EBS QUARTERLY REVIEW

LEGISLATIVE CHANGES REVIEW

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QUARANTINE NEWS

COVID-19 TESTING BY EMPLOYER

The company paid for COVID-19 testing of its employees on its own initiative. Will its value be considered the income of employees? Shall income tax, military tax and USC be paid?

Income tax

Art. 153 of the Labor Code stipulates that the employer is obliged to ensure safe and harmless working conditions for its employees. The list of labor protection measures is quite large. But testing is not included.

Therefore, we recommend common employers to pay attention to cl. 165.1.19 of the Tax Code of Ukraine (hereinafter – the "TCU").

It exempts from income tax the funds or the value of property (services) provided as assistance for medical care of employees at their employer's expense, with relevant supporting documents at hand.

The order of the managing director is the basis for COVID-19 testing of employees at the employer's expense. The order shall state that COVID-19 testing of employees is carried out, as well as the order itself or the annex to it shall provide a list of employees to be tested, persons responsible for testing, and timing.

Employees must give their consent to take such testing, and appropriate statements can be obtained from them before the order is issued. If there are lots of employees, it is enough to acquaint them with the order against signature. All those who wish shall add "I do not object" or "I want to take the test". Of course, only those employees who have shown their willingness will take COVID-19 testing at the employer's expense; an employer has no right to force its employees to take the test.

According to **cl. 165.1.19 of the TCU**, **funds or cost of property (services)** provided as assistance for treatment and **medical care** of the taxpayer or first degree family of a natural person, a child in trusteeship or custody of the taxpayer are not subject to income tax, providing documentary evidence of the expenses associated with the provision of such assistance (in the case of funds provision), excluding the expenses that are reimbursed by payments from the fund of compulsory state social insurance.

Testing of employees for COVID-19 refers to medical care. **Medical care** is the activity of **health care institutions** and sole proprietorships who are registered and licensed in the manner prescribed by law in the field of health care, which is not necessarily limited to medical aid, but is directly related to it **(Article 3 of the Fundamental Principles of Ukrainian Health Legislation).**

A health care institution is defined as a legal entity of any form of ownership and business organization or its economically autonomous subdivision providing medical care to the population on the basis of the relevant license and professional activity of medical (pharmaceutical) workers.

This definition also covers private laboratories that perform COVID-19 testing, and therefore, COVID-19 testing in such laboratories is also a kind of medical service.

To prove the fulfillment of all the conditions specified in cl. 165.1.19 of the TCU, supporting documents are required in addition to the order of the managing director.

If the company pays for the testing of its employees, the supporting documents may be a contract concluded with a health care institution for testing (such contract is not mandatory, but desirable) or primary documents confirming payment and provision of testing services – a bank statement, a certificate of services rendered by a medical institution or laboratory. And the latter documents are obligatory.

In the event that the company reimburses its employees their expenses for testing, it is still necessary to obtain supporting documents from employees proving that they have undergone paid-for COVID-19 testing. This can be a bill from a medical laboratory with documents confirming payment (cash register check, etc.).

The employer has no right to demand testing results from employees – see **art. 39-1** of the Fundamental Principles of Ukrainian Health Legislation.

The employer reflects the non-taxable cost of medical care (namely testing) in the **Form No.1DF** with income notice "143".

Military tax

Since the cost of testing is not subject to income tax upon availability of appropriate documentary evidence, in the case of compliance with this requirement such cost is neither subject to military tax.

Additional benefit
If the above conditions are not met, in particular, in the absence of order of the managing director and/or supporting documents, the cost of testing for COVID-19 is subject to personal income tax and military tax according to the standard procedure as an additional benefit.

Unified social contribution
Funds paid by the employer to the health care institution for testing an employee for COVID-19 are not the base for the assessment of the Unified social contribution (hereinafter – the "USC").
According to **art. 3** of the Fundamental Principles of Ukrainian Health Legislation **of 19.11.1992 No.2801-XII, medical care** is activities of health care institutions and sole proprietorships who are registered and licensed in the manner prescribed by law, in the field of health care, which is not necessarily limited to medical aid, but is directly related to it. **Medical aid** is activities of professionally trained medical staff aimed at prevention, diagnosis, treatment and rehabilitation in case of diseases, injuries, poisonings and pathological states, as well as pregnancy and childbirth.

According to **paragraph 2, cl. 1, part 1 of art. 4 of the Law of Ukraine dated 08.07.2010 No.2464-VI** "On the collection and accounting of a unified contribution for compulsory state social insurance" as amended (hereinafter – the Law No.2464), the payers of a unified contribution for compulsory state social insurance (hereinafter – the unified contribution) are employers, in particular, enterprises, institutions and organizations, other legal entities that use the hired labor of individuals under the terms and conditions of an employment agreement (contract) or under other conditions provided by law or under civil law agreements.
The base for the assessment of a unified contribution for these payers is the amount of wages accrued to each insured person by types of payments, which include basic and additional rates, other financial rewards and incentives, including those in kind, determined in accordance with **the Law of Ukraine of 24.03.1995 No.108/95-VR** "On remuneration" as amended, and the amount of remuneration to individuals for the works (services) rendered under civil law contracts **(art. 7 of the Law No.2464).**
The list of payment types made at the expense of employers which are exempted from a unified contribution for compulsory state social insurance is approved by **the Resolution of the Cabinet of Ministers of 22.12.2010 No.1170**. According to **cl. 13 of sec. I.** thereof the unified contribution is not assessed for the cost of medical services provided by health care institutions. Thus, the funds paid by the employer to the health care institution as financial aid for testing its employee for coronavirus disease (COVID-19) are not the base for the assessment of unified contribution.
Tax authorities have the same opinion, as was clarified in subcategory 201.04.01 "ZIR".

EMPLOYEES' HEALTH INSURANCE DURING A PANDEMIC: WHAT ABOUT VAT?

Health insurance of the employees at the expense of the company does not give rise to tax liabilities with VAT.

In accordance with **art. 186 of the Tax Code of Ukraine** (further – the Code) **(paragraph "b" of cl. 185.1 of art. 185 of the Code)**, taxpayers' activities on service delivery throughout the customs area of Ukraine are VAT-taxable activities**.**

Delivery of services is any activity other than goods supply, or other activity on transfer of intellectual property rights and other intangible assets or granting other property rights in relation to such intellectual property, as well as the delivery of services, consumed during some certain action or carrying out a certain **activity (paragraph 14.1.185, cl. 14.1 of art. 14 of the Code).**

In accordance with **paragraph 196.1.3, cl. 196.1 of art. 196 of the Code** the following activities are not VAT-taxable:

- delivery of insurance, co-insurance or reinsurance services by persons licensed to carry out insurance activities in accordance with the law, as well as services provided by insurance (reinsurance) brokers and insurance agents related to such activities;
- delivery of services on compulsory state social insurance (including retirement insurance), non-state pension provision, attraction and servicing of retirement plans and accounts of participants of banking management funds, administration of non-state pension funds.

Given the above, health insurance of the employees at the expense of the company does not give rise to tax liabilities with VAT.

BUSINESS TRIPS DURING QUARANTINE

Is it possible for an employee to cancel a planned business trip?

The legislation of Ukraine does not provide for a special procedure for sending employees on business trips during quarantine. Therefore, such a business trip takes place on general grounds.
A business trip is a trip of an employee to another settlement by the order of the managing director for a certain period of time **to perform a work assignment** outside their regular place of work.
At the same time, there must be documents available confirming the connection of the business trip with the main activity of an enterprise/institution.
According to **art. 21 of the Labor Code of Ukraine (LC)**, an employment contract is an agreement between an employee and an institution under which:

- the employee undertakes to perform the work specified in this agreement, to comply with internal labor rules and regulations;
- the institution undertakes to pay the employee a salary and provide working conditions necessary to perform work which are provided by labor legislation, collective agreement and mutual agreement of the parties.

Therefore, a business trip to which the employee is sent by order of the managing director of the institution **to perform work stipulated in the employment contract**, is **mandatory** for them.
At the same time, **art. 31 of the Labor Code** protects the employee. According to it, the head of the institution **has no right to demand** from the employee to perform work **not stipulated in the employment contract**. Thus, this rule will work only when the employee is sent on a business trip to perform work that is contrary to the employment and/or collective agreement.
Likewise, **art. 176 of LC prohibits** sending on business trips pregnant women and women with children under 3 years of age under any circumstances. If a woman has a child (children) aged 3 to 14 or a child (children) with disabilities, such an employee can be sent on a business trip, but only with her **consent (art. 177 of LC).**
The described prohibitions and restrictions on business trips also apply to parents raising children without a mother (including the case when the mother is in a medical institution for a long time), guardians, one of the adoptive parents, one of the foster parents **(art. 186[1] of LC).**
Thus, if it is not prohibited by the Labor Code or an employment/collective agreement, the employee may be sent on a business trip.
In this case, if they refuse to go on a business trip to perform the work stipulated in the employment contract **without good reason**, it can be considered a **violation of labor discipline**.

TAX BENEFITS FOR BUSINESS DURING QUARANTINE

The Law of Ukraine of 04.12.2020 No.1072-IX "On Amendments to the Tax Code of Ukraine and Other Laws of Ukraine on Social Support of Taxpayers for the Period of Restrictive Anti-Epidemic Measures Introduced to Prevent the Spread throughout Ukraine of Acute Respiratory Disease COVID-19 Caused by Coronavirus SARS-Co V-2" came into force on 10.12.2020.
According to the Law No.1072-IX:

- single tax payers of group I are exempted from paying this tax for December 2020 and January – May 2021;
- single tax payers of group I are exempted from accrual, calculation and payment of USC in part of the amounts to be accrued, calculated and paid by such persons for the periods from December 1-31, 2020, January 1-31, February 1-28, March 1-31, April 1-30 and May 1-31, 2021 for themselves, and it is determined that such periods are included in the insurance job seniority;
- remission (without a taxpayer application) of the tax debt (including penalties and fines) of the taxpayer is envisaged, if its total amount with all taxes and fees does not exceed UAH 3,060 (inclusive), and which according to information and telecommunications systems of the central executive body implementing the state tax policy was accounted for as of November 1, 2020 and remained unpaid/outstanding as of the date of such debt remission;
- repayment of the tax debt of individual taxpayers, including self-employed persons, has been postponed until December 29, 2021, if its total amount does not exceed UAH 6,800;
- remission of fines and penalties is envisaged in the case when taxpayers pay by themselves the tax debt on principal payment within 6 months from the effective date of the Law (except cases prescribed by Law);
- the threshold of tax debt amount for the application of collection actions was increased to UAH 3,060;
- creation of the Register of recipients of immediate compensation of expenses incurred by business entities for payment of a unified contribution to the obligatory state social insurance for employees, and calculation of amounts of such compensation to be paid to legal entities is attributed to the functions of controlling bodies;
- it is defined that income (financial assistance, compensations) received in accordance with the Law of Ukraine "On Social Support of Insured Persons and Business Entities for the Period of Establishing Restrictive Anti-Epidemic Measures Introduced to Prevent the Spread throughout Ukraine of Acute Respiratory Disease COVID-19 Caused by Coronavirus SARS-CoV-2" is not subject to income tax and corporate income tax.

Next is more detailed information about the following changes:

Remission of tax debts in the amount of up to UAH 3,060 inclusive – without a taxpayer's application

The controlling body, without an application of the taxpayer, writes off the tax debt (including penalties and fines) of the taxpayer, the total amount of which with all taxes and fees **does not exceed UAH 3,060** (inclusive), and which according to information and telecommunications systems of the central executive body implementing the state tax policy was accounted for **as of November 1, 2020** and remained unpaid/outstanding **as of the date of writing off** such debt. Since this rule came into force **on December 10, 2020**, the remission shall be done, if not of this date, then of the date closest to it.

Fines are not applied to such written-off amounts, penalty provided by the TCU is not accrued for the period from the effective date of the **Law No.1071** (from 10.12.2020) and up to the remission date inclusive. That is, the old debts and fines are written off, and new ones are not accrued.

Remission is a one-time action, but general rules are set for debts up to UAH 3,060. A tax claim for such amounts (up to 180 to tax exempt minimum income of citizens) is not sent (not served), and measures aimed at repaying (collecting) the tax debt are not applied (amendments to **cl. 59.1 of the TCU**). Tax lien right does not apply to such amounts (amendments to **cl. 89.2 of the TCU**).

What exactly has changed?

Previously (according to the previous revision of cl. 59.1 of the TCU), the tax authorities did not send a tax claim for the amount of tax debt up to UAH 1,020. But it had to be paid, because the tax authorities took measures to repay it (appealed to the executive service). This amount has now been tripled and no measures will be taken to collect it.

However, if the tax debt increases to UAH 3,061 or more, the standard mechanism of tax debt collection is activated, and the statute of limitations specified in **cl. 102.4 of the TCU** for tax debt collection starts from the date of tax debt in excess of UAH 3,060.

Since these amendments are made to the articles of section II of the TCU, they will be effective on a permanent basis, including after the end of quarantine.

Deferment of tax debt for natural persons in the amount of up to UAH 6,800 is valid until 29.12.2021.

Subsection 10 of Section XX of the TCU is supplemented by a new clause 1-2, which provides for the deferral of tax debt for natural persons. This applies to all natural persons, including sole proprietorships and those engaged in independent professional activity, as well as to all taxes from which a tax debt might arise.

The tax debt of taxpayers – natural persons, including self-employed persons, which in total does not exceed UAH 6,800, may be deferred. But this is, again, a one-time action!

The amount of tax debt accounted for such taxpayers **as of December 1, 2020** and remained outstanding as of the deferral date may be **deferred until December 29, 2021**. The deferral is carried out by the controlling body for the place of registration of the taxpayer – natural person on their application. The deferral is granted without accruing interest for the use of such deferral.

In case of repayment of the full amount of the deferred tax debt within up to December 29, 2021, fines and penalties for such paid deferred amounts are not applied and are not accrued, and those applied (accrued) are adjusted to zero.

In case of non-repayment of the full amount of the deferred tax debt before 29.12.2021, as well as in case of its repayment after 29.12.2021, fines and penalties for deferred amounts that remain outstanding are accrued in accordance with the requirements of the TCU.

SETTLEMENT OF TAX DEBTS OF ALL TAXPAYERS

Subsection 10 of Section XX of the TCU is supplemented with new clauses 2-3, 2-4 for the settlement of taxpayers' tax debts.
Fines and penalties are written off for all taxpayers under the following conditions:

- if the **tax debt** is repaid in full by monetary assets within six months from the effective date of the **Law No.1071 (until June 10, 2021)**. This refers to the amounts of tax debt without penalties, fines, but taking into account unpaid interest for the use of installment/deferral of tax debt (if any), **as of November 1, 2020**.
- in case of payment of **current tax liabilities** in full.

If these two conditions are met, the penalties and fines that remain unpaid on the date of full payment of such tax debt are written off in accordance with **Art. 101 of the TCU, upon the application of the taxpayer**.
This rule applies to any tax debt, regardless of its amount: if it is paid before June 10, 2021, in fair payment of current liabilities, fines and penalties do not apply.
But the above provisions do not apply to:

- large taxpayers that meet the criteria set out in **paragraph 14.1.24 of the TCU;**
- persons subject to court proceedings defined by the **Bankruptcy Procedure of the Code of Ukraine;**
- persons in respect of whom there are court decisions that have come into force and according to which the collection of tax debt is deferred;
- banks to which the norms of the **Law "On Deposit Guarantee System for Natural Persons"** are applied**;**
- persons who have a tax debt on customs payments;
- persons who have outstanding sanctions for violating legislation in the field of foreign economic activity and fines.

Legal entities will not pay income tax for one-time compensation of USC and written off tax debts

Subsection 4 "Peculiarities of corporate income tax collection" of Section XX of the TCU is supplemented by clause 54, which exempts the received compensation and written off tax debts from income tax.
Namely, the pre-tax financial result for tax purposes is reduced by the amount of income in the form of:

- **immediate compensation** received **by business entities** as per the **Law No.1071** and included in the income of the accounting period in accordance with National Accounting Regulations (Standards) (NAR(S)) or International Financial Reporting Standards (IFRS). Mind that according to Accounting Regulations (Standards) (AR(S)) such compensation is included in other operating income: debit 311 credit 685, then debit 685 credit 719 that will further increase the financial result of debit 719 credit 791;
- **written off fines and penalties** in accordance with clause 2-3 and **written off tax debt** in accordance with clause 2-4 of subsection 10 of section XX of the TCU (as commented above) and included in the income of the accounting period in accordance with (NAR(S)) or IFRS. Following (AR(S)), such amounts are reflected by the record: debit 641, 642 credit 717, which increases the financial result: debit 717 credit 791.

Natural persons will not pay taxes on one-time government aid and debt remission on USC

It is worth reminding that a program of state support for businesses and their employees has been recently adopted. The types of financial assistance that can be obtained under this program are defined by the Law No.1071.
The commented Law No.1072 added paragraph 15, 16, 17 to subsection 1 of section XX of the TCU, according to which the following types of financial assistance received by natural persons – income tax payers in accordance with the Law No.1071 are exempted from income tax:

- **one-time financial assistance** provided **to insured persons** in accordance with **art. 2 of the Law No.1071** in fixed amount of UAH 8,000 to employees of employers who have certain KVEDs (Ukrainian Industry Classification System). The insured person as interpreted by the **Law on USC**, and financial assistance is covered by the state budget;
- **one-time financial assistance to employers** covered by the state budget in accordance with **art. 3 of the Law No.1071,** which they then pay to employees. The amount of assistance **depends on the working hours of the employee** which is reduced or planned to be reduced, including due to downtime, and may not exceed UAH 8,000 per employee. Accordingly, the employer as a tax agent does not deduct the income tax from such assistance;
- **written off amounts of arrears on USC,** as well as amounts of fines and penalties accrued on these amounts of arrears, are written off as to the USC payer in accordance with **clause 9-15 of the Law on USC.** This refers to the USC amounts accrued to "sleeping" sole proprietorships for the period from January 1, 2017 to December 1, 2020;
- **written off fines and penalties** for late payment of tax debts, which are written off in accordance with the new rules of cl. 2-3 and 2-4 of subsection 10 of section XX of the TCU. In particular, the written-off tax debt of the taxpayer, the total amount of which with all taxes and fees does not exceed UAH 3,060 (inclusive), is exempted from income tax. Such remission is carried out without applying provisions of **art. 101 of the TCU** (signs of bad tax debt).

The **exemption of these revenues from military tax** is provided as well (amendments to **cl. 1.10 of cl. 16-1 of subsection 10 of section XX of the TCU**).

Payments to insured persons in the form of **one-time financial assistance to insured persons**, as well as those carried out through **one-time financial assistance to economic entities** covered by the state budget in accordance with the Law No.1071 are also exempted from USC. This is provided for by cl. 9-17 of Section VIII "Final and Transitional Provisions" of the Law on USC.

EXEMPTION OF ONE-TIME ASSISTANCE TO SINGLE TAX PAYERS FROM SINGLE TAX

The new clauses 6 and 7 of subsection 8 of section XX of the TCU provide for the exemption of single tax payers from single tax on the following cash receipts to the account:

- the amount received as a **one-time compensation to single tax payers – legal entities** in accordance with **art. 4 of the Law No.1071**;
- the amount received as a **one-time financial assistance to insured persons**, which is paid to a natural person – single tax payer as covered by the state budget in accordance with art. 2 of the Law No.1071. Accordingly, this amount is not registered by the sole proprietorship in the ledger.

Exemption of sole proprietorships – single tax payers of group 1 from single tax and USC

Sole proprietorships – single tax payers of the first group (the terms of referring business to this group are defined in **paragraph 1, cl. 291.4 of the TCU) are exempt from paying the single tax for December 2020 and January – May 2021 (i.e. for 6 months).** In this case, the single tax rates for the first group of single tax payers, established in the manner prescribed by **cl. 293.2 of the TCU**, are not applied for these months. This is provided by **cl. 52-9 of subsection 10 of section XX of the TCU**. However, in case such taxpayers violate the conditions under which they are referred to the first group of single tax payers, the exemption shall not apply. That is, if group 1 sole proprietorships in the first half of 2021 exceed the amount of income allowable for this group, they will have to pay single tax for the entire exemption period.

The same consequences will occur if during these months the first group sole proprietorships violate other conditions – for example, make non-monetary payments or provide services to "wrong" customers. If, for example, this happens in May 2021, then, obviously, they will have to pay single tax for December 2020 and January - May 2021 on a common basis.

Sole proprietorships – single tax payers of the first group are exempted from accrual and payment of USC for themselves for periods:

- **December 1-31, 2020,**
- **January 1-31,**
- **February 1-28,**
- **March 1-31,**
- **April 1-30,**
- **May 1-31, 2021.**

At the same time, they may voluntary pay USC for these months on a common basis, reflecting these amounts in the USC report according to the form presented in Annex 5.

This is provided by **paragraph 9-10.1 of clause 9-10 of section VIII "Final and Transitional Provisions" of the Law on USC**.

With this, **in case of failing USC payment the insurance job seniority is retained** (new paragraph 14-5.1, cl. 14-5 of Section XV "Final Provisions" of the Law "On Compulsory State Pension Insurance"). The periods from December 1-31, 2020, January 1-31, February 1-28, March 1-31, April 1-30 and May 1-31, 2021 are included in the insurance job seniority and it is considered that insurance proceeds were paid in the amount of minimum insurance premium determined by law for each of these periods.

Exemption of some sole proprietorships from paying USC for themselves in December 2020.

For USC payers covered by the Law No.1071, the provisions of **paragraph 2, cl. 2, part 1 of art. 7 of this Law on SSC** in terms of paying a unified contribution for themselves are not applied in December 2020. Note that the Law No.1071 provides for social support in the form of one-time financial assistance to insured persons and one-time financial assistance to business entities.

The business entities who are entitled to receive assistance under the Law No.1071 may not pay USC for themselves in December 2020 in the absence of income.

At the same time, such entities may decide on the accrual, calculation and payment of USC for the period specified in the first paragraph of the clause thereof, in the amounts specified by the Law thereof. In this case, information on the amounts paid shall be indicated in the report on accrual of a unified contribution for the accounting period defined for such entities by the Law thereof.

This is provided for in cl. 9-16 of Section VIII "Final and Transitional Provisions" of the Law on USC.

Remission of arrears on USC for "sleeping" sole proprietorships and independent professionals for the period of 2017 – 2020.

The new revision of cl. 9-15 of Section VIII "Final and Transitional Provisions" of the Law on USC was another attempt of the state to write off the arrears on USC for "sleeping" sole proprietorships for the period of 2017 - 2020.
Remission is carried out at the **payer's application** and in the manner prescribed by the Law on USC.
Amounts of arrears on USC, unpaid **as of December 1, 2020**, accrued to USC payers – **sole proprietorships in the general taxation system and persons engaged in independent professional activity**, for the period **from January 1, 2017 to December 1, 2020** are written off, as well as fines and penalties accrued on these amounts of arrears through the filing date of application for arrears remission.
Lack of income (profit) from their activities which is subject to income tax is a mandatory condition. Lawmakers did not specify the period during which the lack of income is required, but obviously, it shall be understood as the same period for which arrears are written off.
An application for arrears remission can be filed by **sole proprietorships in the general taxation system** if the following conditions have been fulfilled:

- they are USC payers as of the date of filing the application for arrears remission, or they were considered USC payers as sole proprietorships in the general taxation system for the period from January 1, 2017 to the date of filing the application;
- **by March 1, 2021,** they have filed an application for termination of sole proprietorship business to the state registrar at the location of the registration file of the sole proprietorship;
- they have submitted reports to the tax authority in accordance with the requirements of the second part of Article 6 of the Law thereof for the period from January 1, 2017 to December 1, 2020. That is, all reporting on USC years to date must be filed.

The application for termination of sole proprietorship business and the reporting on USC shall only be filed by the payer (person) if they have not been filed before.
Persons engaged in independent professional activity may file an application for arrears remission, provided that the following conditions are met:

- they are USC payers as of the date of filing the application for arrears remission, or they were considered USC payers as persons engaged in independent professional activity for the period from January 1, 2017 to the date of filing the application;
- **by March 1, 2021,** they have filed to the tax authority for the main place of registration the applications for their deregistration as unified contribution payers;
- they have submitted reports to the tax authority in accordance with the requirements of the second part of Article 6 of the Law thereof for the period from January 1, 2017 to December 1, 2020. That is, all reporting on USC years to date must be filed.

The application for deregistration and the reporting on USC shall only be filed by the payer (person) if they have not been filed before.
Within 15 working days from receipt date of the application for arrears remission the tax authority conducts a desk audit based on which it makes a decision to write off the amount of arrears, penalties and fines or a reasoned decision to refuse to write off arrears, penalties and fines.

The tax authority may decide to refuse to write off the amount of arrears, penalties and fines, if:

- the taxpayer received income (profit) from entrepreneurial and/or independent professional activity during the period from January 1, 2017 to December 1, 2020;
- the amounts of arrears, as well as fines and penalties accrued on the amounts of arrears, have been fully paid by the payer (person) themselves or collected in the manner prescribed by the Law on USC. This means that the amounts of USC, fines and penalties paid will not be written off or refunded. If the amounts of arrears, as well as fines and penalties accrued on the amounts of arrears, have been partially paid by the payer (person) themselves and/or collected in the manner prescribed by the Law thereof, the tax authority shall decide to write off the amount of arrears, fines and penalties that remained unpaid.

Under the above conditions, fines to the unified contribution payer provided by **cl. 7, part 11, art. 25 of the Law on USC** in case of failure to file, late file, failure to file in the prescribed form of reporting on USC, will not be applied!

The Law of Ukraine of 04.12.2020 No. 1071 "On Social Support of Insured Persons and Business Entities for the Period of Establishing Restrictive Anti-Epidemic Measures Introduced to Prevent the Spread throughout Ukraine of Acute Respiratory Disease COVID-19 Caused by Coronavirus SARS-CoV-2" (came into force 10.12.2020), was adopted to provide one-time financial assistance to both insured persons (i.e. employees and sole proprietorships) and employers (legal entities).
The law provides for three types of assistance:

1) one-time financial assistance to insured persons (employees and sole proprietorships) in the amount of UAH 8,000;
2) one-time financial assistance to legal entities to save jobs;
3) one-time compensation for legal entities to reimburse the costs incurred for the USC paid for employees.

MINIMUM WAGE AND SUBSISTENCE MINIMUM IN 2021

The Law of Ukraine "On Ukraine State Budget 2021" establishes the following:
Minimum monthly wage:
From January 1, 2021 – UAH 6,000.0.
From December 1, 2021 – UAH 6,500.0.
Minimum hourly wage:
from January 1 – UAH 36.11,
from December 1 – UAH 39.12.

Subsistence minimum per person per month:
from January 1, 2021 – UAH **2,189**;
from July 1, 2021 – UAH **2,294**;
from December 1, 2021 – UAH **2,393**.

Subsistence minimum **for able-bodied persons:**
from January 1, 2021 to June 30 – UAH **2,270;**
from July 1 to November 30 – UAH 2,379;
from December 1 – UAH 2,481.

In 2021, **tax social privilege** will amount to **UAH 3,180.0.**
(2270*1.4).

USC. Maximum base for the assessment of USC (15 minimum wages)**:**
— from **January 1** to November - **UAH 90,000**,
— from December 1 – UAH 97,500.
Minimum insurance premium (USC rate is 22% of minimum wage):
— from **January 1** to November – **UAH 1,320**,
— from December 1 – UAH 1,430.

Per diem. The amount of tax-free per diems for business trips:
- within Ukraine – **UAH 600** (10% of minimum wage);
- abroad – not more than 80 euros for each calendar day of such a business trip at the official exchange rate of hryvnia to the euro set by the NBU, calculated for each such day.

FROM JANUARY 1, NEW ACCOUNTS ON USC AND TAXES ARE VALID

The State Treasury Service of Ukraine (hereinafter – the State Treasury) announces: starting January 1, 2021, new accounts to pay USCs and taxes came into force. From this date, the amounts paid on the old accounts will be returned to payers as unidentified receipts.

The State Treasury **informs** that in accordance with **the resolution of the Verkhovna Rada of Ukraine dated 17.07.2020 No.807-IX** "On the formation and liquidation of districts", and with **art. 4 of the Law of Ukraine dated 08.07.2010 No.2464-VI** "On the collection and accounting of a unified contribution for compulsory state social insurance" (as amended), **from 01.01.2021 new accounts for crediting receipts to state and local budgets and unified contribution for compulsory state social insurance (hereinafter – USC) are introduced.**

In order to properly and timely pay taxes, fees, USC and minimize unidentified receipts, the State Treasury requests **to urgently apply** to the State Tax Service of Ukraine at the place of registration to obtain new account details.

At the same time, the State Treasury emphasizes that **the funds paid by taxpayers to the old accounts for crediting taxes, fees and USCs will not be credited, but returned to taxpayers as unidentified receipts.**

CERTAIN PROVISIONS OF THE TAX LAW No.466 ARE DEFERRED: THE LAW IS PUBLISHED!

On December 31, 2020, in the "Voice of Ukraine" No.243 (7500) **the Law of 17.12.2020 No.1117-IX** "On amendments to the Tax Code of Ukraine and other laws of Ukraine to ensure the collection of data and information necessary for the declaration of certain taxable items" was published.

According to it, the effective date of a number of provisions introduced by the Law No.466 is postponed to a later period.

The document provides for the introduction of transparent and detailed mechanisms for the implementation of the provisions on restrictions introduced to prevent tax evasion; defining clear rules for the taxation of controlled foreign companies, as well as providing taxpayers with sufficient time to ensure the collection of data and information necessary to declare certain taxable items.

The adoption of the law was due to the difficult situation that arose in connection with the COVID-19 pandemic and the introduction of restrictive measures related to its spread throughout the world.

The document, in particular:

- makes changes in the tax legislation aimed at clarifying some provisions of transfer pricing;
- clarifies the grounds for administrative arrest termination;
- clarifies the provisions on the adjustment of financial results before tax for transactions that have no business purpose;
- prescribes specific features of excise tax collection;
- clarifies specific features of profit taxation of a controlled foreign company.

The Law shall come into force on the day following the day of publication (i.e. on January 1, 2021), except for amendments to paragraph 140.5.4, 140.5.5-1, 140.5.6 of the TCU, which will come into force on January 1, 2022.

The Law supplements the Tax Code of Ukraine with Article 39-2 which comes into force on January 1, 2022.

Within three months from publication date of the Law the Cabinet of Ministers of Ukraine shall:

- adopt regulatory legal acts necessary for the implementation of the Law;
- bring their regulatory legal acts in line with the Law;
- ensure that ministries and other central executive bodies bring their regulatory legal acts in line with the Law.

After bringing the regulatory legal acts in line with the Law, a detailed analysis of the changes introduced by Law No.1117 in the TCU and other Laws will be provided.

VALUE ADDED TAX

From January 1, the VAT rate for cultural and entertainment events and hotel services was reduced

The Law of Ukraine "On amendments to the tax code of Ukraine on state support of culture, tourism and creative industries" of 04.11.2020 **No. 962-IX**, effective from 23.12.2020, adopted:
the VAT rate of 7% is applied from 01.01.2021 and will be valid until January 1, 2023 for the supply of the following services:
– theatrical performances, operas, ballets, musical acts, concerts, puppet plays, audio presentations, choreographic, circus, light and other performances, productions, performances of professional art groups, artistic groups, actors and performers, cinematic premieres, cultural and artistic events;

– displaying original musical works, demonstrating exhibition projects, conducting excursions for groups and individual visitors in museums, zoos and reserves, visiting their territories and objects;

– distribution, screening, public announcement and public showing of movies adapted, in accordance with the legislation, into Ukrainian versions for the visually impaired and acoustically handicapped;

– temporary accommodation provided by hotels and similar facilities (class 55.10 group 55 KVED DK 009:2010).

Exempt from VAT temporarily, from January 1, 2023 to January 1, 2025:
– supply of services on showing, distribution and showing by demonstrators and distributors of national movies and foreign movies, which are dubbed, voiced in the state language on the territory of Ukraine, provided that such national movies and foreign movies are adapted, in accordance with the legislation, into Ukrainian versions for the visually impaired and acoustically handicapped.

SOFTWARE DEVELOPMENT AND VAT

In general, when considering the issues of VAT taxation of software development services, the tax authorities advise to refer to the provisions of the **Generalized Tax Advice No.536**.

These issues are traditionally related to the so-called "IT privilege", which is VAT-exempt supply of software products, as well as handling software products which fees are no royalty.
Below are VAT-exempt options:

- supply of software products (including the expansion of computer program functionality) with transfer of ownership (exclusive property rights) for such software products;

- supply of software products under which the executor acquires the right of ownership (exclusive property right) for the developed software products and further together with the developed software products transfers such right to the customer. In this case, the subcontractor's (VAT payer's) supply of software development services is subject to VAT taxation in accordance with the standard procedure at the basic rate, because in the process of its creation the subcontractor does not acquire the right of ownership (exclusive property right) for such software products or their components.

It should be noted that the privilege does not depend on whether the resident or non-resident supplies the relevant software products, as the privilege is applied to activity and not to payers.

Source: ITA STSU of 04.09.2020 No. 3700/IPK/99-00-05-06-02-06

STATE TAX SERVICE OF UKRAINE HAS APPROVED NEW TAX BENEFITS DIRECTORIES

On its official web portal, State Tax Service of Ukraine (hereinafter – the “STSU”) published new Directories on Tax Benefits No.100/1 which are losses of budget revenues, and the Directory on Other Tax Benefits No.100/2 as of 01.10.2020.

The directories provide a list of benefits concerning income tax, land fees, VAT, excise tax, real estate tax, local taxes and fees, state duty, as well as start and end of benefits thereof.

It will be recalled that the Report on 2019 tax benefits was last filed until February 10, 2020.

Now the accounting of the amounts of tax benefits provided for business entities is carried out by the supervisory authorities on the basis of information available in the tax returns submitted by such business entities.

In the Income Tax Return – Tax Benefits Annex "Information on the amounts of tax benefits", and mark "+" in the "Availability of annexes" box.

In the VAT return – Annex 6 "Calculation of value added tax amounts not paid by the business entity to the budget in connection with obtained tax benefits and/or indicators according to which the enterprise (organization) belongs to the enterprise (organization) of persons with disabilities".

NEW RULES OF FINANCIAL MONITORING

On September 23, 2020, the Resolution of the Cabinet of Ministers of 09.09.2020 No.850 “Some issues of organization of financial monitoring” (Resolution No. 850) was officially published (the Government Courier No.185/2020).
Resolution No. 850 will **come into force on January 1, 2021**.
Resolution No. 850 approved:

- **Information submission procedure for registration** (deregistration/renewal of registration) of reporting entities, registration and submission by reporting entities to the State Financial Monitoring Service of information on financial transactions subject to financial monitoring, other information, which may be related to the legalization (laundering) of proceeds of crime, terrorist financing and financing of the proliferation of weapons of mass destruction;
- **Procedures of the State Financial Monitoring Service for keeping records of information** on financial transactions subject to financial monitoring;
- **Procedures of the State Financial Monitoring Service for keeping records** of reporting entities.

Reporting entities (accounting companies, auditors, notaries, lawyers, etc.) will be able to submit information on financial transactions subject to financial monitoring via the account of the financial monitoring system. Such innovations will reduce material and time costs while performing their duties in this area.
Reporting entities also have the opportunity to accomplish their duty in terms of submitting new types of messages, namely:

- case reporting of suspicious financial transactions or customer activities;
- discrepancies between the information on ultimate beneficial owners of clients, discovered during the due diligence of the client (so-called, “customer due diligence”), and the information entered in the NRC (National Register of Companies and Sole Proprietorships) and the application of risk-oriented approach.

At the same time, the **Resolution of the Cabinet of Ministers of August 5, 2015 No.552** and clause 2 of the amendments to the resolutions of the Cabinet of Ministers approved by the **Resolution No. 343** were declared invalid.

INCOME TAX AND FINANCIAL STATEMENTS

NEW FORM OF INCOME TAX RETURN

The Ministry of Finance by the order of 29.10.2020 No.649 (registered in the Ministry of Justice on 18.11.2020 by No.1143/35426) made changes to the form of the income tax return.
Order No.649 came into force **on December 1, 2020**. It was published on 01.12.2020 in the Official Bulletin, No.94.
Four new annexes were added and "old" annexes were updated.

What has changed?
The return is supplemented with a new line 9 "Full name of the collective investment scheme2". In this regard, the footnote clarifies that the income tax return is submitted by the taxpayer – legal entity based on the results of the collective investment scheme activity (filled in box 9). If the taxpayer manages the assets of several collective investment schemes, the Corporate Income Tax Return is drawn up and submitted separately for each collective investment scheme without the status of a legal entity, the assets of which it manages in accordance with the Law of Ukraine "On collective investment schemes" by filling box 9 and marking the "collective investment scheme as an entity without the status of a legal entity2" in box 10 "Special marks".
In line 10, the ground of "single tax payer" is read with "business entity – legal entity that has chosen a simplified system of taxation." And it will be supplemented by the following grounds:

- a natural person – sole proprietorship, including those who have chosen the simplified taxation system, or a natural person who carries out independent professional activity;
- foreign company;
- collective investment scheme as an entity without the status of a legal entity2.

- In indicators:
- the line under code 06 is supplemented with the following line "Income tax of the controlled foreign company 06.1 KIK"
- the line under code 17 is rephrased as follows: "Income tax for the reporting (tax) period (line 06 + line 06.1 KIK + line 08 + line 10 + line 12 + line 15 - line 16 ZP)"
- the ground "Availability of annexes" is rephrased as well and the footnote specifies that appropriate boxes are marked with "+", except for the boxes under "PN" and "KIK", where the number of submitted annexes to the income tax return are indicated.

New annexes to the return and updating the old ones

The below annexes to the return **are stated in a new version**:

- Annex PN (ПН) “Calculation (Report) of Tax Liabilities of Non-Residents Receiving Income with the Source from Ukraine” to line 23 of PN Return;
- Annex RI (РІ) “Tax Differences” to line 03 of RI Return;
- Annex AM (АМ) “Amortization” to line 1.2.1 of Annex RI to line 03 of the RI Return.

In addition, the following changes have been made:

- line 16.5 on 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 from Annex ZP (accounting period). And the line under code 16 is stated in the following version: "Reduction of the accrued tax amount (line 16.1 + line 16.4.1 of the Annex ZP)";
- In Annex VP (ВП) “Calculation of Tax Liabilities for the Period when Mistakes were Identified”, changes have been made to lines 26 - 29, 31 - 33, 35. The line under code 06 shall be followed by a new line "Income tax of the controlled foreign company", and line under code 17 is rephrased as follows: "Income tax for the reporting (tax) period (line 06 + line 06.1 KIK + line 08 + line 10 + line 12 + line 15 - line 16 ZP)";
- In Annex PP (ПП) “Information on Amounts of Applied Tax Benefits” to the Return, the figure "1" in line 1 is excluded, as well as line 2.
  Subject to paragraph 141.4.2 of the TCU this annex can reflect the amount of income paid to a non-resident in any form other than cash.

The return is supplemented by new annexes:

- Annex KIK (on controlled foreign company) to line 06.1 of the KIK Return;
- Annex KIK-K to line 02 KIK-K of the Annex KIK to line 06.1 of the KIK Return;
- Annex KIK-TC (КІК-ТЦ) to the annex KIK to line 06.1 of the KIK Return;
- Annex KIK-TsP (КІК-ЦП) to lines 1.2 KIK-TsP, 1.3 KIK-TsP of the Annex KIK-K to line 02 KIK-K of the Annex KIK to line 06.1 of the KIK Return.

When you need to report using the new form?

In accordance with clause 46.6 of the TCU, the updated forms of tax reporting must be used for the period following the period of their official publication.
Since the order was published on December 1, 2020, the updated form of income tax return will have to be used for the first time:

- by payers with a quarterly accounting period – for the first quarter of 2021;
- by payers with an annual accounting period – for 2021.

BUDGETARY GRANTS IN THE FIELD OF CULTURE, TOURISM AND CREATIVE INDUSTRIES WERE EXEMPTED FROM TAXATION

Tax benefits are provided by the Law of Ukraine of 04.11.2020 No. 962-IX "On Amendments to the Tax Code of Ukraine on State Support of Culture, Tourism and Creative Industries", which is effective from 23.12.2020.

A budgetary grant is targeted assistance in the form of funds or property provided free of charge and on non-refundable basis covered by the state and/or local budgets, international technical assistance for the implementation of a project or program in the field of culture, tourism and creative industries, sports and other humanitarian spheres in the manner prescribed by law. The list of budgetary grant providers will be determined by the Cabinet of Ministers.

Income in the form of a budgetary grant during its accrual (payment, provision) in favor of the taxpayer is not subject to taxation and is not included in the taxable income.

The financial result before taxation will be reduced by the amount of budgetary grants obtained by the taxpayer and included in the income of the accounting period.

In addition, the amount of the grant is not included in the income of the single tax payer and persons engaged in independent professional activity.

ANNUAL REPORTING ON INCOME TAX, TAX DIFFERENCES (LAW No.466)

The Law of Ukraine No. 466-IX "On Amendments to the Tax Code of Ukraine to Improve Tax Administration, Eliminate Technical and Logical Inconsistencies in Tax Legislation" (Law No. 466-IX) amended **paragraph 134.1.1 of the TCU** in terms of increasing the value criterion of annual income from UAH 20 million to UAH 40 million to waiver differences (came into force on May 23, 2020) and to **paragraph 137.5 of the TCU** in terms of increasing the value criterion of annual income to apply annual accounting period (will come into force on January 1, 2021).

In accordance with **paragraph 134.1.1 of the TCU**, a taxpayer whose annual income (net of indirect taxes) determined by accounting rules for the last annual accounting period **does not exceed forty million hryvnias**, has the right to waiver all differences as to adjustments of the financial result before taxation (except for the negative value of taxable activity of previous taxation (reporting) years), determined in accordance with the provisions of this section, not more than once during a continuous set of years with each year meeting this criterion for level of income.

The taxpayer shall indicate the decision in the tax reporting on the tax, which is filed for the first year in such a continuous set of years. In subsequent years of the set the adjustments to the financial result are also not applied (except for the negative value of taxable activity of previous taxation (reporting) years).

This means that corporate income taxpayers whose annual income for the reporting year 2020 does not exceed UAH 40 million will be able to:

- decide to waiver all differences as to adjustments of the financial result before taxation (except for the negative value of taxable activity of previous taxation (reporting) years), determined in accordance with the provisions of **section III of the TCU**, in 2020 return;
- apply in 2021 the annual tax (reporting) period for corporate income tax.

At the same time, in 2020, the annual tax (reporting) period for corporate income tax is applied by taxpayers whose annual income for the 2019 reporting year does not exceed UAH 20 million.

That is, legal entities that in the tax year 2019 received accounting income (net of indirect taxes) over UAH 20 million, file an income tax return for the 1st quarter, 6 months, 9 months of 2020 and for the year 2020.

If the payer's accounting income for 2020 does not exceed UAH 40 million, then they will further report only for 2021. Meanwhile, if the payer's accounting income for 2020 exceeds UAH 40 million, in 2021 they will be in the quarterly accounting period.

Revenue officers noted in subcategory 102.12 "ZIR" that the taxpayer, whose income in 2019 exceeded UAH 20 million, files income tax returns for the reporting quarter, half-year, three quarters of 2020 and adjusts the financial result before taxation for these periods (tax differences - Annex RI). But in case of not exceeding the income threshold (UAH 40 million) they have the right to declare in the 2020 annual tax return a waiver of tax differences and their reflection in Annex RI to the 2020 return (except for the negative value of taxable activity of previous taxation (reporting) years).

At the same time, clarifying returns for the first quarter, half-year and three quarters are not filed.

FINANCIAL STATEMENTS

Business entities file financial statements:

- to the State Tax Inspection (hereinafter – the "STI"), if the person is a payer of income tax;
- to statistical authorities.

The accounting period and the form of financial statements are determined regardless of the income tax accounting period.
Annual financial statements are filed to the STI only by micro-enterprises.
Small enterprises file quarterly financial statements to the statistical authorities, and if the annual accounting period is applied to the income tax, quarterly financial statements are not filed to the tax authorities.

FINANCIAL STATEMENTS TO STATISTICAL AUTHORITIES

Interim (quarterly) financial statements are drawn up based on the results of the first quarter, first half-year, nine months (financial accounting period, shorter than the full financial year (**cl. 4 of IAS 34**). According to accounting policies, financial statements may be drawn up for other periods.

Only annual financial statements are mandatory (paragraph 16, cl. 2 of the Procedure No.419):

- for micro-enterprises;
- for non-profit organizations;
- for single tax payers of group III who keep simplified accounting in accordance with the TCU;
- for start-ups.

With regard to the latter, the company's affiliation to a certain category is only determined on the basis of annual financial statements. That is, if the company was established in 2020, it determines its category according to the financial statements for 2020.

Warning! Small enterprises (criteria are given in **Part 2 of art. 2 of the Law on Accounting**) must draw up interim financial statements.

REGARDING FINANCIAL STATEMENTS TO THE STS

In 2020, the annual accounting period on income tax is used by taxpayers whose annual income for the 2019 financial year does not exceed UAH 20 million.

Therefore, income tax payers who file a quarterly return shall submit along with it (as part of it) an annex – financial statements for the period thereof.
In case of transition to the simplified system, **an income tax return** for the accounting period preceding the quarter from which the person switches to the simplified system shall be filed within 40 business days following the last calendar day of the accounting period.
For example, those who have become single tax payers starting from the IV quarter of 2020, file an income tax return for the three quarters of 2020, along with the relevant **financial statements.**

FILING TERMS

Interim (quarterly) financial statements are filed:

- to statistical authorities no later than on the 25th day of the month following the financial quarter;
- to the STI within the timeframe for filing a corporate income tax return.

FORMS OF FINANCIAL STATEMENTS

For micro-enterprises, **small enterprises**, non-profit companies and representative offices of foreign economic entities, **excluding those** required to draw up financial statements in accordance with international standards, condensed financial statements as part of the balance sheet and profit and loss statement are established **(Part 3 of art. 11 of the Law on Accounting).**

Therefore, small enterprises file: Balance sheet **(Form No.1-m)** and profit and loss statement **(Form No.2-m).**
Medium and large enterprises also file interim quarterly reports on AR(S) as part of the balance sheet and profit and loss statement (see **paragraph 15 of cl. 2 of the Procedure No.419**).
Income tax payers who draw up financial statements in accordance with international standards, along with the return, file interim financial statements consisting of either a complete set of financial statements (defined in IAS 1) or a set of condensed financial statements (the components of a complete set of financial statements are given **in cl. 5 of IAS 34**, and the minimum components of the interim financial statements – in **cl. 8 of IAS 34**).

ACCOUNTING POLICY AT THE ENTERPRISE

Does a small enterprise need an accounting policy order?

Under what date can an accounting policy order be approved if the enterprise was established some time ago but the accounting policy has not been approved? And whether it is necessary for the small enterprise to approve it under the simplified system of the taxation?

Any company needs an accounting policy. De facto, each company, which had to choose one accounting alternative from several allowed, is thus forming its accounting policy, even if it does not issue a separate order.

Under normal circumstances, an accounting policy order is issued either under the date of state registration of the enterprise or at the beginning of any financial year to apply the new policy from the beginning of the new accounting period. However, it may be different in practice.

There must be sufficient grounds to change the accounting policy. The conditions allowing to change the accounting policy are specified in **cl. 9 of AR(S) 6**:

- when the statutory requirements are changed;
- when the requirements of the body that approves the accounting regulations (standards) are changed;
- when the changes provide a reliable reflection of events or transactions in the financial statements of the enterprise.

For example, if an enterprise in the middle of the accounting period finds out that the current accounting policy does not provide a reliable reflection of events or transactions in the financial statements, it shall change the accounting policy so as to correct it.

In accordance with **cl. 11 of AR(S) 6**, the accounting policy is applied to events and transactions from the moment of their occurrence. That is, in the event of such a change in accounting policy, all previous financial statements will need to be corrected by listing all such transactions under the new accounting policy.

If the accounting policy order has not been approved, it is better to approve it starting from the new financial year, i.e. on the first working day of January.

There is neither obligation to approve the accounting policy order nor responsibility for non-approval. There is only responsibility for incorrect accounting and inaccurate financial statements, but it is possible to keep proper records and draw up accurate financial statements without an approved accounting policy order.

The main thing is to make the right and professional decisions in those cases where the accounting rules provide a choice from several possible alternatives, and thus ensure the reliability of financial statements. It is also important to follow the requirements provided in cl. 9 of AR(S) 6 and not to change previously selected alternatives without sufficient grounds.

Each company is unique, so it shall define its accounting policy independently, taking into account its events and transactions, as well as the professional judgment of the management of accounting professionals.

NEW FORM OF REPORT ON EMPLOYMENT OF PERSONS WITH DISABILITIES

Order of the Ministry of Social Policy of Ukraine dated 27.08.2020 No.591 "On Approval of the Form No. 10-POI (10-ПОІ) (annual)" Report on Employment of Persons with Disabilities" and Instructions for its Completion", registered in the Ministry of Justice dated 13.10.2020 under No.1007/35290 came into force on 27 October due to publication in the *Official Gazette* on 27.10.2020 No.84.
The order approves:

- new **form No.10-POI (10-ПОІ) (annual) "Report on employment of persons with disabilities";**
- Instructions for filling in the form No.10-POI (10-ПОІ) (annual) "Report on employment of persons with disabilities".

The new form No.10-POI (10-ПОІ) (annual) will be introduced starting with the report for 2020.

Who and when shall file this report?
The form No.10-POI (10-ПОІ) (annual) is filed by enterprises, institutions, organizations, including enterprises, public organizations of persons with disabilities, natural persons using hired labor to the branch of the Social Security Disability Fund at its location no later than March 1 of the year following the financial year.

WHAT HAS CHANGED AND HOW TO COMPLETE FORM No.10-POI (10-ПОІ)?

According to the Instructions, the form No.10-POI (annual) is completed in the state language by enterprises, institutions, organizations, including enterprises, public organizations of persons with disabilities, natural persons using hired labor, who are primary employers for at least eight people (hereinafter – employers).

The report is signed by the head and the chief accountant (if any). All columns and lines in the report shall be filled in clearly and legibly. The missing data are marked with a dash. The correction is confirmed by the signature of the head.

Employers with separate divisions are employers who are fully supported by state or local budgets or business associations established to coordinate production, research and other activities to address common economic and social problems. Along with the report, they file to the branch of the Social Security Disability Fund at its location the documents specified in the Enrollment Procedure for persons with disabilities to meet the standards of such jobs, defined by **Article 19** of the Law of Ukraine "On Social Protection of Persons with Disabilities in Ukraine" (Procedure **No.70**), as well as a list of enterprises using the pro-forma provided in the annex to the report.

The address part of the report and the grid of codes are filled in by employers according to the EDRPOU.

Natural persons indicate the taxpayer's identification number or the series (if any) and number of passport of a citizen of Ukraine (for natural persons who due to their religious beliefs refuse to receive the taxpayer's identification number and notify the supervisory authority and have the mark in the passport).

Also in the section "Codes of the respondent organization" now it will be necessary to note:

- features of non-profitability according to the Register of non-profit institutions and organizations,
- forms of financing (budget - 1, self-financing - 2, membership fees - 3, combined - 4).

The section "Number of employees and payroll" has also been changed. Regarding the number of employees, **the distribution by sex (women and men), place of residence (city or villages and urban villages), age (18-35 years, 35-60 years, over 60 years) is taken into account).**

Line **01** shows the average number of full-time employees of the accountable staff for the financial year, which is determined in accordance with clause 3.2 of Chapter 3 of the **Instructions on statistics of the number of employees** by sex, age and place of residence.

Line **02** shows the average number of full-time employees for the financial year, who, in accordance with current legislation, have a disability, with a breakdown by sex, place of residence and age. If a natural person who uses hired work has a disability in accordance with applicable law they increase the rate of line 02 per unit.

Line **03** shows the number of full-time employees with disabilities who, in accordance with the standards of job sites for persons with disabilities must work in the workplaces created by the employer. The indicator of line 03 for employers with more than 25 employees is determined by multiplying the indicator of line 01 by 4%; for employers with 8 to 25 employees, equals 1.

Data on the average number of full-time employees (line 01), the average number of full-time employees with disabilities in accordance with current legislation (line 02), and the number of persons with disabilities who must work in the workplace (line 03) are displayed in whole units. If a fractional number occurs during the calculation, the rounding-off rule is applied: if digit 1 to 4 follows the comma, drop it, if digit 5 to 9 follows the comma, the number to be rounded is increased by 1.

Line **04** reflects the amount of actual accruals from the salaries of full-time employees of the accountable staff, specified in line 01, for the financial year.

Line **05** shows the average annual wage of a full-time employee.

Line **06** shows the amount of administrative and economic sanctions that must be paid by the employer in case of non-compliance.

WHEN TO REPORT WITH THE NEW FORM FOR THE FIRST TIME?

According to the text of the order, the new form and the Instructions **will come into force starting from the report for 2020.**

Accordingly, since October 27, the **order of the Ministry of Labor dated 10.02.2007 No.42** "On approval of the form No.10-PI (10-ПІ) (annual) "Report on employment of persons with disabilities" and the Instruction on completing the form No.10-PI (10-ПІ) (annual) "Report on employment of persons with disabilities" is not valid.

REPATRIATION TAX: WHETHER IT IS POSSIBLE TO PAY AT UKRAINIAN COMPANY'S EXPENSE

Is it possible to state in agreements with non-residents that the repatriation tax will be paid at the Ukrainian company's expense?

Now, after the enactment of the Law of Ukraine "On Amendments to the Tax Code of Ukraine to Improve Tax Administration, Eliminate Technical and Logical Inconsistencies in Tax Legislation", the Tax Code of Ukraine does not prohibit to write into the agreement with a non-resident a condition under which such income tax is paid by the Ukrainian party.
Until 23.05.2020, the TCU established a taboo for such wording in agreements with non-residents.

Repatriation tax obligation
Any income received by a non-resident that is originated from Ukraine is taxed in the manner and at the rates specified in cl. 141.4 of the TCU. A resident, incl. a sole proprietor, a natural person performing independent professional activity, or business entity (legal entity or sole proprietor) who has chosen a simplified taxation system, or another non-resident who undertakes an economic activity through a permanent establishment in Ukraine who pay to non-residents or persons authorized by them income, listed in paragraph 141.4.1 of the TCU. Repatriation tax is bound to be withheld from the amount of such income at a rate of 15%.
The tax withheld from a non-resident is paid by the resident to the budget when conducting the payment of income to the non-resident and at the latter's expense (paragraph 141.4.2 of the TCU). The TCU states that such rules apply unless international treaties between Ukraine and the countries of residence of the beneficiaries do not indicate otherwise.
Exception: the advertising tax is assessed "on top" at a rate of 20% (paragraph 141.4.6 of the TCU).
A resident who must pay a repatriation tax is a revenue agent. Revenue agents are in fact income tax payers as to the income of a non-resident originated from Ukraine and have the right and perform the obligations established by the TCU for taxpayers (paragraph 133.1, cl. 18.2 of the TCU). And each person is obliged to pay the taxes and fees established by the TCU and the laws on customs procedures, the payer of which they are in accordance with the provisions of the TCU (cl. 4.1 of the TCU).

Until 23.05.2020, in paragraph 141.4.9 of the TCU, it was clearly stated: in the case of concluding agreements with non-residents, **it is not allowed to include tax clauses, according to which enterprises that pay income undertake to pay income taxes of non-residents**.

Following the amendments to the TCU by Law No. 466, the above paragraph was excluded, so there is no such prohibition now. However, we will not find in the TCU the direct permission to do it.
But it is defined: according to paragraph 141.4.2 of the TCU, the repatriation tax is withheld, since it is paid at the expense of a non-resident, unless otherwise provided in the International Treaty. And only the advertising tax is assessed at resident's expense (paragraph 141.4.6 of the TCU).

Therefore, if the agreement stipulates that the resident shall pay the repatriation tax it ignores the requirement of paragraph 141.4.2 of the TCU (unless otherwise stated in the Convention). So, we advise: if the Ukrainian part wants to pay the tax so that the non-resident could receive the planned amount net of any taxes, it is worth to calculate and fix the agreement price taking into account the imputed tax.

However, imagine that the agreement does not provide for anything separately, the amount was paid without withholding the tax (it was ignored or forgotten to be withheld under paragraph 141.4.2 of the TCU), in which case there will be a special rule applied on how to calculate the amount of this tax.

The mentioned special rule appeared on 23.05.2020, and it is actually reduced to the use of the "natural factor".
According to paragraph 141.4.2 of the TCU, if the income is paid to a non-resident in any form other than cash, or if the non-resident's income tax was not deducted from the relevant income at the time of its payment (including income treated by the TCU as dividends), such tax is due and payable according to the following calculation:

Tp = AI x 100 / (100 – TR) – AI, where:

Tp - the amount of tax payable;
AI - the amount of income paid;
TR - tax rate set by paragraph 141.4.2 of the TCU.

So, if you do not withhold income tax from a non-resident's income originated from Ukraine (of course, we are talking about income that was subject to taxation), the tax will have to be calculated and paid at your own expense.

Note
If International Treaty standards stipulate other rules, guided by art. 3 of the TCU, if an international treaty, consent to be bound by which was given by the Verkhovna Rada of Ukraine, establishes other rules than those provided by the TCU, the rules of the international treaty are applicable. This is confirmed by paragraph 141.4.2 of the TCU.

According to cl. 103.1 of the TCU, the rules of Ukrainian international treaty are applied by:

- exemption from taxation the income originated from Ukraine;
- reduction of the tax rate;
- refunding the difference between the amount of tax paid and the amount that the non-resident shall pay in accordance with the Ukrainian international treaty.

A person (tax agent) has the right to independently apply the tax exemption or reduced tax rate provided by the relevant Ukrainian international treaty when paying income to a non-resident, if such non-resident is a beneficial (actual) recipient (owner) of income (when required by the International Treaty) and resident of the country with which the Ukrainian international treaty is concluded.
The Ukrainian international treaty in terms of tax exemption or reduced tax rate is only applied when the non-resident provides the person (tax agent) with a document confirming the status of a tax resident (cl. 103.2 of the TCU).

Conclusion: The TCU does not explicitly provide for the right of a resident to bear the burden of paying the repatriation tax. But today it does not contain a clear ban for it (as it was until 23.05.2020). Given the wording in paragraph 141.4.2 of the TCU, the tax is paid at the expense of the non-resident (advertising tax is an exception, it is accrued and paid at the expense of the resident).

However, if this rule is ignored, then the resident will be responsible for paying the tax based on the "natural factor" formula set out in paragraph of the TCU.
Liability for failure to withhold and pay the income tax of a non-resident. According to cl. 127.1 of the TCU, failure to assess, withhold and/or pay (transfer) taxes by the taxpayer, including the tax agent, before or during the payment of income in favor of another taxpayer a fine of the following amount is envisaged:

25% of the tax amount due and/or payable to the budget;

50% of the tax amount due and/or payable to the budget, if the same actions are repeated within 1095 days;

75% of the tax amount due and/or payable to the budget, if the same actions are repeated within 1095 days for the third time or more.

The responsibility for repayment of the amount of tax liability or tax debt arising as a result of such actions, and the obligation to repay such tax debt rests with the person designated by the TCU, including the tax agent. Meanwhile, the taxpayer - the recipient of such income is released from the obligation to repay this amount of tax liabilities or tax debt, except as provided in Section IV of the TCU.

Specialists of the SFSU in the explanation of category 102.18 of section "Questions and answers from the Knowledge Base" ZIR (zir.sfs.gov.ua) also emphasize:
"…the fine provided by art. 127 of the TCU is applied to the taxpayer who pays income to a non-resident without deducting and paying to the budget the income tax, or who has paid to the budget the tax on the non-resident's income in full, but beyond the deadline".

During the quarantine period - from March 1, 2020 to the last day of the last month of quarantine – there is no liability for errors in income tax, in particular for failure to assess or pay this tax (cl. 521 of subsection 10 of section XX of the TCU). Therefore, if the payment of income to a non-resident occurred during this period, but erroneously the tax was not paid or reflected in the statements, there will be no fine for it.

A person who pays income to a non-resident is obliged to file to the controlling body a report on income paid to non-residents, and income tax withheld and paid to the budget (cl. 103.9 of the TCU). Annex PN (ПН) to the Return functions as such a report.

In particular, the amount of taxes withheld during the payment of income (profits) to non-residents for the accounting (tax) period is reflected in Table 1 "Calculation (report) of tax liabilities of non-residents who received income originated from Ukraine" of Annex PN (ПН) and transferred to line 23 of the PN (ПН) of such Return.

Conclusion:
The agreement with a non-resident should not stipulate that the repatriation tax will be paid by the Ukrainian party at its own expense. After all, in paragraph 141.4.2 of the TCU it is specified that the payment is performed at the expense of the income paid (i.e. withholding), the exception is the advertising tax (paragraph 141.4.6 of the TCU).
However, if the payment was made without withholding the tax, it must be calculated according to a special formula given in paragraph 141.4.2 of the TCU, i.e. you must actually use the "natural factor" and pay at your own expense.

LABOR RELATIONS, WAGES

FROM DECEMBER 12, THE AVERAGE WAGE IS CALCULATED IN A NEW WAY – CHANGES TO PROCEDURE No.100

The Cabinet of Ministers of Ukraine by **Resolution of 10.12.2020 No.1213** amended the Procedure for calculating the average wage (hereinafter - the Procedure No.100).

The new rules will be applied on December 12, 2020, the date of publication of the Resolution No.1213 in the Government Courier No.243 of 12.12.2020. Major changes:

- **The Procedure No.100** is applied to natural persons acting as employers;
- standards on adjusting the average wage in connection with the wage increase are excluded;
- the list of cases of the Procedure No.100 application has been updated;
- the notion of "other valid reason" for absence was canceled;
- an exhaustive list of payments that are not included average wage has been introduced;

The Procedure No.100 also applies to natural persons acting as employers

The changes provided for in the Procedure No.100, are applied to business entities (enterprises, institutions and organizations of all forms of ownership), which also include sole proprietors and natural persons who use the labor of employees within the labor relations.

Although in practice, natural persons acting as employers have used this Procedure before.

The average wage is no longer adjusted

Clause 10, which referred to the application of the adjustment factor was excluded from the updated **Procedure No.100**. Therefore, now it is not necessary to adjust the average wage despite the wage increase in the billing period. Accrual of vacation allowance must be made without adjustment for the wage increase factor.

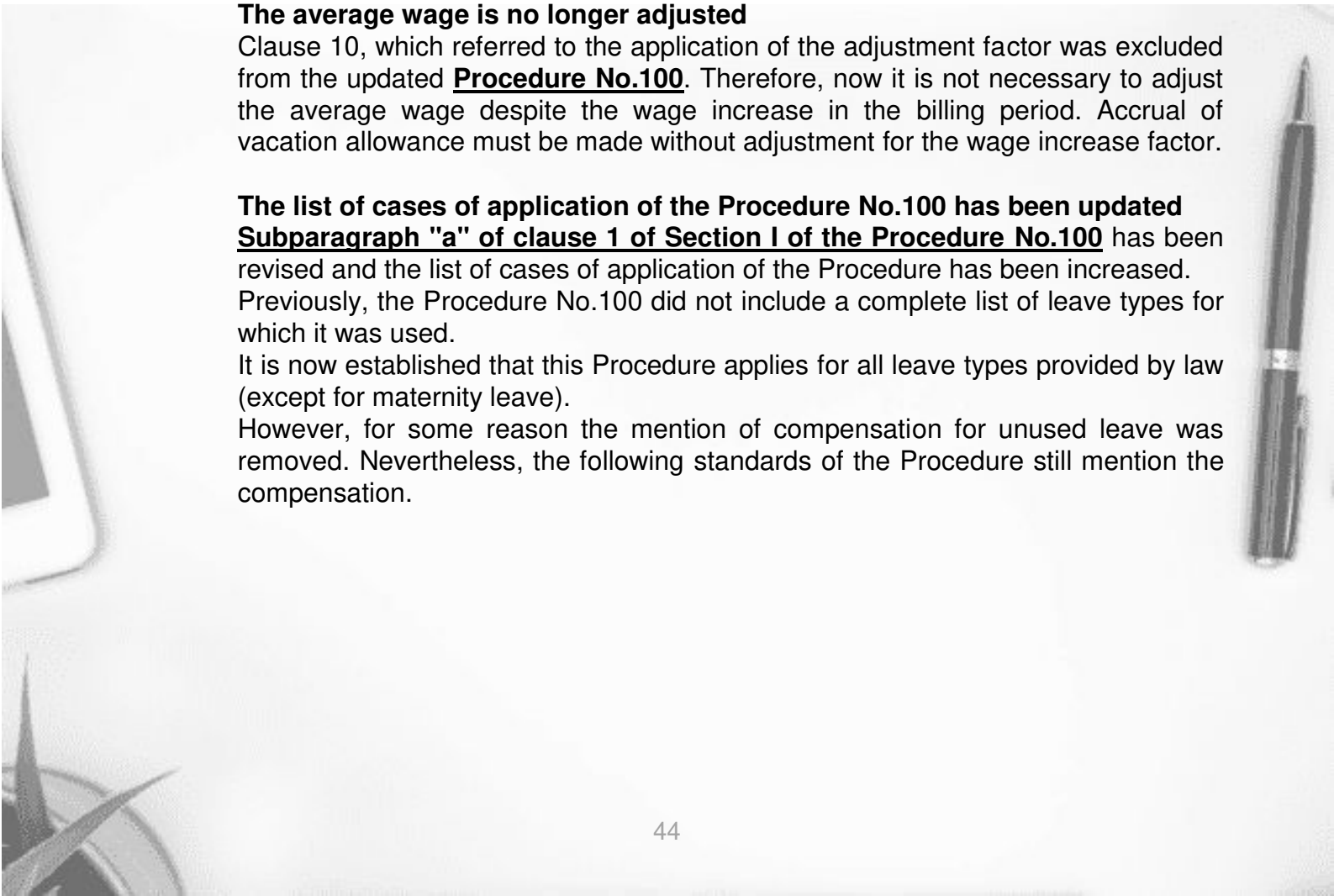
The list of cases of application of the Procedure No.100 has been updated

Subparagraph "a" of clause 1 of Section I of the Procedure No.100 has been revised and the list of cases of application of the Procedure has been increased.

Previously, the Procedure No.100 did not include a complete list of leave types for which it was used.

It is now established that this Procedure applies for all leave types provided by law (except for maternity leave).

However, for some reason the mention of compensation for unused leave was removed. Nevertheless, the following standards of the Procedure still mention the compensation.



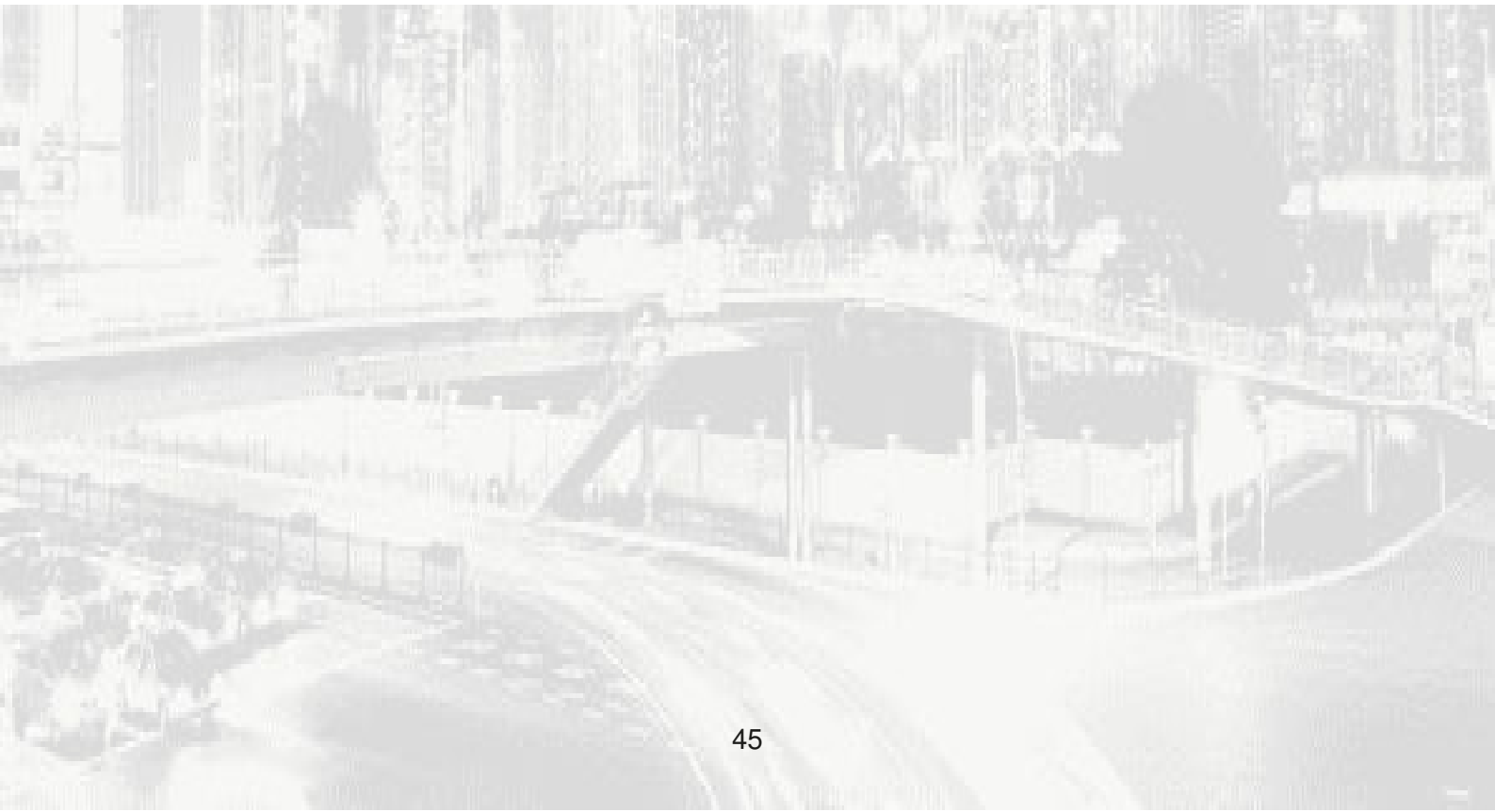
Also, in accordance with the standards of the Procedure No.100, we will calculate the average wage during a business trip, except for business trips of public officers. Of course, the average wage during the business trip is only paid to the employee if their fixed salary (regular rate of pay) is lower (this is required by **art. 121 of the Labor Code**).
The Procedure will also be used to calculate the average wage during the delay in the execution of the court ruling.

If the first working day is not the first day of the month: there will be no more disputes

For many years there have been disputes between employers and controllers over whether to include into the billing period the month if the employee is not hired from the first day of the month, but the date of employment is the first working day of the month. Now it is definite – it shall be taken into account!
The second paragraph of **cl. 2 of the Procedure No.100** states: if the employee is hired (taken on the staff) not from the first day of the month, but the date of employment is the first working day of the month, this month is included into the billing period as a full month.

The notion of "other valid reasons" for the absence was removed from the Procedure

Previously, the **Procedure No.100** mentioned “other valid reasons” for absence from the workplace, but there was no list of such valid reasons. It was impossible to determine the list by other regulations. And this affected the calculation of the average wage.
Now the sixth paragraph of **part 2 of the Procedure No.100** has been revised. The notion "other valid reasons" have been removed from it, and this paragraph looks like this: *"The time during which the employee did not work in accordance with the law and did not retain or partially retained the earnings is excluded from the billing period".*



AN EXHAUSTIVE LIST OF PAYMENTS NOT INCLUDED IN THE CALCULATION HAS BEEN APPROVED

The list of employees' income that must be or must be not taken into account when calculating the average wage under the **Procedure No. 100** has undergone drastic changes.

Paragraph 3 of the Procedure now states that when calculating the average wage, all amounts of accrued wages are taken into account in accordance with the legislation and the terms of the employment agreement, except for those specified in clause 4 of the Procedure.
When calculating the average wage to pay for leave time or compensate the unused leave, the actual earnings include payments for the time during which the employee retains the average wage (during the previous annual leave, state and public duties, business trips, forced absences etc.) and assistance in connection with temporary disability.

List of payments that are not included in the calculation of the average wage in all cases of calculation:

- payments for certain (one-time) assignments that are not part of the employee's responsibilities (except for surcharges for combining professions and positions, expansion of service areas or additional work and duties of temporarily absent employees, as well as differences in salaries paid to employees who perform the duties of the temporarily absent head of the enterprise or its structural unit and are not full-time deputies);
- lump-sum payments (compensation for unused leave, financial assistance, assistance to retired employees, severance pay, etc.);
- compensation payments for business trips and transfers (per diems, travel expenses, rental costs, relocation allowance, allowance paid instead of per diems);
- bonuses based on the results of the annual performance appraisal, for inventions and innovation proposals, for promoting the implementation of inventions and innovation proposals, for the introduction of new equipment and technology, for collecting and bringing for recycling scrap ferrous, nonferrous and precious metals, collecting and bringing for renovation used machine parts and car tires, for commissioning of production facilities and construction facilities (except for these bonuses to employees of construction companies paid as part of bonuses for business results);
- monetary and material rewards for prizes in competitions, reviews, contests, etc.;
- pensions, government aid, social and compensation payments;
- literary royalty to full-time employees of newspapers and magazines, paid under the copyright agreement;

- cost of free safety overalls, safety footwear and other personal protective equipment, soap, detergents and disinfectants, milk and healthy nutrition;
- subsidies on lunches, transportation, the cost of vouchers to health centers and rest homes paid by the company;
- payments related to anniversaries, birthdays, long-term and impeccable work, active community service, etc.;
- the cost of utilities, housing, fuel provided free of charge to certain categories of workers and the amount of funds for their reimbursement;
- wages for concurrent employment (except for employees for whom its inclusion in the average wage is provided by current legislation);
- the amount of compensation for damage caused to the employee by injury or other damage to health;
- income (dividends, interest) accrued on shares of the work force and contributions of members of the work force to the property of the enterprise;
- compensation to employees for the loss of part of the wages due to violation of the terms of its payment;
- wages accrued for work in election committees, committees of the all-Ukrainian referendum;
- rewards for state performers;
- idle hours, paid at the rate of 2/3 of the fixed salary (regular rate of pay).

Warning! If the basic billing period is two months, then, in addition to the above payments, the payments for the period during which the average wage of the employee is retained (for state and public duties, annual and additional leave, business trips, forced absences, etc.) and assistance in connection with temporary disability are also not taken into account.

A NEW APPROACH TO INCLUDING BONUSES TO THE AVERAGE WAGE

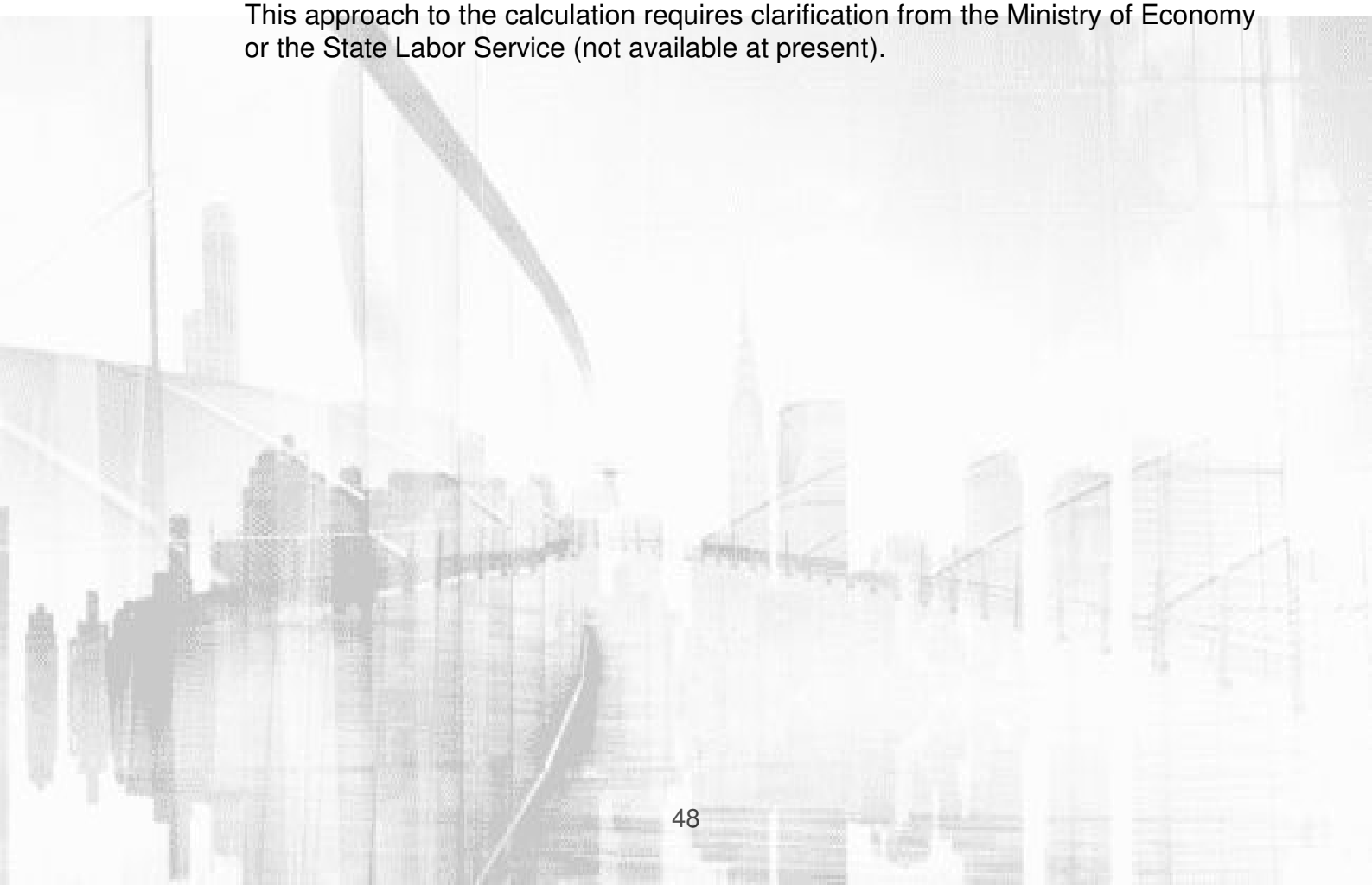
Previously, the procedure for including bonuses and rewards varied and depended on the period for which these payments were accrued.
But the mention of remuneration based on the results of year-long work ("13th wage", as it was often called) was removed from the **Procedure No.100** altogether. Instead, a new and very specific approach to including bonuses and other months-long payments was noted.

As indicated in the third paragraph of clause 4 of the Procedure, when calculating the average wage bonuses and other payments paid for two months or a longer period are included by adding to the earnings of each month of the billing period the part corresponding to the number of working days worked for the period (months) for which such bonuses and other payments are accrued.

This part is determined by dividing the amount of accrued bonuses and other payments by the number of working days worked for the period for which they are accrued, and multiplying by the number of working days worked each month which refers to the billing period for calculating the average wage.

So, now when taking into account the quarterly and annual bonuses at calculating the average wage to pay for leave time the days worked by the employee shall also be calculated, despite the fact that the leave allowance is counted in calendar days.

This approach to the calculation requires clarification from the Ministry of Economy or the State Labor Service (not available at present).



HOW TO CALCULATE THE AVERAGE WAGE IF THE BILLING PERIOD IS ABSENT

As before, if in the billing period the employee did not have earnings, the calculations are made based on the established in the employment agreement regular rate of pay, fixed salary.

If the size of the fixed salary is less than the amount of the minimum wage provided by law, the average wage is calculated from the established amount of the minimum wage at the time of calculation.
In the case of concluding an employment agreement on a part-time basis, the calculation is made from the amount of the minimum wage, calculated in proportion to the terms of the concluded employment agreement.

If the calculation of the average wage is based on the fixed salary or minimum wage, it is calculated by multiplying the fixed salary or minimum wage by the number of months of the billing period.

However, the **Procedure No.100** provides no formula for calculating the average wage from the minimum wage.

In such cases employers will have to determine their own approach to calculations. We are waiting for clarification from the Ministry of Economy.

NEW STATISTICAL REPORTING ON WAGE ARREARS

By the order of 21.07.2020 No. 222 the State Statistics Service of Ukraine introduced a new form of reporting "Report on wage arrears" (No. 3-debt (monthly)).

Legal entities will file the report to the territorial body of the State Statistics Service **no later than on the 7th day of the month following the reporting month**. The report is filed for the first time **for January 2021.**

Indicators of the No. 3-debt form include data on the unpaid amounts of accrued wages, the number of employees to whom these payments are owed, the amounts of unpaid assistance for temporary disability.

The amounts of accrued wages and the amounts of assistance for temporary disability not paid by the end of the month are not considered wage arrears, if the term of such payments settlement is set at the enterprise in the same month for which the accruals were made.
The amount of accrued wages not paid to employees within the next month after the payment date set at the enterprise is wage arrears, information on which is reflected in the relevant lines of the report.

For example, if the report by the No. 3-debt form is drawn up on May 1, the indicators of the form contain information on the amount of fully or partially unpaid wages for January-March of the financial year and previous periods (financial and previous years).

If at the enterprise there are no arrears of wages and assistance for temporary disability, line 2000 in section 1 contains the mark "V", and all other lines of the form contain no data.
Detailed explanations on filling in the No. 3-debt form are approved by the order of the State Statistics Service **of August 12, 2020 No. 19.1.2-12/23-20**.

SHALL A REPORT ON EMPLOYMENT BE SUBMITTED TO THE STATE TAX SERVICE IN THE CASE WHEN CIVIL LAW CONTRACT IS CONCLUDED WITH A NATURAL PERSON?

The conclusion of civil law contracts is not regulated by art. 24 of the Labor Code and, as a result, no notice on hiring an employee under a civil law contract is filed.

The State Tax Service of Ukraine notifies that the notice on hiring an employee is filed by the owner of the enterprise, institution, organization or its authorized body (person) or natural person (except for the notice on hiring a member of the executive body of the business entity, head of an enterprise, institution, organization) to the territorial bodies of the State Tax Service at the place of their registration as a payer of the unified contribution for compulsory state social insurance using the form given in the annex before the employee starts working under the concluded employment agreement in one of the following ways:

- by means of electronic communication with the use of a qualified electronic signature of responsible persons in accordance with the requirements of the legislation in the field of electronic document management and electronic trust services;
- in print format along with a copy in electronic format;
- in print format, if employment agreements are concluded with no more than five persons.

In particular, the Resolution of the Cabinet of Ministers of 17.06.2015 No.413 "On the procedure for notifying the State Tax Service and its territorial bodies on hiring an employee" (hereinafter – Resolution No.413) was developed by the Ministry of Social Policy in accordance with Part 3 of art. 24 of the Labor Code, which contains provisions for the conclusion of an employment agreement.

The conclusion of civil law contracts is not regulated by art. 24 of the Labor Code and, as a result, no notice on hiring an employee under a civil law contract is filed.

DIRECTOR WITHOUT SALARY: IS IT POSSIBLE AND FOR WHAT TYPES OF ORGANIZATIONAL AND LEGAL FORMS OF LEGAL ENTITIES

In case of "freezing business", the question arises as to whether the founder or director can support the enterprise (for example, file statements) without being paid?
Any work must be paid. Even if it is signing the statements once a year.

If an employment agreement has been concluded with the director (even if he is also the founder), failure to pay their salary will lead to significant fines. And the director can't refuse a salary. And in this case they will not be able to work on a voluntary basis.

This means that cutting off salary for the head is only possible by getting rid of the employment relationship between them and the legal entity. Management of a legal entity is entrusted to the founder (owner), without concluding an employment contract with him.
If there are no labor relations with the person who manages the legal entity, the legal entity is not obliged to pay the salary.

However, for some organizational and legal forms of legal entities it is impossible to give up labor relations.

For joint stock companies (JSC), it is not possible. The director of a joint-stock company cannot be cut off salary. In accordance with Part 5 of Article 8 of the Law of Ukraine "On Joint Stock Companies", the rights and obligations of members of the executive body (i.e. director and directorate) are determined, inter alia, in the contract.
A contract is a special form of an employment agreement (Part 3 of art. 21 of the Labor Code).
For private enterprises (PE), it is possible. Private enterprises are guided only by the general standards on legal entities from the Civil Code of Ukraine and the Commercial Code of Ukraine.
In accordance with p. 4, 5 of art. 63, p. 2 of art. 65 and p. 4 of art. 128 of the Commercial Code of Ukraine, the enterprise can be managed directly by the owner or by a manager be appointed by this owner/supervisory board.
Thus, the owner can manage the PE directly. The main thing is to provide for such a possibility in the charter. So, the owner can be cut off salary.
For companies (LLC), it is possible if you really want it. Formally, it is impossible to leave a company without a director (i.e. not to pay them a salary).
Thus, the norms of parts 4 and 5 of art. 63, as well as part 2 of art. 65 of the Commercial Code of Ukraine are applied to this company. But this is not enough, as LLCs are primarily guided by the Law of Ukraine "On Limited and Additional Liability Companies". Based on its norms, the company can only be managed through the executive body, because:

- art. 28 of the Law on LLC unequivocally declares that one of the bodies of the company is the executive body. "In case of its creation" clause is only contained in the norm for the supervisory board;
- the company concludes a contract with the director (part 12 of art. 39 of the Law on LLC). Although the Law on LLC not only refers to the employment agreement, but also briefly mentions the civil law contract (part 7 of art. 39 of the Law on LLC).

But experience has shown that even LLCs can impose the obligation to manage them on the founder and not pay them a salary.
Thus, the Ministry of Social Policy in its letter dated 07.02.2012 No. 113/13/84-12 indicated that the method of remuneration may be defined in the charter: “We believe that the position should remain the same, because the problem with LLC had arisen long before the Law on LLC emerged”.
The courts also "go for" the idea that the founder should run the company without remuneration (see the ruling of the Fifth Administrative Court of Appeal of 11.06.2020 in the case No. 540/2480/19//reyestr.court.gov.ua/Review/89792067).
Tax authorities also indirectly confirm this. In their opinion, the founder can sign and file statements on behalf of the company. However, it is only possible if the enterprise conducts no activity, has no full-time employees, and data on the signatory are entered in the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Organizations (USR) (see the letter of the SFSU of 01.06.2017 No. 435/6/99-99-15-02-02-15/IPK).
Also, it is possible not to accrue USC if the functions of the head are performed by the founder of the enterprise for the period of its suspension and the constituent documents allow not to pay any remuneration (see 201.04.01 of the Knowledge Base).

HOW TO EXECUTE IT CORRECTLY?

Those who still can apply such a scheme, first of all, shall dismiss the director. It is done in the usual way. According to the explanations, all employees have also been dismissed earlier.

The further procedure depends on whether such a director is also a founder.

We do not conclude a new employment agreement/contract with the founder (owner), nor do we include them in the staff list. In this case, the legal entity has no labor relations with them. It is important that such a management scheme is provided for in the charter's documents. It can be difficult for a limited liability company to include such provisions in the charter, because, as we mentioned above, from the point of view of the Law on Limited Liability Companies, the founder cannot directly manage the company.

The director is not the founder. In this case it is necessary:

- at the general meeting (by the owner), to make a decision on dismissal of the director and transfer of management to the founder (owner). It shall be noted that in connection with the suspension of the legal entity the management is carried out by the founder (owner). Avoid the following wording: "founder (owner) is a director" or "founder (owner) acts as a director";
- to enter information about the founder in the USR;
- to submit to the bank a list of persons authorized to operate the account, with samples of the founder's signature, so that s/he could, for example, pay taxes;
- to file to the STSU form No. 1-OPP (1-ОПП) marked "Information about the person responsible for accounting and/or tax accounting" containing information about the founder in column 10;
- to issue an e-signature for the founder (if the statements are going to be filed in electronic format).

The director is the founder. The differences from the previous algorithm are as follows. In this case, it does not make sense to apply to the state registrar with revised data on the legal entity in the USR. Even if you dismiss the founder from the position of director, but at the same time hand over to them the management of the legal entity, such founder will still be listed as the head in the USR. It is technically impossible to change the name of the column.

Decisions on dismissal of the director and assignment of management to the founder (owner) are made by the decision of the general meeting (owner). As we do not apply to the registrar, it is not necessary to notarize the signatures on such a decision.

If before the dismissal the director-founder was also the person responsible for accounting, we believe that formally the form No. 1-OPP does not need to be filed. After all, nothing changes. But some taxpayers play safe and submit the form No. 1-OPP, adding to it the decision of the general meeting which states that the director now manages the legal entity as the founder.

IN WHICH CASES A SEVERANCE PAY IS PAID?

In today's realities, redundancy is becoming commonplace, so to protect the employees in case of loss of their job, there is such a tool as severance pay.

Severance pay is a state guarantee, which consists of a cash payment to an employee in cases provided by law, by the employer in the collective agreement or by the parties.
Provisions on severance pay are stipulated in **art. 44 of the Labor Code,** which, depending on the different grounds determines the amount of severance pay.

In general, the set of grounds set out in the article allows us to conclude that the right to receive severance pay belongs to persons who are not voluntarily dismissed or their dismissal is caused by conditions that do not depend on them.

The employee is paid a severance pay in the amount of not less than the average monthly salary in the case of:

- termination of the employment agreement in case of the employee's refusal to be transferred to another location together with the enterprise, institution, organization, as well as refusal to continue working in connection with a significant change in working conditions (**cl. 6 of art. 36 of the Labor Code**);
- termination of the employment agreement on the initiative of the owner or their authorized body in case of changes in the organization of production and labor, including liquidation, reorganization, bankruptcy or conversion of the enterprise, institution, organization, staff reduction (**cl. 1 of art. 40 of the Labor Code**);
- termination of the employment agreement on the initiative of the owner or their authorized body in case of incompatibility of the employee with the position or work performed due to insufficient qualifications or health conditions that prevent the continuation of this work, as well as in case of refusal to grant a secret clearance or revocation of secret clearance, if their duties require secret clearance (**cl. 2 of art. 40 of the Labor Code**);

- termination of the employment agreement on the initiative of the owner or their authorized body upon reinstatement of the employee who used to perform this work (**cl. 6 of art. 40 of the Labor Code**).

The amount of severance pay may be determined by a collective agreement, but the amount of such monetary assistance may not be less than three months' average earnings.
The collective agreement may determine the amount of severance pay in case of violation by the owner or their authorized body of labor legislation, collective or employment agreement (i.e. when the employment agreement was terminated at the initiative of the employee under **Article 38**, **Article 39 of the Labor Code**, but this amount cannot be less than three months' average earnings).
In case when the employment agreement is terminated on the initiative of the owner or their authorized body upon termination of powers of officials, the employee is entitled to severance pay in the amount of not less than six months' average earnings.
A separate basis and amount of severance pay is provided for seasonal and temporary workers. In addition to the grounds provided for in art. 44 of the Labor Code, the termination of the employment agreement at the suspension of the enterprise is the basis for payment.
The severance pay for seasonal workers is paid in the amount of weekly average earnings, and for temporary workers - in the amount of three days' average earnings.
Article 44 of the Labor Code sets a minimum but mandatory level of severance pay. In order to be competitive in the market, the employer may provide, in addition to the mandatory grounds for severance pay, other grounds for paying it, which are part of the social package of the enterprise or organization, or increase its size.
In particular, the employment agreement may additionally provide for other grounds or the amount of severance pay.
However, the grounds provided by law cannot be denied or a smaller size set, because according to **art. 9 of the Labor Code**, such an employment agreement will worsen the situation of the employee and as a result will be considered invalid.
According to **art. 116 of the Labor Code**, severance pay is paid together with all other amounts due to the employee from the enterprise, institution, organization, on the day of dismissal or no later than the next day after the dismissed employee's request for payment, if the employee did not work on the day of dismissal.
The calculation of severance pay is carried out in accordance with the Procedure for calculating the average wage, approved **by the Resolution of the Cabinet of Ministers of 08.02.1995 No.100 (hereinafter – the Procedure No.100**).

Source: State Labor Service in Poltava region

LEAVE APPLICATION FORM IN ELECTRONIC FORMAT: CAN IT BE SENT?

Electronic documents operation procedure and their preparation for archival storage is approved **by the order of the Ministry of Justice No.1886/5**.

Also, the basic organizational and legal principles of electronic document management and use of electronic documents in Ukraine are established by the **Law "On Electronic Documents and Electronic Document Management" No. 851-IV**.

According to **cl. 5 of the Procedure No. 1886/5**, if the company is planning to introduce electronic document management, it is necessary in this case to develop its own Instructions on office work, which will contain the procedure of electronic document management at the enterprise, including requirements for naming and storage of electronic documents. The standards of such instructions must comply with the statutes of the law, in particular, the Procedure No.1886/5.

As noted in **part I of Section III of the Instructions No.1886/5**, the procedure for organizing electronic document management is determined by the instructions on office work of the institution, taking into account the requirements of regulations in the field of office work, as well as hardware and software operating in the institution.

In institutions, the File Register provides for a specific set of documents that, according to the legal status of the institution, the competence of the official can be created as originals in the form of electronic documents in accordance with the law.

The electronic document must be drawn up according to the general rules of documentation and have the corporate details set for a similar document with paper medium.

Corporate details of organizational and administrative electronic documents are executed by electronic means of documenting information taking into account the requirements of the National Standard of Ukraine “State unified documentation system. Unified system of organizational and administrative documentation. Requirements for paperwork. DSTU 4163-2003", approved by the **order of the State Committee of Ukraine on Technical Regulation and Consumer Policy dated 07.04.2003 No.55**.

Regarding personal files of employees and personnel documentation

Here it is necessary to pay attention to **cl. 4 of Section I of the Instructions 861886/5**, the establishments are obliged to create documents for permanent and long-term (over 10 years) storage in two formats: paper and electronic.
Creation of documents on personnel issues (staff) in electronic format shall be agreed with the relevant state archival institution, archival department of the city council.

According to Articles 493-c, 495, 499 of the **List No.578/5**, personal files and personal cards shall be kept in the archives of the organization for 75 years after the employees' dismissal, and therefore they belong to the documents of long-term storage, which are subject to cl. 4 of section 1 of the Procedure No.1886/5.

Thus, **personal files and other personnel documentation the storage period of which is more than 10 years shall be stored in two formats – paper and electronic – in case the organization switches to electronic document management.**

Regarding the applications of employees

A qualified electronic signature has the same legal force as a personal handwritten signature, and has the presumption of its conformity to the handwritten signature **(cl. 4 of art. 18 of the Law "On electronic trust services").**

The legislation does not restrict the use of a handwritten signature at the level of a qualified electronic signature (QES). Provide such a feature in the instructions for paperwork of the enterprise.

The original of electronic document is an electronic copy of the document with mandatory details, in particular with the electronic signature of the employee (**part 1 of art. 7 of the Law No.851-IV**). Without it, the document cannot be a basis for accounting and has no legal force.

An employee's application submitted in the form of an electronic document with a qualified electronic signature (QES) to the e-mail of the enterprise is considered a document that has legal force.
But if employees do not receive QES to sign applications, but simply send scanned copies of applications to e-mail, they also have to send the original applications to the human resources department.

PAYMENT OF DIVIDENDS TO THE FOUNDER OF SINGLE TAX LLC

Decision for paying dividends

In the general case, the issuer of corporate rights, which decides on the payment of dividends to its shareholders (owners), except as provided in **paragraph 57.1-1.3 of the TCU**, accrues and pays to the budget an advance payment of income tax.

The obligation to accrue and pay an advance payment at the rate of 18% rests with any issuer of corporate rights (except for single tax payers) that is a resident, regardless of whether such issuer enjoys the tax benefits provided by the TCU, or in the form of application of a tax rate other than that set by **paragraph 136.1 of the TCU.**

Thus, **issuers of corporate rights – single tax payers – legal entities when paying dividends to their shareholders (owners) do not pay to the budget advance payments of income tax.**

That is, single tax payers (of groups III and IV) do not accrue and do not pay to the budget advance payments of income tax when paying dividends.

The above standard is valid from 01.01.2018 and provided for in **paragraph 57.1-1.2 of the TCU**.

The decision on the distribution of net profit and payment of dividends is made at the general meeting of members of the company. Accordingly, it is registered in the minute. **Article 60 of the Companies Law** states that the chairman of the meeting organizes the minute.

Then the director (or directorate or other executive body of the company) issues an order for dividends payment based on the decision of the general meeting of members. According to their economic nature, dividends are accrued and paid only if there is a profit for the accounting period for which the dividends are paid.

Therefore, the maximum amount of accrued dividends may be the amount of profit for the relevant period for which dividends are paid. Dividends can be accrued and paid in a smaller amount than the accumulated profit.

TAXATION

In accordance with **paragraph 170.5.2 of the TCU**, any resident who accrues dividends to natural persons is a tax agent. Passive income in the form of dividends is included in the total monthly (annual) taxable income of a natural person and, as a result, is subject to income tax and military tax.
Dividends paid by single tax payers to natural persons are taxed at a rate of 9% (**paragraph 167.5.4 of the TCU**). In addition, dividends are subject to military tax at a rate of 1.5%.

In the quarter, accrual and payments, dividends and withheld income tax and military tax shall be reflected by the issuing company in the tax calculation under **form No.1DF**. According to its completion Procedure, the income of natural persons in the form of dividends is reflected on the basis of income "109".

As to the military tax, dividends accrued in favor of natural persons – residents (non-residents) are included in the total monthly taxable income of the taxpayer. Therefore, such income is subject to military tax at a rate of 1.5%.

Payment of income tax and military tax to the budget is carried out simultaneously with the payment of dividends. Banks only accept payment documents for income payment along with a payment document for paying income tax to the budget. However, there are some nuances:

- Income tax and military tax are paid to the budget within three banking days following the day of such accrual (payment, provision), if the taxable income is provided in non-monetary form or is paid in cash from the cash desk of the tax agent;
- no later than the 30th day of the month following the month of accrual, if the taxable income is accrued but not paid (not provided) to a natural person.

Clause 14 of Section II of the Resolution of the Cabinet of Ministers of Ukraine No.1170 stipulates that income from shares and other income from employee's share ownership of the enterprise (dividends, interest, share payments) is not the basis for accrual of a unified contribution. In view of this, USC is not accrued on the amount of dividends paid both to employees of the enterprise and to those members of the company who are not employees of this enterprise.

ACCOUNTING

Account 44 records retained income or uncovered losses of the current and previous years, as well as the income used in the current year.

In accounting, the use of dividend income will be reflected as follows:

- accrual of dividends by conducting Dt 443 "Income used in the accounting period" Kt 671 "Calculations based on accrued dividends";
- at the same time, at the end of the year Dt 441 "Retained income" Kt 443 "Income used in the accounting period" shall be conducted;
- withholding of income tax or income tax of a non-resident (if the founder is a non-resident legal entity) – Dt 671 Kt 641;
- withholding of military tax (if the founder is a natural person) – Dt 671 Kt 642;
- payment of dividends to the founder – Dt 671 "Calculations based on accrued dividends" Kt 311 (26, 28, in case of a decision to pay with property).

INSPECTIONS BY CONTROLLING BODIES

"SELF FINING" IS NOT A TAX DIFFERENCE

On its official web portal, STSU has published new Directories on Tax Benefits No.100/1 which are losses of budget revenues, and the Directory on Other Tax Benefits No.100/2 as of 01.10.2020.

The amounts of fines and penalties accrued in accordance with **paragraph 50.1 of the TCU** when determining the taxable item on corporate income tax are not taken into account.

Accordingly, **no adjustments of the financial result** before taxation in the amount of **self-imposed fines and penalties** during self-correction of errors, are carried out**.**

Such amounts are reflected at the formation of the financial result according to the accounting rules.

Source: *STS in Zaporizhzhia region*

FORM No.20-OPP (20-ОПП) FOR A PASSENGER CAR

Is it necessary to file a form No. 20-OPP (20-ОПП) containing information about past actions: purchase and lend-lease of a car? Is there any fine?

In accordance with **cl. 8.4 of the Procedure No.1588**, notification on taxable items or items related to taxation or through which activities are carried out under the **form No. 20-OPP (20-ОПП)** is filed within 10 working days after their registration, creation or opening to controlling body at the main place of registration of the taxpayer.

The notification under the form No. 20-OPP provides information on all taxable items that are owned, leased or leased out.

Thus, the company had to file the **form No. 20-OPP** both at the time of purchasing a car and at the time of leasing it out. Failure to do it can lead to a fine, in accordance with **paragraph 117.1 of the TCU**, in the amount of UAH 1,020.

But here periods of limitations shall be considered.

In accordance with **paragraph 114.1 of the TCU**, the deadlines for the application of penal (financial) sanctions (fines) to taxpayers correspond to the periods of limitations for tax liabilities accrual, defined by Article 102 of the TCU (not later than 1095 days following the deadline for filing a tax return).

In the event that the period in which the form No. 20-OPP containing the information on a car purchase was to be filed for the first time is beyond the period of limitations, there is no reason for penalty. If the period of limitations on filing the information on the lease has not yet expired and if the inspection discovers this violation, a fine can be imposed.

It should be noted that the fine is provided for failure to file the form within the prescribed period. That is, the fine is imposed for both failure to file, and late file. Therefore, if the company files the form now, it may be fined for late file.

RISKY TAXPAYERS AND THEIR CONTRACTORS: HOW DOES THE STATE TAX SERVICE MAKE AN INSPECTION PLAN?

The Ministry of Finance of Ukraine, at the request of the State Tax Service, periodically reviews and updates the criteria for the selection of taxpayers for scheduled inspections. This takes into account current judicial practice and the standards of art. 205 of the Criminal Code of Ukraine on the fictitiousness of entrepreneurship.

The Ministry of Finance by the **order of 07.09.2020 No.548** (registered in the Ministry of Justice on 29.10.2020 under **No.1064/35347) set out** a new version of the Procedure for the creation of a scheduled plan for desk audits of taxpayers**.**

Among the changes in the list of criteria for selecting taxpayers for audits there are criteria regarding fictitious transactions and the risky nature of the activities of counterparties. Such criteria are applied at the selection of both legal entities and sole proprietorships.

WHICH CRITERIA HAVE BEEN EXCLUDED? WHO WILL NOT BE INCLUDED IN THE INSPECTION PLAN?

The list of criteria for the selection of high-risk taxpayers-legal entities excludes the information from law enforcement agencies, structural units of the SFS on tax evasion and/or on relations with taxpayers (**cl. 5 of section III of the Procedure No.524**) in respect of which a pre-trial investigation within criminal proceedings has been launched that are related to:

- fictitious entrepreneurship;
- evasion of taxes, fees (payments), unified contribution and insurance premiums for compulsory state pension insurance.

What are the consequences?
Previously, taxpayers who were put under inspections read the justification of the identified violations in the inspection reports. And there, revenue officers often quoted extracts from resolutions, for example:

«...During the pre-trial investigation it was established that the members of the organized group registered or re-registered a number of enterprises to fictitious persons and currently use a group of flow-through conversion enterprises including _____ LLC (EDRPOU code: _____), _____ LLC (EDRPOU code: _____), and others, in order to cover up illegal activities by using their details and bank accounts in criminal schemes to create artificial documented semblance of business transactions for illegal overstatement of gross expenditures of corporate income tax and VAT tax credit for enterprises of real sector of the economy. Also, to the bank accounts of these business entities with signs of "fictitiousness" the funds of real enterprises were transferred for allegedly provided services, performed work or delivered goods in order to transfer funds in cash and return them to customers less certain interest...»

Given this information, the controllers concluded that the LLCs listed in the resolution of the investigating judge created an artificial semblance of business transactions by formally compiling primary documents that were not accompanied by the actual asset flow in the process of transactions. As a result, such facts and circumstances became the basis for recognition of unreasonable assignment of the VAT amount to the tax credit for the period checked.

HOW TO FIGHT IT?

If you, as a taxpayer, are subject to a pre-trial investigation regarding fictitious activities or tax evasion, you will not be included in the inspection plan drawn up under the new rules.
However, the very fact of the existence of such an investigation may still appear in the tax audit act, as a reason for non-recognition of expenditures or tax credit. Therefore, in lawsuits, the taxpayers pointed to the decriminalization of art. 205 of the Criminal Code of Ukraine.
It will be recalled that starting with 25.09.2019, **the Law of Ukraine No.101 of 18.09.2019** excludes from the Criminal Code of Ukraine the article 205, which

envisaged criminal liability for fictitious business, i.e. the creation or acquisition of legal entities in order to cover up illegal activities or activities that are prohibited.
Therefore, the inspection acts, appointed after 25.09.2019, referring to criminal proceedings do not prove the absence of real business transactions. In the same manner, the explanation of the heads of legal entities about being not implicated in the registration of the legal entity in the EDR and in business operations cannot be taken into account.
Regarding pre-trial investigations, it should be noted that investigating officers have the right to "share" with the tax authorities any information obtained during the pre-trial investigation. And this information can be taken into account when collecting and processing tax information by the State Tax Service (in particular, for making inquiries). However, such information cannot be a basis for selecting taxpayers for audits!
After all, the Supreme Court in its ruling of 27.03.2018 in **case No.816/809/17** noted that the very fact of initiating a criminal case and obtaining evidence (explanations) from public officials of business entities within such a criminal case is not an indisputable fact confirming the absence of real legal consequences of all business transactions conducted by the suitor and their counterparties.
The Supreme Court also notes that during business transactions the taxpayer may be unaware of the actual state of legal personality of their counterparties and actually receive goods (work or services) from them, despite the fact that the counterparties may intend to violate the tax legislation.
Indeed, even the orders on the access to property and documents which result in the seizure of certain documents of business activity with a number of counterparties, in no way indicate the termination of business activity of the counterparty or the impossibility of actual delivery of goods, services or works.
The criterion *"pre-trial investigation within criminal proceedings connected with fictitious entrepreneurship has been initiated"* has been excluded from the criteria for the selection of tax audit plan. The legal entities with signs of fictitiousness are still left in the list of selection for inspection with a high risk degree.
And even if you are not included in the inspection plan, information about criminal proceedings may be grounds for sending requests to provide copies of primary documents and explanations of taxpayers. And if you do not respond to this request, it can lead to an unscheduled inspection.

YOU CAN ALSO BE CHECKED THROUGH A RISK COUNTERPARTY

Such criterion of a high risk degree when selecting legal entities for scheduled audit as **information available in court ruling under art. 191, 212, 368 of the Criminal Code of Ukraine on risky activity of the taxpayer's counterparties** is also noteworthy.

It is about criminal proceedings entered in the Unified Register of Pre-trial Investigations (hereinafter – the "URPI") for such offenses as:

- misappropriation, embezzlement of property or taking it by abuse of office (**art. 191 of the Criminal Code of Ukraine**),
- evasion of taxes, fees (mandatory payments) (**art. 212 of the Criminal Code of Ukraine**, USC evasion under the **art. 212-1 of the Criminal Code of Ukraine** are not mentioned here),
- acceptance of an offer, promise or receipt of illegal benefit by an official (**art. 368 of the Criminal Code of Ukraine).**

Therefore, if there are criminal proceedings against your counterparties in the URPI, the taxpayers who have the appropriate economic relations with such counterparties are the first to be included in the inspection schedule based on the risky nature of the taxpayer's counterparties.

By the way, note that the criteria of a high risk degree according to art. 191, 212, 368 of the Criminal Code of Ukraine are also defined for taxpayers-natural persons (**item 4 of section IV of the Procedure No.524**).

Unfortunately, it is difficult to avoid this basis for a scheduled inspection. After all, taxpayers are unaware of this information about their counterparties: the information entered into the URPI is non-public.

You can find out about this indirectly from the rulings of investigating judges, so you should view the information on the **website of the Unified State Register of Court Decisions** and, if necessary, request appropriate explanations during or after the establishment of business relations with economic entities. This does not guarantee the lack of attention from the tax authorities, but will provide an opportunity to more thoroughly prepare for inspections and consider some explanations in case of tax request receipt.

INSPECTIONS WILL BE ASSIGNED BASED ON INFORMATION FROM THE STATE FINANCIAL MONITORING SERVICE

The criteria for selection of high risk taxpayers-legal entities to the inspection plan checking the correctness of calculation, completeness and timeliness of payment of income tax, military tax and USC additionally include now such a criterion as *"information from law enforcement agencies, structural units of the State Tax Service and other tax information obtained in the manner prescribed by the Code, which testifies due payments evasion"*.

Regarding these other sources of information that revenue officers can receive, it should be borne in mind that starting from 2020, another source is added which is the State Financial Monitoring Service.

The Service pays constant attention to the analysis of suspicious transactions for money laundering, which have the signs of tax crimes. In this regard, a number of large-scale financial investigations have already been conducted, which resulted in filing generalized materials to law enforcement agencies. And most of them now are related to cash transactions.

At present, any information that reaches the State Financial Monitoring Service and, subsequently, law enforcement agencies, will inevitably be a basis for the analysis of such information by the State Tax Service and its consideration in the creation of tax audit schedules. Although, in some cases, revenue officers will not wait to conduct an audit on the terms specified in the plan, taxpayers should expect requests under the provisions of **paragraph 78.1.1 of the TCU** and urgent appointment of unscheduled inspection.

HOW TO RESPOND TO REVENUE SERVICE REQUESTS TO PROVIDE INFORMATION

WHETHER REVENUE OFFICERS HAVE THE RIGHT TO SEND A REQUEST

Yes, they have. Relevant powers are provided in the **TCU** standards, in particular: **paragraph 20.1.3, paragraph 20.1.6, paragraph 72.1.6.**
The grounds for sending a request and the procedure are regulated by **Art. 73 of the TCU** and the Procedure for periodic filing of information to the bodies of the State Tax Service and receipt of information by these bodies upon a written request approved by the Resolution of the Cabinet of Ministers of 27.12.2010 No.1245 (**Procedure No. 1245**).
At the same time, the controlling bodies may send a request only on the basis of one of the grounds, the list of which is given in **cl. 73.3 of the TCU**.
In particular, the grounds are as follows:

- the analysis results of tax information obtained in the manner prescribed by law revealed the facts that indicate a violation by the taxpayer of tax or currency legislation, laws on prevention and counteraction to legalization (laundering) of proceeds of crime or terrorist financing, as well as other legislation, supervision of compliance therewith is entrusted to the controlling bodies;

- to determine the compliance of the conditions of the controlled activity with the arm's length principle during the tax control of transfer pricing in accordance with **art. 39 of the TCU** and/or to determine the level of normal prices in cases specified by the **TCU;**

- the inaccuracy in tax returns data filed by the taxpayer was revealed;

- a complaint was filed against a taxpayer for failure to provide:

  - a tax invoice to the buyer or the seller's mistakes in specifying the mandatory details of the tax invoice provided for in **cl. 201.1 of the TCU**, and/or violation by the seller/buyer of deadlines for registration in the Unified Register the tax invoice and/or adjustment calculation;

  - an excise invoice to the buyer or violation of the completing and/or registration procedure of the excise invoice;

- in case of third party audit;

- inaccuracy of data contained in the report on accountable accounts filed by the financial agent was revealed;

- a notification from the competent authority of a foreign state with which Ukraine has concluded an international agreement containing provisions on the exchange of information for tax purposes, the binding consent of which was given by the Verkhovna Rada of Ukraine, or interdepartmental agreements concluded on their basis, on the detection by such authority of errors, incomplete or unreliable data provided by the financial agent on the accountable account of a person who is the resident of the relevant foreign state, or on the non-fulfillment by the financial agent of obligations under such an international agreement;

- in other cases, specified by the **TCU**.

MANDATORY DETAILS OF THE TAX REQUEST

In addition to the grounds provided by the **TCU** for sending a request, the latter, in order to be legal, must also meet a number of requirements for its execution and sending to the taxpayer, which are listed in **cl. 73.3 of the TCU and cl. 10 of the Procedure No. 1245.**

In particular, the request shall contain:

- references to the law standards, according to which the controlling body has the right to receive such information;
- the basis for sending the request (from the list above) along with the confirming information;
- a list of information requested and a list of documents to be provided;
- seal of the controlling body.

The request for tax information from taxpayers and other subjects of information relations is created using the form of the body of the State Tax Service, and it is signed by the head (deputy head) of the specified body.

If the information requests from the controlling bodies contain no clearly defined circumstances that indicate a violation of tax legislation by the taxpayer, **the taxpayer has no objective opportunity to provide any explanations and documentation without reporting the above facts.**

This, in particular, was emphasized by the Supreme Court/Administrative Court Procedure Code in rulings of 11.09.2018 in case **No. 813/4042/17**, of 21.05.2020 in case **No. 819/1782/13-a**, of 17.07.2020 in case **No. 820/2105/16.**

The request executed in accordance with the above requirements is sent to the taxpayer in the manner prescribed by **art. 42 of the TCU**, namely:

- at the address (location, fiscal address) of the taxpayer by registered letter with acknowledgment of receipt or is personally served to the taxpayer (their representative);
- to taxpayers who file reports in electronic format and/or have undergone an online electronic identification in their account – in electronic format in compliance with the Laws of Ukraine "On Electronic Documents and Electronic Document Management" and "On Electronic Trust Services" (to taxpayers who have submitted an application on documents receipt through their account, requests can be sent by electronic means in electronic format to the account with simultaneous sending to the taxpayer's e-mail address (addresses) the information on the type of document, date and time of its sending to their account).

HOW TO RESPOND TO THE REQUEST RECEIVED

Clause 73.3 of the TCU stipulates that taxpayers **are obliged** to provide the information specified in the controlling body request and its documentary evidence (except for a third party audit) **within 15 working days from the day following the day of the request receipt** (unless otherwise provided by the **TCU**).

In the case of a third party audit, taxpayers and other subjects of information relations are obliged to submit the information specified in the controlling body request **within 10 working days from the day following the day of the request receipt**. Documentary evidence of this information, at the request of the controlling body, may be provided in electronic or paper format at the choice of the taxpayer.

NOTE.

A document sent by the controlling body to the account is considered delivered to the taxpayer if it is executed in compliance with the requirements of the legislation and is available in the account.

The date of delivery of the document to the taxpayer is the date specified in the delivery receipt in text format sent from the account automatically and indicates the date and time of delivery of the document to the taxpayer.

If the document is delivered after 6:00 pm, the date of delivery of the document to the taxpayer is the next business day. If the delivery was made on a weekend or holiday, the date of delivery of the document to the taxpayer is the first working day following the weekend or holiday.

The obligation of the taxpayer to provide information to the controlling bodies in the manner, time and in the amounts established by the tax legislation, is also specified in **paragraph 16.1.7 of the TCU**. Therefore, according to the general rule, the taxpayer **is obliged to respond** to the request (provide the requested information, copies of the requested documents).

However, **cl. 73.3 of the TCU** also states that if the request is executed violating the established requirements, the taxpayer is released from the obligation to respond to such a request.
However, it should be taken into account that failure to respond to the request is the basis for an unscheduled inspection (**paragraph 78.1.1, 78.1.4, 78.1.9 of the TCU**).

Of course, it will be illegal, because the taxpayer should not respond to an improperly executed request of the tax authorities. But to prove it you will even have to resort to court.

Therefore, if you have received a request from the controllers and found out that it was executed violating the requirements, you should not respond on the request merits if you intend to further appeal against it.

In case of receiving an improperly executed request, the company may respond that the received request was executed in breach of requirements, so the company **cannot** (does not waive its obligation, but simply cannot for reasons beyond its control) provide the requested information.

How to make out a respond to a request

The requirements for the respond are briefly stated only in **cl. 15 of the Procedure No. 1245**. The letter sent at the request of the body of the State Tax Service, has to contain:

- number and date of the controlling body request to which the respond is provided;
- information requested by the body of the State Tax Service.

Actually, these are all requirements for the respond. However, it is obvious that the letter shall be executed in the generally established order accepted for registration of letters. It is signed on the letterhead by the taxpayer's head, if any.

In the case of a request properly executed in accordance with the law, if the request asks for copies of documents, the relevant copies are attached to the letter.

How to send (serve) a response to a request (letter) to the revenue service

The response to the request is sent to the revenue service by registered letter with acknowledgment of receipt or serve it personally by the responsible authorized person of the taxpayer to the administrative office of the revenue service. In the latter case, you should have two copies of the letter: one is left in the administrative office, and the second is marked on receipt.

What the taxpayer shall face in case of failure to respond to the tax request

The only negative consequence of not responding to the request of the tax authority is an unscheduled inspection. There are no other sanctions for refusing to respond to a **TCU** request.

SOCIAL INSURANCE: THE INSPECTION PROCEDURE HAS CHANGED

From October 10, 2020, the Social Insurance Fund of Ukraine (hereinafter – the Fund) during the inspections of policyholders is guided by the new Procedure No. 23, which "came" to replace the Instruction No. 29. The new document provides much more power to officials of the Fund both when planning inspections and when conducting them.

The fact that the Fund is introducing new types of inspections testifies to the increased attention to inspections. If earlier the Fund could carry out scheduled and unscheduled inspections, now they are added with:

- desk audits;
- documentary scheduled verifications;
- unscheduled inspections, which can be both field and on-site.

The new Procedure also includes desk audits by the Social Insurance Fund.

DESK AUDITS

Clause 2.5 of Procedure No. 23 defines the features of desk audits:

- the inspection is carried out by officials of the Fund without any special decision of the management of the working body of the executive directorate of the Fund or its branch. That is, neither an order nor a decree is issued separately;
- certification for the inspection is not issued;
- site – the premises of the working body of the executive directorate of the Fund or its branch;

The new Procedure provides for a clear and understandable mechanism and approves a strategy for preventive, risk-based approaches to inspections.

The new Procedure will reduce the number of ineffective documentary inspections and the expenses of the Fund therewith, as well as minimize the burden on policyholders while increasing the protection of the interests of insured persons.

In particular, the Procedure defines an updated list of possible grounds for conducting scheduled and unscheduled inspections, which allow to assess their feasibility and reduce their total number.

THANK YOU
FOR YOUR ATTENTION

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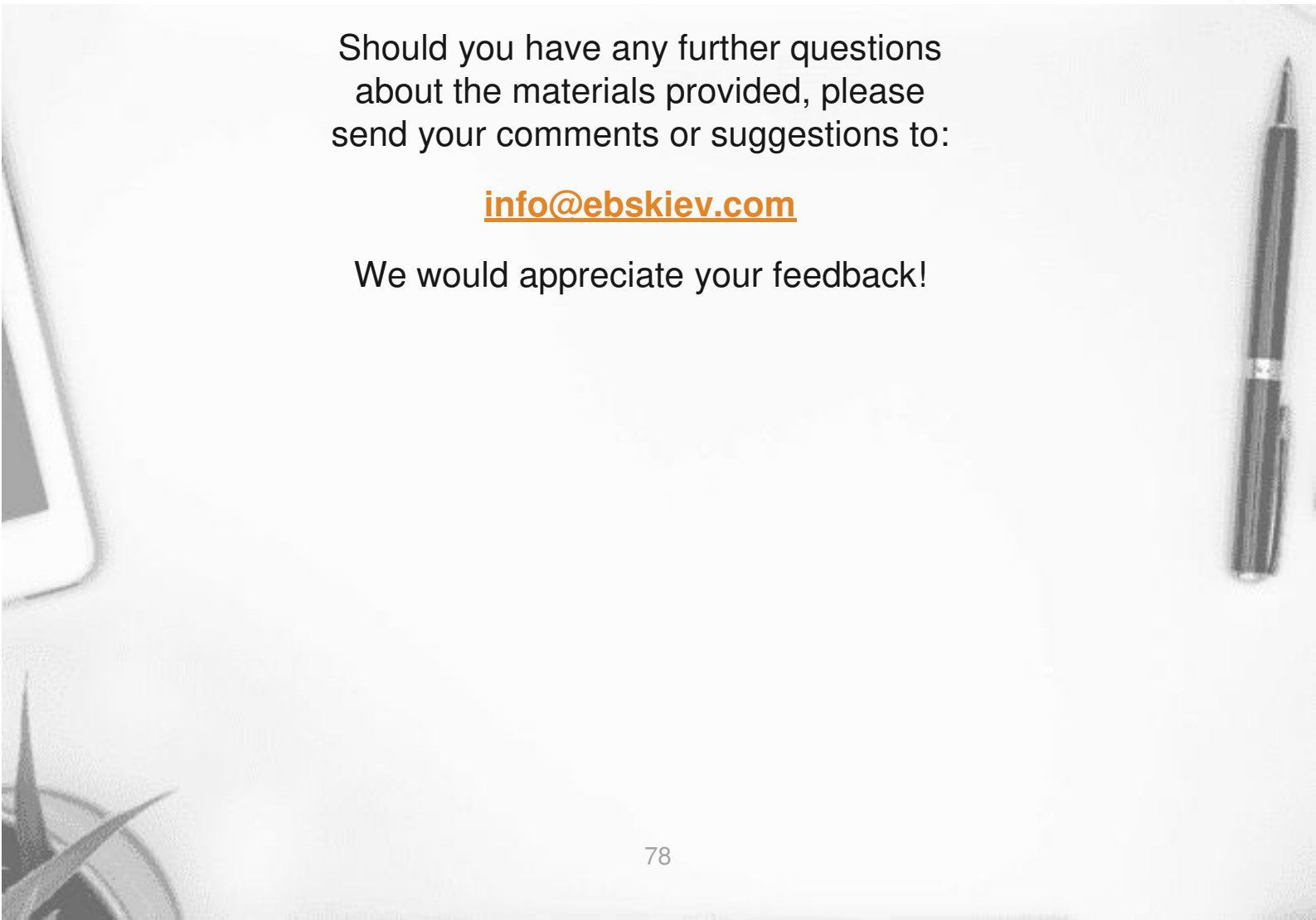

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