of companies.

OTHER NEWS
(CHANGES IN LEGISLATION)

CHANGES OF THE TAXPAYERS AND FEES ACCOUNTING PROCEDURE



The Ministry of Finance of Ukraine by its order dated 24.06.2020 No.323 and registered in the Ministry of Justice on 01.07.2020 under No.606/34889 (entered into force on 27.07.2020) approved changes to the Procedure for accounting of taxpayers and fees. In particular:

1. The procedure for determining the tax number of the taxpayer has been clarified.

Thus, the structure of the registration (accounting) number of the taxpayer, which is assigned by the controlling authority, will be as follows:

XX000000K, where:

XX - takes the value 77 - for resident taxpayers, 88 - for non-resident taxpayers;

000000 - serial number;

K - controlling category, which is formed by an algorithm defined by the central executive body that implements the state tax policy (hereinafter - the Central Controlling Authority).

2. The procedure of registration with the controlling bodies of foreign companies, organizations, and diplomatic missions has been established.

In particular, registration with the controlling authorities of foreign companies, organizations, diplomatic missions is carried out on the basis of documents submitted to the controlling authority, specified by:

- paragraph 4.4 of section IV of this Procedure - in case of acquisition by a foreign company, organization, diplomatic mission of property rights to real estate or land in Ukraine, which are subject to taxation, if the method and purposes of obtaining this property do not require the establishment of a separate unit or permanent representative office of a non-resident in Ukraine. In this case, the documents are submitted by the non-resident to the controlling authority at the location of the relevant object;
- paragraph 4.4 of section IV of this Procedure (except for the documents specified in the fourth paragraph of paragraph 4.4 of section IV of this Procedure) - if a foreign company, organization, diplomatic mission opens an account with a bank or other financial institution and does not fall under the second paragraph of this subparagraph. In this case, the documents are submitted by the non-resident to the relevant controlling authority at the location of the bank (separate unit) or other financial institution where the account is opened.

Foreign companies, organizations, diplomatic missions registered in accordance with this sub-item shall be included in the register of non-resident taxpayers with the sign “foreign company that has acquired property rights to real estate or land” or “foreign company opening an account”.

3. The order of registration with controlling authorities of the individuals who carry out independent professional activity is specified.

If a lawyer or forensic expert conducts independent professional activity individually (not as a member of a state specialized institution or other legal entity) not from the date of issuance of the relevant certificate, then in order to confirm the periods during which independent professional activity was not performed, a document shell be submitted from a relevant authorized body or an extract from the register, which ensures the registration of independent professional activity, indicating the dates of suspension and renewal of the right to engage in independent professional activity or the dates of change of the organizational form of the relevant activity.

The confirmation of independent professional activity may be established by the controlling authority on the basis of information (data) of the relevant authorized body or register, which provides registration of independent professional activity, if the relevant register contains data that professional activity is carried out independently (individually).

Individuals engaged in independent professional activity and registered as internally displaced persons may submit an application for registration/change of place of registration to the controlling authority at the place of registration of the actual place of residence of such an internally displaced person in accordance with the certificate of registration of the displaced person, a copy of which is submitted to the controlling authority.

4. It is noted that the separate divisions of the legal entity provide information on the objects of taxation that are on their balance sheet.

A legal entity shall inform about all objects of taxation except those the information on which is provided to the relevant controlling authorities by separate subdivisions of such legal entity.

5. The procedure for submitting a notification on objects of taxation or objects related to taxation or through which activities are carried out under form No. 20-OPP (No. 20-ОПП).

It is specified that the notification on form No.20-OPP provides for information about all objects of taxation that are private, leased or leased out.

When providing notifications on form No.20-OPP, the principle of aggregation of information about the object of taxation is applied (for example, if information is provided about the objects of taxation - office, warehouse, warehouse-shop, located in one office center at the same address, it is enough to provide information on one of the types of objects of taxation, indicating in the name: office, warehouse, warehouse-shop).

The principle of aggregation of information does not apply when providing information on movable and immovable property subject to registration with the relevant state authority upon receipt of the relevant registration number (for example, the notification on form No.20-OPP provides information on both land and non-residential real estate located on such land).

Information about single-type (type, use, condition and type of ownership) of motor vehicles, which are not points of mobile retail trade, catering or services other than passenger and freight transport, may be submitted in a notification on form No.20-OPP as generalized with the type of object of taxation "motor vehicles" and the number of such vehicles in the column "Registration number of the object of taxation".

Notifications on form No.20-OPP with information on taxable objects, which are registered in the relevant state body without assignment of registration number (cadastral number, registration number of real estate object), are **submitted to the controlling body at the main place of registration in paper form attaching a copy of the document confirming the registration of the object of taxation in the relevant state body**. In this case, column 12 "Registration number of the object of taxation" of the notification on form No.20-OPP is not filled.

The information specified in the notification on form No.20-OPP shall be entered by the controlling body into the Unified data bank of legal entities or the Register of self-employed persons:

- no later than the next day after receipt of the notification on form No.20-OPP by electronic means in electronic form;
- no later than 10 working days from the date of receipt by the controlling body in paper form of the notification on form No.20-OPP.

Taxpayers can view information about the objects of taxation and controlling authorities where the tax payer has a secondary place of registration in a private part of the Electronic Cabinet.

6. Amended and restated:
Appendix 5. Form No. 1-OPP
Appendix 6. Form No. 1-RPP
Appendix 8. Form No. 5-OPP
Appendix 11. Form No. 11-OPP
Appendix 13. Form No. 8-OPP

FROM AUGUST 3 THE OPERATING DAY WILL BE 23/7 FOR TAX PAYMENT

According to the "Technological Regulations of the Electronic Payment System of the National Bank of Ukraine", approved by the Decision of the Board of the National Bank of Ukraine dated 25.02.2020 No.142 (as amended), the State Treasury Service of Ukraine in order to create favorable conditions for payers of taxes, fees and other payments to budgets, reports that from **03.08.2020** the State Treasury Service of Ukraine (EAP) (bank code 899998) - a participant of the system of electronic payments of NBU **works in the mode 23/7**.

According to paragraph 1 of the Decision of the Board of the National Bank of Ukraine "**The date of the banking day** in the electronic payment system during working days on a five-day working week will **correspond to the calendar date**, and **on weekends**, holidays and non-working days as defined by the legislation of Ukraine – **to the calendar date of the first working (transaction) day after them**".

The way the 23/7 mode works

The NBU has defined the following features of the extended EPS (E-Payment System) regulations:

- EPS participants can make an interbank transfer of funds through this payment system from 01:00 to 24:00;
- there will be a technological break in the system for one hour during the transition to a new banking day (from 00:00 to 01:00);
- EPS participants independently make decisions on the regulations of their interaction with the payment system around the clock;
- EPS regulations for the period of the end of the reporting year will be determined by a separate decision of the Board of the National Bank of Ukraine.

At the same time, banks perform interbank funds transfer through EPS in the 23/7 mode on a voluntary basis. Banks will independently decide on the commencement and termination of work in EPS, based on their own needs and the needs of their customers.

LAW 786-IX - AMENDMENTS TO THE LAW No.466: IMPROVEMENT OF THE WORK OF THE ELECTRONIC CABINET OF THE TAXPAYER, REDUCTION OF PENALTIES AND CANCELLATION OF COMPULSORY REGISTRATION OF LEDGERS FOR INDIVIDUAL ENTREPRENEURS

On August 7, the Law as of 14.07.2020 786-IX "On Amendments to the Tax Code of Ukraine Regarding Functioning of the Electronic Cabinet and Simplification of Work for Individuals – Entrepreneurs" was officially published in Holos Ukrayiny under No.138.

The law provides for simplification of accounting for individuals-entrepreneurs, access to the Electronic Cabinet of the taxpayer and expansion of its functionality.

Peculiarities of the entry into force of the Law:

According to the text of the Law No.786, it enters into force on the day following the day of its publication (that is on August 8, 2020).

Apart from the following changes in the TCU:

- to the sub-clause 16.1.16 (concerning definition of changes of the authorized persons who have the right to use E-cabinet), **articles 42**, **42^{1}** (concerning the rules of introduction of electronic document circulation with State Tax Service), clause **49.4** (concerning cancellation of the agreement on recognition of E-documents), that come into force 3 months after publication of this Law. It means that these changes will take effect from **November 8, 2020**;
- to item **57.1^{1}** (concerning changes in payment of the advance payment from the income tax in case of payment of dividends), **item 133.3** (concerning the new order of registration by the nonresident taxpayers of the income tax), **article 177**, **item 178.6** (concerning changes in accounting for individuals who use general taxation system and self-employed individuals), **paragraph 296.1** (concerning accounting of individuals who use unified taxation system of group I and II and III (non-payers of VAT) in any form by means of a monthly reflection of income). These changes will take effect on **January 1, 2021.**

The law abolishes:

mandatory registration of the Ledger of income and expenditure (**from January 1, 2021**);

the obligation to keep records in the Ledger of income and expenditure for the individuals-entrepreneurs of the 1st and 2nd groups who use a simplified taxation system and of the 3rd group who are not VAT payers (**from January 1, 2021**). Individuals - entrepreneurs of groups I-III who use a simplified taxation system will be able to keep records in any convenient form either in paper or electronic, indicating the amount of income per month. Individuals - entrepreneurs who use a general system will also be able to keep records in paper or electronic form, but in a standard form defined by the Ministry of Finance.

The law improves the work of the Electronic Cabinet of the taxpayer:

- electronic interaction of taxpayers with tax authorities has been improved. Copies of tax notices-decisions and other documents sent by the tax authority to the taxpayer will be displayed in the Electronic Cabinet;
- it is determined that the controlling authority will correspond with taxpayers in electronic form, if they submitted a statement of desire to receive documents by means of the Electronic Cabinet;
- the requirement for the taxpayer to submit an application to join the agreement on the recognition of electronic documents was abolished;
- automatic registration in the Electronic Cabinet of documents received from the taxpayer is introduced;
- it is stipulated that the Electronic Cabinet should contain data on the amount and date of approval of the monetary obligation determined by the controlling authority;
- the mechanism of proving by the taxpayer of the absence of his guilt due to a technical failure in the electronic cabinet is simplified, in particular, the need to confirm the fact of a technical failure, methodological or technical errors by the technical administrator and/or methodologist is eliminated.

PENALTY SANCTIONS FOR VAT VIOLATIONS ARE REDUCED

Among the amendments to the legislation regarding the functioning of the electronic cabinet and simplification of the work of individuals - entrepreneurs, the Law No. 786 halved the fines for non-registration and untimely registration of tax invoices and calculation of adjustments to them.

Thus, **for violation by VAT payers of the deadline for registration of a tax invoice** and/or calculation of adjustments to such tax invoice in the Unified Register of Tax Invoices for transactions that:

- are exempt from taxation;
- are subject to value added tax at a zero tax rate;
- do not provide for the provision of a tax invoice to the recipient (buyer), as well as tax invoice/calculation of adjustments drawn up: in the amount of excess of the tax base, determined in accordance with Articles 188 and 189 of the Tax Code of Ukraine, over the actual supply price;
- for compensating tax liabilities (according to paragraph 198.5 and Article 199 of the TCU), fines accrued during the period from January 1, 2017 to May 23, 2020, the term of payment of monetary obligations for which has not occurred or monetary obligations for which are not agreed (relevant tax notices-decisions are in the procedure of administrative or judicial appeal and monetary obligations for them are not paid) as of May 23, 2020 apply **in the amount of 1 percent of the supply (excluding value added tax), but not more than 510 hryvnas**.

Penalties applied **due to lack of registration** during the deadline of tax invoices and/or calculation of adjustments to them for the same operations under the same conditions are applied in the amount of **2.5 percent of the volume of supply (excluding value added tax), but not more than 1700 hryvnas.**

REPORTING OF INDIVIDUALS-ENTREPRENEURS IN CASE OF TERMINATION OF ACTIVITY

Entrepreneurs who cease their activities must report to the tax authorities.

Entrepreneurs who use the general taxation system, in respect of which a record of termination of business activity is entered in the USR, file for the last time the liquidation tax returns for the reporting period from the day following the end of the previous basic tax (reporting) period to the last day of the calendar month in which state registration of the termination of business activity is made.

These reports are submitted within the deadlines set for the monthly tax period.

Liquidation reporting is not provided for **the entrepreneurs who use a simplified taxation system**. Therefore, they file for the last time the tax returns of the single tax payer for the tax (reporting) quarter in which the state registration of termination of business activity was carried out, with a cumulative result from the beginning of the year. This should be done within 40 calendar days following the last calendar day of the reporting (tax) quarter.

It is possible to submit this "farewell" report in a convenient way (of course, taking into account the quarantine schedule):

- personally;
- by mail;
- by electronic means (except for the last declaration of the individual-entrepreneurs who use a unified taxation system).

It should be noted that if after the entry into the USR of a record of termination of entrepreneurial or independent professional activity, an individual continues to carry out such activities, it is considered that he started such activities without registering it in a capacity of a self-employed person.

Therefore, in order to avoid misunderstandings, all cases should be completed by the time of state registration of termination of activity.

Source: explanation of the State Tax Service from category 129.02 of the section "Questions - answers from the Knowledge Base" ZIR (zir.tax.gov.ua)

PROVISION ON FINANCIAL MONITORING BY BANKS CONTAINS INDICATORS OF SUSPICIOUSNESS OF CLIENTS' OPERATIONS

Resolution of the Board of the National Bank as of May 19, 2020 No. 65 approved a new Regulation on financial monitoring by banks.

The resolution came into force on May 22. Based on regulations of this resolution the banks collect information about clients and block, if necessary, their accounts. And this is of particular concern to many clients. After all, despite a significant increase in the limit for financial monitoring (up to UAH 400,000), banks began to actively implement the risk-oriented approach provided for by the Law on Financial Monitoring. That is, to comprehensively evaluate clients and their actions making conclusions about the blocking of their accounts.

Annex 20 to Regulation No. 65 lists the features that the National Bank proposes to use as suspicious to block accounts (so-called indicators of suspiciousness of financial transactions). The banks focus on them. Of course, each bank still has its own internal documents on financial monitoring, but they are based on the Law on Financial Monitoring and Regulation No. 65.

Thus, the signs of suspiciousness are as follows: the client has several cards, the client's excessive nervousness or the desire to be served only by a particular employee of the bank. And this is not a complete list, because the NBU counted as many as 73 signs of suspiciousness of financial transactions.

Thus, according to the norms of the NBU, transactions should be considered suspicious if the client (his representative):

- cannot clearly explain the essence of their business activity (nature of activity);
- doesn't want or refuses to provide information or provides information that is difficult to verify;
- has a large number of accounts or payment cards, the need for which is not clear or does not meet his business needs;
- is nervous for no apparent reason or shows unusual behavior;
- demonstrates an unusual interest in the requirements of the legislation in the field of financial monitoring or internal documents of the bank on these issues;
- demonstrates ignorance of information related to financial transactions on his own account, and/or cannot explain their content;
- unusually and excessively justifies or explains the financial transaction, emphasizing the absence of any connection with illegal activities, etc.

The NBU also advises banks to consider transactions suspicious if:

- financial transactions on the account of an individual do not correspond to the risk profile of the client (including age, profession, income);
- no mandatory payments that are inherent in normal business activities (e.g. rent payments, payments for utility services, taxes) of the client - an economic entity have been paid or have been paid in a small amount (in the amount that clearly does not correspond to the volume of financial transactions);
- there are apparent signs that other persons are in control of the financial transaction (the client reads everything from the notes or in the phone or other persons follow the client in the office or stay outside), etc.

Indicators related to the client's financial transactions focus on aspects of the client's transactions, primarily those of legal entities. For example, the NBU will consider as suspicious regular transfers of funds from the account of a client-a legal entity to the personal accounts of employees or persons associated with employees, and vice versa (except, of course, transfers related to wages, social benefits and other mandatory payments).

We draw attention of the accountants that it will be considered as suspicious for the bankers if the payments of the client - an economic entity in the appointments do not contain a clear and unambiguous purpose. In particular, they contain only references to contract numbers or invoices, without specifying the type of goods or services.

The bankers grouped the **indicators for different types of products (services)** into five items, which, however, contain quite a few sub-items.

For example, cash transactions in which the volume of cash transactions on the client's account do not correspond to the volume that is inherent in the type and scale of the client's activity will be suspicious. Or when the client's account carries out regular financial transactions in cash for large round amounts.

It will be dangerous for the credit/loan relationship if the client is not interested in the essential terms of the loan (including interest rates, penalties) or the costs associated with repayment of credit.

The NBU also made its own set of suspicious indicators for transactions with securities and other financial instruments, trade finance, services for storing valuables/renting a safe deposit box, and online services.

IT IS POSSIBLE TO UPDATE THE PLAN-SCHEDULE OF THE STATE TAX SERVICE INSPECTIONS, BUT ONCE IN A WHILE…

Prior (before the amendments made by the Law No. 466, which started on 23.05.2020) in Art. 77 of the TCU, which regulates the issue of documentary scheduled inspections, there was no talk of making changes to the published plan-schedule of scheduled inspections.

In particular, it was stipulated that the schedule for the next year would be published by December 25 of the year preceding the year of the planned inspections. There was not a word about making changes.

But in practice, the tax authorities constantly made adjustments to the list of companies that were included in the schedule.

From 23.05.2020 there is a clear rule on the possibility of making changes to the schedule, making changes to the schedule of documentary scheduled inspections for the current year **is allowed no more than once in the first and once in the second quarter of that year, except when changes are related to the changes in the name of a taxpayer, which has already been included in the schedule, and/or correction of technical errors** (paragraph 77.2 of the TCU).

In case of an update in the first quarter, the inspection of the economic entities added to the schedule cannot be scheduled earlier than July 1, and in case of an update in the second quarter, an inspection may not be scheduled earlier than October 1.

The updated plan-schedule is published on the website of the State Tax Service of Ukraine by the 30th of the last month of the quarter - as we understand, it is a question of promulgation of changes for the first quarter - by March 30, and for the second quarter - by June 30.

Request for copies of documents during the inspection - no later than 5 working days before its completion

During the audit, revenue officers have the right to receive **copies** of primary documents (duly certified) from the taxpayers. But another question arises: *when is the time to ask to provide copies?* Because under the word combination "*during the inspection*" the last day of such inspection is also meant. And how to manage to provide copies if the request was received on the last day of the inspection, so later it will be indicated in the act that "*no documents were provided*…".

Now this issue has been resolved - the tax authorities can request a copy of the documents no later **than 5 working days before the end of the inspection** (paragraph 85.4 of the TCU).

It is an unconditional right of taxpayers to stop the inspection

Previously, the norm of paragraph 82.4 of the TCU on the suspension of the inspection by the decision of the tax authorities applied **only** to large taxpayers, and from 23.05.2020 it is applied to all taxpayers.

In particular, scheduled and unscheduled documentary inspections may be suspended by the decision of the head (his deputy or an authorized person) of the controlling authority and executed by an order, a copy of which is delivered to the taxpayer or his authorized representative against signed receipt or sent to the taxpayer in order defined by Art. 42 of the TCU, with the subsequent resumption of such inspection for the unused period (paragraph 82.4 of the TCU).

There are no conditions to stop the inspection. It means that tax authorities **may suspend** the inspection at any time and **resume it later** (the period of suspension is not taken into account for the total duration of the inspection).

The limitation period for personal income tax and military tax is not 3 years, but 7.

These changes will take effect from 01.01.2021.

Taxpayers will be able to check and add to the tax agents of personal income tax and military tax when paying wages, other incentive and compensation payments or other payments and rewards that are accrued (paid, provided) to an individual in connection with the employment relationship for 2555 days (7 years), and not as it has been before - for 1095 days (3 years). Such an update was prescribed in paragraph 102.1 of the TCU from 01.01.2021.

INFORMATION FROM FOREIGN GOVERNMENT AGENCIES INDICATING THE VIOLATIONS IS THE REASON FOR UNSCHEDULED INSPECTION OF THE PERIOD THAT HAS BEEN ALREADY INSPECTED

Paragraph 78.1.21 of the TCU (of 01.07.2020) is added, according to which the reason for unscheduled inspection, in particular by a controlling authority after a scheduled documentary inspection or unscheduled documentary inspection, is the **receipt of information and/or documents from foreign government agencies** related to issues covered during preliminary inspections of the taxpayer and indicate violations by the taxpayer of tax, currency and other legislation, the control of which is entrusted to the controlling authorities. Such inspection shall be carried out only in respect of issues, which gave rise to the inspection.

FULL AND PARTIAL RELEASE FROM LIABILITY

The Law of Ukraine "On Amendments to the Labor Code of Ukraine" as of 12.12.2019 No. 378-IX amended the Labor Code of Ukraine of 10.12.1971 (hereinafter - the Labor Code) on the norm of full and partial exemption from responsibility.

Thus, if a legal entity pays **within 10 banking days** from the date of delivery of the relevant resolution on the imposition of a fine for violation of labor legislation **50% of the amount of such a fine**, it is considered that the **resolution has been executed**.

In addition, **if the employer corrects the violation within the period** specified in the order, he/she **will not be fined**.

This rule **does not apply to**:

1) admission to work of undocumented employees, cases when employees work full time contrary to the registration for part-time work, payment of wages (remuneration) in "envelopes" and the recurrence of these violations;

2) non-admission to inspection and creation of obstacles in its carrying out (irrespective of its subject);

3) repeated implementation of other violations of labor legislation (i.e. those that are not directly listed in Article 265 of the Labor Code).

WARNING! A NEW DECLARATION OF PROFIT WILL SOON APPEAR

The State Tax Service of Ukraine has published a draft of amendments to the form of the Corporate Income Tax Declaration.

On September 10, the State Tax Service of Ukraine published a draft order of the Ministry of Finance, which proposes to approve changes to the form of corporate income tax declaration, approved by the order of the Ministry of Finance of Ukraine as of 20.10.2015 under No.897.

The draft order was developed to implement the requirements of the Law No.466 and the Law No.786.

Thus, the form of income tax declaration will be brought in line with the provisions of the Tax Code of Ukraine.

What will change?

The declaration will be supplemented with a new **line 9** "The full name of the joint investment institution". In this regard, the footnote clarifies that the income tax declaration is submitted by the taxpayer - a legal entity based on the results of the joint investment institution (fill in field 9). If the taxpayer manages the assets of several joint investment institutions, the declaration is drawn up and submitted separately for each joint investment institution without the status of a legal entity, which assets it manages in accordance with the Law of Ukraine "On Joint Investment Institutions", by filling in line 9 and marking "Institution of joint investment in the form of formation without the status of a legal entity" in line 10 "Special marks".

In line 10, the position of the "single tax payer" will be set out in the wording "business entity - a legal entity that has chosen a simplified system of taxation." It will also be supplemented by the following items:

- an individual - entrepreneur, including the one who has chosen a simplified system of taxation, or an individual who carries out independent professional activity;
- a foreign company;
- an institution of joint investment as a formation without the status of a legal entity.

In indicators:

- after a line under code 06 is supplemented with the line of the following content "Income tax of the controlled foreign company 06.1 КІК";
- a line under code 17 is set out in a new wording "Income tax for the reporting (tax) period (line 06 + line 06.1 КІК + line 08 + line 10 + line 12 + line 15 - line 16 ЗП)";
- a new wording also states the position "Availability of appendices" and the footnote clarifies that the relevant cells are marked "+", except for the cells under the letters "ПН" and "КІК", in which the number of annexes to the income tax declaration is defined.

New annexes to the declaration and updates of the old ones

The new wording will contain the following annexes to the declaration:

- **annex ПН** to the line 23 ПН of the Declaration;
- **annex PI** to the line 03 of PI of the Declaration;
- **annex AM** to the line 1.2.1 of Annex PI to the line 03 of the PI Declaration.

As stated in the explanatory note, the **PI Annex** to the declaration is brought in line with the provisions of the TCU, which, in particular, provide:

increase of the financial result of the tax (reporting) period by:

- 30 percent of the value of goods, including non-current assets, works and services sold to non-residents from low-tax jurisdictions;
- the amount of expenses incurred by the taxpayer in carrying out transactions with non-residents, if such transactions are not for business purposes;
- reduction of the financial result of the tax (reporting) period:
- the amount of accrued income in the form of dividends payable in its favor from a controlled foreign company within the limits not exceeding the amount by which the object of taxation was increased;
- the amount of accrued income from participation in the capital of non-residents (including controlled foreign companies) and by the amount of accrued income in the form of dividends payable in his favor from such non-resident, provided that the share of equity in the non-resident is at least 10 percent during a calendar year and such a non-resident is not included in the list of states (territories);
- a taxpayer who is a legal successor in the amount of negative value of the object of taxation of the reorganized taxpayer.

In addition, the following amendments are made in accordance with Laws No.466 and No.786:

- line 16.5 regarding the reduction of corporate income tax by the amount of excise tax paid for the current tax (reporting) period on registered excise invoices for heavy distillates (gas oil) is excluded in the **annex ЗП**;
- in the **annex ПН** the list of proceeds of non-residents is supplemented with the following proceeds (profits):
  - ✓ income from transactions in sale or other alienation of securities or other corporate rights in the authorized share capital of legal entities - residents, shares, corporate rights, shares in foreign companies formed in accordance with the laws of other states;
  - ✓ income from the alienation of rights to the extraction and development of mineral deposits and other natural resources located on the territory of Ukraine, which belong to a non-resident.

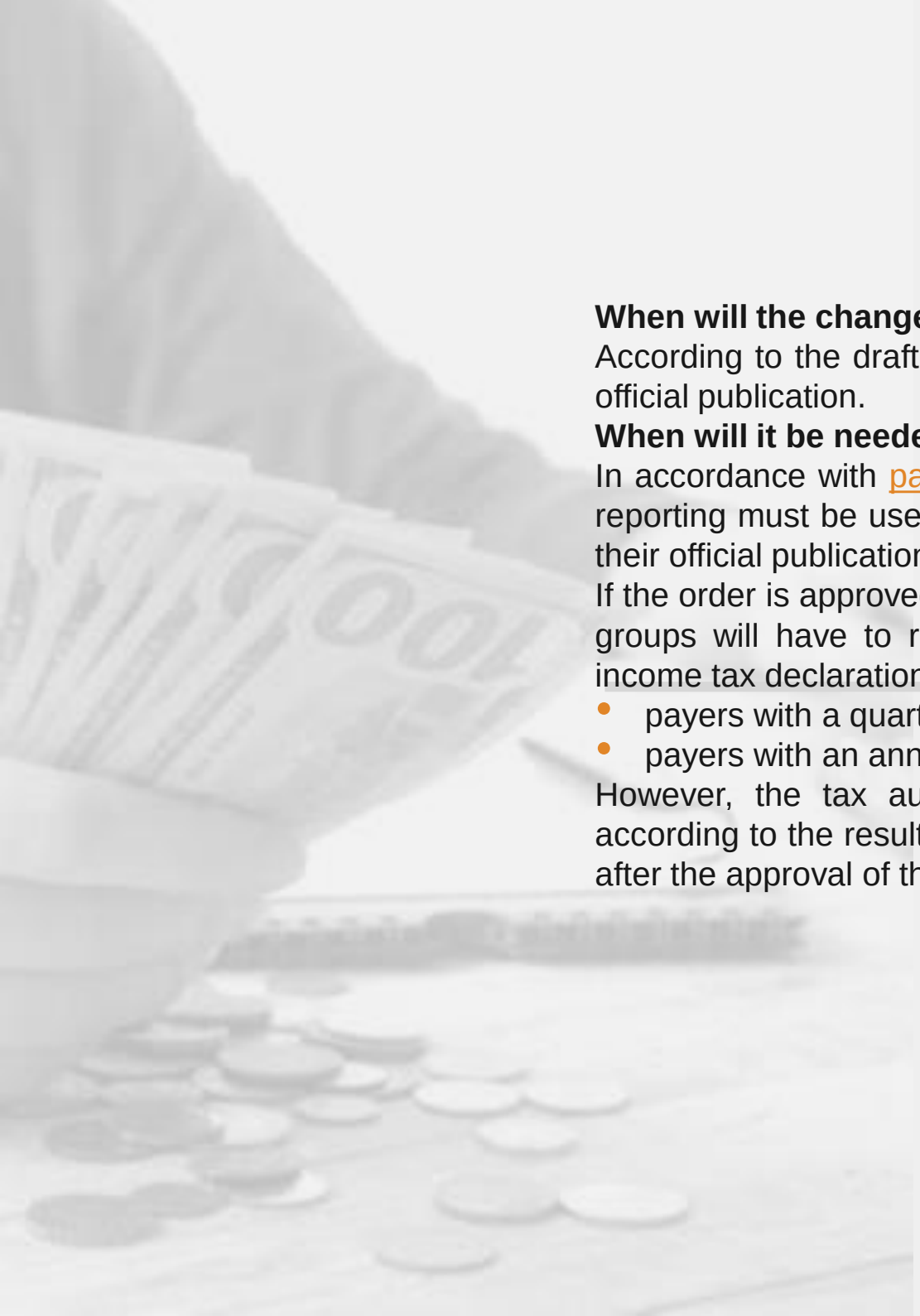
Subject to paragraph 141.4.2 TCU this annex provides for the possibility of reflecting the amount of income paid to a non-resident in any form other than cash.

In the **annex АМ** :

- the positions have been marked out to display data on groups of fixed assets for which the application of accelerated depreciation for the period from January 1, 2020 to December 31, 2030 is envisaged: the third group (transmitting devices), the fourth group (machinery and equipment), the fifth and the ninth groups.
- it is supplemented by the table "Information on the results of the inventory of fixed assets as of the 1st day of the tax (reporting) period of 2020, in which the decision was made to apply the" production "method of depreciation."

In addition, the declaration will be supplemented with **new annexes**:

- Annex КІК to line 06.1 of the КІК Declaration (download);
- Annex КІК-К to line 02 КІК-К of the КІК Annex to line 06.1 КІК of the Declaration (download);
- Annex КІК-ТЦ to annex КІК to line 06.1 of КІК Declaration (download);
- Annex КІК-ЦП to lines 1.2 КІК-ЦП, 1.3 КІК-ЦП of the annex КІК-К to line 02 КІК-К of the annex КІК to line 06.1 КІК Declaration (download).



When will the changes take effect?

According to the draft, this order will come into force from the date of its official publication.

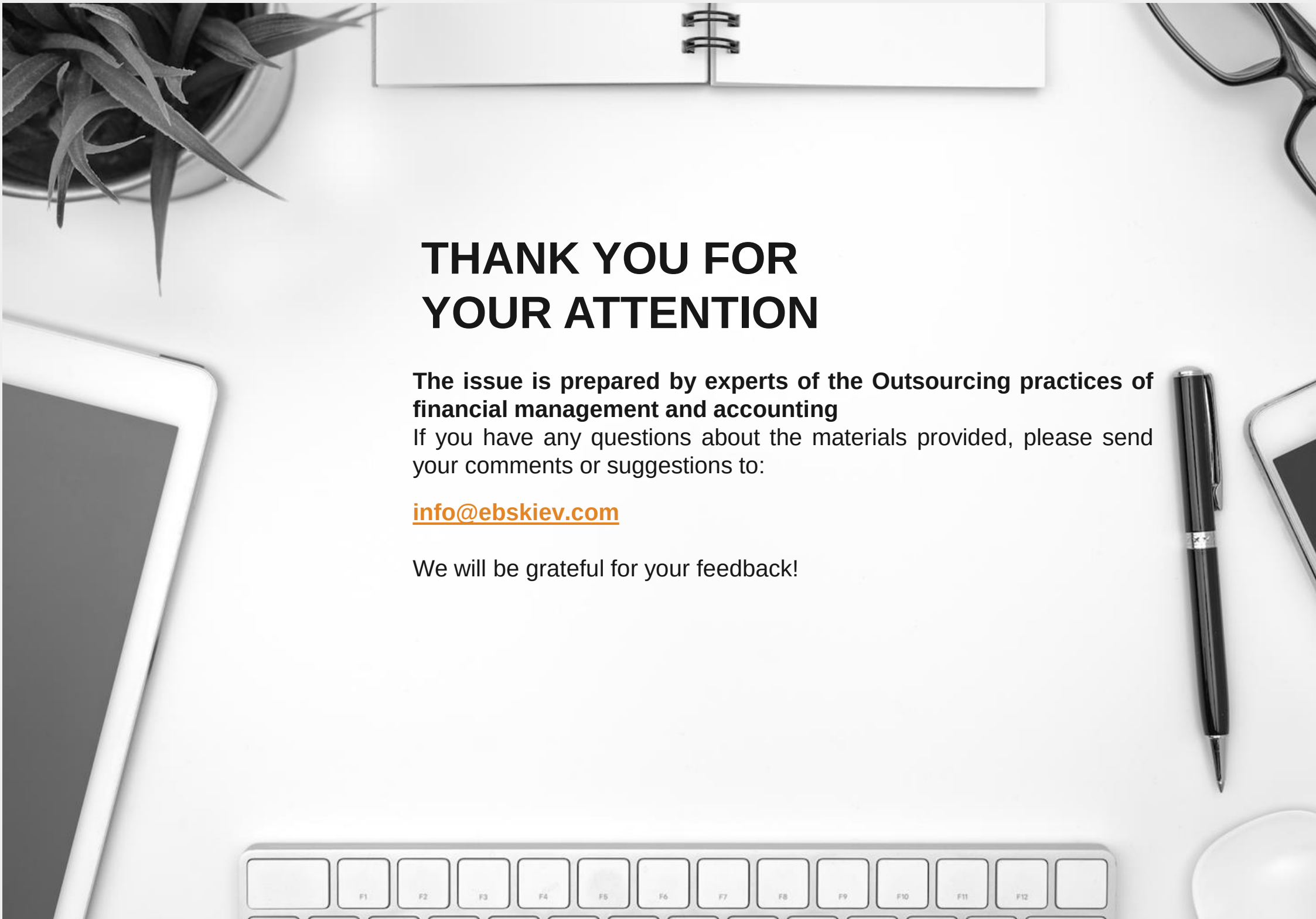
When will it be needed to report using a new form?

In accordance with paragraph 46.6 of the TCU, the updated forms of tax reporting must be used for reporting for the period following the period of their official publication.

If the order is approved and published in 4th Quarter of 2020, the following groups will have to report for the first time using the updated form of income tax declaration:

- payers with a quarterly reporting period - for the I quarter of 2021;
- payers with an annual reporting period - for 2021.

However, the tax authorities may recommend reporting as early as according to the results of 2020 and the IV quarter. But this will be known after the approval of the order.



THANK YOU FOR YOUR ATTENTION

The issue is prepared by experts of the Outsourcing practices of financial management and accounting

If you have any questions about the materials provided, please send your comments or suggestions to:

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We will be grateful for your feedback!