EBS QUARTERLY REVIEW

LEGISLATIVE CHANGES REVIEW

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QUARANTINE NEWS

WHAT CHECKS CAN BE CARRIED OUT BY THE STATE TAX SERVICE IN QUARANTINE: THE RESOLUTION CAME INTO FORCE

On February 9, 2021, resolution of the Cabinet of Ministers of Ukraine No. 89 dated February 3, 2021 "On Reducing the Validity Period of Restrictions regarding the Moratorium on Conducting Certain Types of Inspections" came into force (published in the Government Courier No. 26 dated February 9, 2021).

This resolution lifted the moratorium on certain types of tax audits.
Starting from this date, it is allowed to conduct scheduled inspections that were not completed as of March 18, 2020, and inspections of VAT payers who have formed a tax credit for risky operations.

The moratorium on inspections of legal entities has been lifted. And the moratorium on inspections of individual entrepreneurs continues to operate in the same manner as before.

Types of new permitted STS inspections

Starting from February 9, 2021, the State Tax Service has the right to conduct:

- documentary and factual inspections that were started before March 18, 2020 and were not completed have been temporarily stopped;
- documentary inspections, the right to conduct which is granted in compliance with the requirements of clause 77.4 of the Tax Code of Ukraine (hereinafter – the "TCU"). This regulation stipulates the rules for conducting scheduled inspections. Therefore, these types of checks are allowed to be carried out during quarantine.
- documentary unscheduled inspections on the grounds specified in subclause 78.1.1 and/or 78.1.4 of the TCU, business entities of the real sector of the economy that have formed a tax credit due to registration of risky operations for the purchase of goods/services (from the list of risky taxpayers). These checks are carried out if the taxpayer's response to it is not available within 15 business days from the date of receipt of the request by the STS;
- documentary unscheduled inspections of taxpayers for which tax information has been obtained indicating that the payer has violated currency legislation in terms of compliance with the deadlines for the receipt of goods for import operations and/or foreign currency earnings for export operations;
- documentary unscheduled inspections on the grounds specified in subclauses 78.1.12, 78.1.14, 78.1.15, 78.1.16 of the TCU. These are inspections in connection with a complaint about actions or inaction of tax authorities and inspections of controlled transactions.

QUARANTINE STATE AID AND TAX DIFFERENCES

An income taxpayer who has received "quarantine" reimbursement of expenses incurred for the payment of the USC should be aware of the impact of these transactions on the financial result before tax.
The financial result before tax is reduced by the amount of one-time compensation according to Law No. 1071.

Such a decrease in the financial results can be reflected in any line of Section "Differences provided for in Subsection 4, Section XX of the Tax Code of Ukraine" of Appendix DI to the Tax Return. It is also necessary to put a mark (X) in the special field of the Tax Return (the column "Availability of an appendix") and indicate the code of the used line of Appendix DI to the Tax Return and a reference to the relevant regulation of the Code – "clause 54, Subsection 4, Section XX of the TCU" in the column "Content of the appendix" (without submitting other additions to the Tax Return on this basis).

***Source**: explanation of the Office of Large Taxpayers*

INCOME TAX

CERTAIN PROVISIONS OF TAX LAW NO. 466 HAVE BEEN POSTPONED: LAW NO. 1117-IX

On December 31, 2020, "Holos Ukrayiny" No. 243(7500) published Law No. 1117-IX dated December 17, 2020 "On Amendments to the Tax Code of Ukraine and Other Laws of Ukraine on Ensuring the Collection of Data and Information Necessary for the Declaration of Individual Objects of Taxation" (Law No. 1117). According to them, the beginning of a number of regulations introduced by Law No. 466 is postponed to a later period.
Law No. 1117, inter alia:

- makes changes to the tax legislation aimed at clarifying certain provisions of transfer pricing;
- clarifies the grounds for termination of administrative arrest;
- clarifies the provisions for adjusting the financial result before tax for transactions that do not have a business purpose;
- prescribes the specifics of excise tax collection;
- clarifies the specifics of taxation of profits of a controlled foreign company.

Thus, the burden on businesses to pay taxes is reduced and mechanisms are created to attract new investments, bring the economy out of the shadows, which will lead to an increase in revenues for both state and local budgets.

This Law came into force on the day following the day of publication (i.e., from January 1, 2021), except for amendments to subclauses 140.5.4, 140.5.5-1, 140.5.6 of the TCU, which will enter into force on January 1, 2022.

What has Law No. 1117 changed?

Due to the changes made to the TCU by Law No. 466, in 2020 (from May 23 to July 1, 2020), new rules for taxation of income paid to a non-resident by a resident of Ukraine were introduced.
However, Law No. 1117 has changed these rules: the application of changes in the taxation of income of non-residents and permanent representative offices has been postponed: income of non-residents and permanent representative offices in 2020 is taxed according to the old rules that were in force as of January 1, 2020.
The application of the new rules of taxation of controlled foreign companies (CFC) has also been postponed until January 1, 2022 and a transition period of 2022-2023 has been established.

Then about everything in order – first about the "new" changes, then about postponing the "old" ones.

What income do non-residents receive from Ukraine?

Starting from January 1, 2021, the determination of income with a source of origin from Ukraine in subclause 14.1.54 of the TCU has been changed again. The list of such income includes:

- income of **residents** from the alienation of shares, stakes, corporate or other similar rights in **foreign** companies, organizations formed according to the legislation of other states (foreign legal entities);
- income of **non-residents** from the alienation of shares and corporate rights in the authorized capital of a legal entity that is a **resident of Ukraine**.

Regarding the latter type of income: to be considered for tax purposes, such alienation of securities must meet the condition: at any time within 365 days preceding the sale or other alienation, the value of shares, stocks in a Ukrainian legal entity by 50% or more **is formed at the expense of real estate that is located in Ukraine** and belongs to such a Ukrainian legal entity or is used by such a Ukrainian legal entity based on an **operating or financial renting (lease) agreement or a similar agreement, and such use must be reflected in the accounting of such legal entity as an asset, including an asset with the right to use,** according to with the requirements of the National Accounting Regulations (Standards) (hereinafter – the "NAR(S)") or IFRS.

The value of shares, stocks, corporate or other similar rights and real estate, in this case, will be determined based on the book (residual) value according to accounting data as the highest amount at any time within 365 days preceding the sale or other alienation and will be subject to comparison with the value of other property (assets) according to the book (residual) value according to accounting data of such legal entity.

In other words, if a non-resident sells his/her share in a Ukrainian enterprise to a resident, the latter will have to determine the amount of profit that the non-resident receives from this transaction. Profit will be defined as the difference between the proceeds from the sale and the costs of acquiring this share (which may include the value of the contribution made by a non-resident to the authorized capital). However, a resident must tax this profit if the authorized capital of a Ukrainian enterprise, a share in which is acquired from a non-resident, meets the above condition.

Which non-residents are affected by this innovation? First of all, legal entities – relevant changes have been made to subclause 141.4.1 of the TCU, which establishes a list of income while a resident of Ukraine must pay to a non-resident the so-called "withholding tax" – an income tax on the non-resident's income. As for non-resident individuals, the position of the STS has been as follows before: if the income from the sale of shares is paid by a resident business entity, then it is a tax agent. And if this income is paid by an ordinary individual or another non-resident, then a non-resident individual must submit an annual tax return and pay personal income tax and military levy independently.
And only if a non-resident (legal entity or individual) who is the owner of the dominant block of shares pays income to non-resident individuals through escrow accounts for shares purchased from such persons, then the resident bank in which the account of such a non-resident individual is opened must perform all the functions of a tax agent.

Registration of non-residents: updated grounds and postponed deadlines

Also, starting from January 1, 2021, the grounds for registering a non-resident with the STS have been supplemented (clause 64.5 of the TCU): **non-residents are required to register with the STS if they acquire title to an investment asset** defined in paragraphs three to six, subclause "e", clause 141.4.1 of the TCU, from another non-resident who does not have a permanent representative office in Ukraine – until the date of making the first payment for the acquired investment asset.
An application for registration is submitted to the controlling body at the location of a Ukrainian legal entity whose shares, corporate rights form the value of the investment asset that is the subject of such a transaction.

Non-residents (foreign companies, organizations) that carry out economic activities on the territory of Ukraine and/or that before the entry into force of this Law duly accredited (registered, legalized) on the territory of Ukraine separate divisions, including permanent representative offices, and as of January 1, 2021 are not registered with the controlling bodies, are required within three months (that is, until March 31, 2021 inclusive) to submit documents to the controlling bodies for registration according to the procedure established by clause 64.5 of the TCU.
Inspections of such non-residents (foreign companies, organizations) who were supposed to be registered and did not submit documents before March 31, 2021, and their separate divisions, including permanent representative offices that are registered, may be scheduled from July 1, 2021.
Permanent representative offices of non-residents who were registered as taxpayers (including income tax) in the periods up to January 1, 2021, remain such taxpayers according to the requirements of this Code for registration as taxpayers (including income tax) of the relevant non-residents.
The corresponding changes were made to clause 60, Subsection 10, Section XX of the TCU, they are effective from January 1, 2021.

Violation of these requirements may lead to the seizure of non-resident assets. However, in connection with the registration of a non-resident for tax registration by the controlling body based on an inspection report, the administrative seizure of the taxpayer's property is terminated – a new subclause 94.19.10 of the TCU is valid from January 1, 2021.

Postponement of regulations on controlled foreign companies

The new rules for taxation of controlled foreign companies (CFC) are **postponed** and apply **to tax (reporting) periods starting from January 1, 2022** (see clause 60-1, Subsection 10, Section XX of the TCU). Namely, from January 1, 2022, the following regulations will come into force:

- paragraph 25, subclause14.1.193 of the TCU – that the recognition of a person as a controlling person according to the provisions of Article 39-2 of the TCU is not a permanent representative office;
- clause 120.7 of the TCU – penalties for failure to submit or late submission by a controlling person of a report on controlled foreign companies, for failure to notify the controlling person of CFC and other violations;
- paragraph 3 of subclause 133.1.1 of the TCU – that simplified taxpayers are CFC taxpayers;
- paragraph 12, subclause 134.1.1 of the TCU – that non-taxation of profits with a source of origin outside of Ukraine received by foreign companies that have effective management on the territory of Ukraine;
- clause 136.7 of the TCU – the basic income tax rate levied on the adjusted profit of the CFC.

For the transition period 2022-2023, the following rules of CFC taxation and exemption from liability are established (clause 54, Subsection 10, Section XX of the TCU):

- the first reporting (tax) year for the report on controlled foreign companies is 2022 (if the reporting year does not correspond to the calendar year, the reporting period begins in 2022). In other words, the first CFC report will need to be submitted in 2023;
- as an exception, it is allowed to report on CFC for 2022 when submitting reports for 2023 (that is, to report as early as 2024!) – controlling persons have the right to submit a report on controlled foreign companies for 2022 to the controlling body simultaneously with the submission of the annual tax return of the property status and income or income tax return for 2023 with the inclusion of the adjusted profit of the CFC specified in such report, subject to taxation in Ukraine, in the indicators of the corresponding tax returns for 2023. At the same time, penalties and/or fines are not applied;
- in 2022-2023, the ownership share in a foreign legal entity was temporarily increased from 10% to 25% or more, provided that several individuals-residents of Ukraine and/or legal entities-residents of Ukraine own shares in a foreign legal entity, the total amount of which is 50% or more. In other words, in the reporting periods of 2022-2023, the number of payers who will be required to report on CFC for these two years has been reduced;
- subclauses 39-2.3.2.1-39-2.3.2.4 of the TCU applies to accounting periods starting from January 1, 2023;
- penalties and fines for violating the requirements of Article 39-2 of the TCU when determining and calculating the profit of a controlled foreign company are not applied based on the results reporting (tax) years 2022-2023;
- based on the results of reporting (tax) years 2022-2023, administrative and criminal liability for any violations related to the application of the regulations of Article 39-2 of the TCU is not applied to the taxpayer or his/her officials.

In this regard, information and/or documents received by the controlling body according to Article 39-2 of the TCU, based on the results of reporting (tax) years 2022-2023:

A) are information with restricted access that cannot be requested and/or transferred to law enforcement agencies upon their request or within the framework of procedures provided for by the Criminal Procedure Code of Ukraine;

B) cannot be considered evidence in criminal proceedings under Article 84 of the Criminal Procedure Code of Ukraine.

INNOVATIONS OF LAW NO. 1117: BUSINESS PURPOSE

Law No. 1117, among other things, introduced significant amendments to the regulations in terms of the accounting of the business purpose doctrine in the taxation of income tax on transactions with certain non-residents.

What rules were in effect before January 1, 2021

Accounting for the business purpose doctrine in "uncontrolled" transactions with non-residents was regulated until January 1, 2021 by subclause 140.5.15 of the TCU, which was put into effect on May 23, 2020 by Law No. 466.

This provision applied to "high-income" taxpayers (whose income for the past year exceeded UAH 40 million) or persons who did not put a mark on failure to adjust the financial result in the corporate income tax return for tax differences.

According to the regulations of subclause 140.5.15 of the TCU (which were valid until January 1, 2021), the financial result of the tax (reporting) period should have been increased by the amount of expenses incurred by the taxpayer when performing transactions with non-residents, **if such transactions do not have a business purpose**. If the taxpayer is obliged to increase the financial result before tax by the cost of expenses specified in this subclause, as well as according to the provisions of other subclauses of this Article, such other adjustments according to the provisions of other subclauses of Article 140 of the TCU are not made.

At the same time, it was noted that the duty to prove the circumstances provided for in this subclause is assigned to the controlling body.

But from January 1, 2021, the specified regulation is excluded (subclause 5, clause 8, Section I of Law No.1117). The new rules on taxation of transactions for business purposes will come into force only from January 1, 2022 (see clause 1, Section II of Law No.1117).

Changes that came into force on January 1, 2021

From January 1, 2021, the clarifications made to the regulations of subclause 14.1.231 of the TCU concerning the definition of a business purpose began to take effect.

According to the regulations of subclause 14.1.231 of the TCU, a **reasonable economic reason (business purpose)** is a reason that can be available only if the taxpayer intends to obtain an economic effect as a result of economic activity.
The economic effect, in particular, but not exclusively, implies an increase (preservation) of the taxpayer's assets and/or their value, as well as the creation of conditions for such an increase (preservation) in the future.

For tax purposes, it is considered that a transaction made with non-residents does not have a reasonable economic reason (business purpose) if:

- the main purpose or one of the main goals of the transaction is non-payment (incomplete payment) of the amount of taxes and/or reduction of the taxpayer's taxable profit;
- under comparable conditions, a person would not be ready to purchase (sell) such goods, works (services), intangible assets or other items of business transactions other than goods from unrelated persons.

Starting from January 1, 2021, this regulation has been supplemented with the following clarification:

*"This subclause shall apply for the purposes of Article 39 of this Code, **including in proving circumstances showing the absence of a business purpose, in cases defined by clause 140.5, Article 140 of this Code, which provide for the application of the relevant provisions of Article 39 of this Code**".*

However, as for the adjustments under clause 140.5 of the TCU, these amendments in 2021 are "declarative" in nature, since the relevant regulations in terms of the specifics of taxation of transactions for business purposes come into force only from January 1, 2022.

What will change from January 1, 2022

Starting from January 1, 2022, the rules for adjusting transactions with non-residents based on the business purpose doctrine will be detailed.

Changes were made to the regulations of subclauses 140.5.4, 140.5.5[1], 140.5.6 of the TCU. We emphasize that these norms regulate the taxation of transactions for "high-income" taxpayers (whose income for the past year exceeded UAH 40 million) or persons who did not put a mark on non-adjustment of the financial result in the corporate income tax return.

Changes to subclause 140.5.4 of the TCU

According to the regulations of paragraphs 3 and 4, subclause 140.5.4 of the TCU, the financial result of the tax (reporting) period is increased in transactions with non-residents in the amount of 30% of the value of goods, including non-current assets (except for assets under lease agreements), works and services (except for transactions specified in clause 140.2 and subclause 140.5.6 of the TCU, and transactions recognized as controlled according to Article 39 of the TCU) acquired in:

- non-residents (including related non-resident persons) registered in the states (territories) included in the list of states (territories) approved by the Cabinet of Ministers of Ukraine according to subclause 39.2.1.2 of the TCU (List No. 1045);
- non-residents whose legal form is included in the list approved by the Cabinet of Ministers of Ukraine according to subclause "d", clause 39.2.1.1 of the TCU (List No. 480) that do not pay income tax (corporate tax), including the income tax received outside the state of registration of such non-residents, and/or are not tax residents of the state in which they are registered as legal entities.

From January 1, 2022, subclause 140.5.4 the TCU will be supplemented with the following regulation:

*"The financial result before tax is increased by the **entire amount** of the value of goods, including non-current assets (except for assets under the right of use under lease agreements), works and services (except for transactions specified in clause 140.2 and subclause 140.5.6 of this clause, and transactions recognized as controlled according to Article 39 of this Code), purchased from non-residents defined in paragraphs three and four of this subclause**, if such transactions do not have a business purpose**.*

***The obligation to prove the circumstances provided for in this paragraph is imposed on the controlling body with the application of the relevant provisions of Article 39 of this Code**.*
At the same time, other adjustments provided for in this subclause are not applied, and the amount of this adjustment for such a transaction is reduced by the amount of the adjustment provided for in paragraph one of this subclause if the taxpayer has already independently applied this adjustment for such a transaction".
Also, paragraph 6 of subclause 140.5.4 of the TCU from January 1, 2022 will provide for exceptions, for which the requirements of this subclause are not applied by the taxpayer, if the transaction is not controlled and the amount of such expenses is confirmed by the taxpayer at prices determined on the "arm's length" principle according to the procedure established by Article 39 of the TCU, but without submitting a report.

At the same time, if the purchase price of goods, including non-current assets (except for assets from the right of use under lease agreements), works and services exceeds their price determined by the "arm's length" principle according to the procedure established by Article 39 of the TCU, the adjustment of the financial result before tax is carried out by the amount of the difference between the purchase price and the value determined based on the price level determined by the "arm's length" principle.

At the same time, according to the new regulations of paragraph 8, subclause 140.5.4 of the TCU from January 1, 2022, these rules will be clarified:

*"In case of non-application of the requirements of this subclause based on paragraph six of this subclause, **if the controlling body does not take into account (does not recognize) such a transaction based on the results of the analysis according to Article 39 of this Code**, the financial result before taxation is increased according to the procedure provided for in paragraph one of subclause 140.5.2[1], clause140.5 of Article 140 of this Code. At the same time, other adjustments provided for in this subclause are not applied, and the amount of this adjustment for such a transaction is reduced by the amount of the adjustment provided for in paragraph seven of this subclause if the taxpayer has already independently applied this adjustment for such a transaction".*

In turn, the new regulation of subclause 140.5.2[1] of the TCU (effective from January 1, 2021) establishes that:

"...the financial result before tax is increased by the amount of the transaction that the controlling body does not take into account (does not recognize) due to the application of subclause 39.2.2.12, subclause 39.2.2, clause 39.2 of Article 39 of this Code.

If the financial result before taxation of the taxpayer's tax (reporting) period is increased according to the requirements of this subclause, other adjustments provided for in subclauses 140.5.1 and 140.5.2 of this clause are not applied to such a transaction.

The obligation to adjust the financial result before tax provided for in this subclause is imposed on the controlling body, and the amount of this adjustment for such a transaction is reduced by the amounts of adjustments provided for in subclauses 140.5.1 and 140.5.2 of this clause if the taxpayer has already independently applied these adjustments for such a transaction".

Changes to subclause 140.5.5[1] of the TCU

According to the current regulations of paragraphs 2 and 3 of subclause 140.5.5[1] of the TCU, the financial result of the tax (reporting) period is increased by 30% of the value of goods, including non-current assets, works and services (except for transactions recognized as controlled according to Article 39 of the TCU) sold in favour of:

- non-residents registered in the states (territories) included in the list of states (territories) approved by the Cabinet of Ministers of Ukraine according to subclause 39.2.1.2 of the TCU (List No. 1045);
- non-residents whose legal form is included in the list approved by the Cabinet of Ministers of Ukraine according to subclause "d", subclause 39.2.1.1 of the TCU (List No. 480) that do not pay income tax (corporate tax), including income tax received outside the state of registration of such non-residents, and/or are not tax residents of the state in which they are registered as legal entities.

According to the new regulations of paragraph 4 of subclause 140.5.5[1] of the TCU (valid from January 1, 2022):

*"The financial result before tax is increased by the **entire amount of the value of goods**, including non-current assets, works and services (except for transactions recognized as controlled according to Article 39 of this Code), sold in favour of non-residents, defined in paragraphs two and three of this subclause, if such transactions do not have a business purpose. **The obligation to prove the circumstances provided for in this paragraph is imposed on the controlling body with the application of the relevant provisions of Article 39 of this Code**. At the same time, other adjustments provided for in this subclause are not applied, and the amount of this adjustment for such a transaction is reduced by the amount of the adjustment provided for in paragraph one of this subclause if the taxpayer has already independently applied this adjustment for such a transaction*".

As of now, paragraph 5 of subclause 140.5.5[1] of the TCU will establish that:

"...the requirements of this subclause are not applied by the taxpayer if the transaction is not controlled and the amount of such income is confirmed by the taxpayer at prices determined on the "arm's length" principle according to the procedure established by Article 39 of this Code, but without submitting a report.

At the same time, if the sale price of goods, including non-current assets, works and services is lower than the price determined according to the "arm's length" principle established by Article 39 of this Code, the adjustment of the financial result before taxation is carried out by the amount of the difference between the value determined based on the price level determined by the "arm's length" principle and the cost of sales".

However, according to the new clarification given in paragraph 7 of subclause 140.5.51 of the TCU, starting from January 1, 2022 it will be specified:

"In case of non-application of the requirements of this subclause based on paragraph five of this subclause, if the controlling body does not take into account (does not recognize) such a transaction based on the results of the analysis according to Article 39 of this Code, the financial result before taxation is increased according to the procedure provided for in paragraph one of subclause 140.5.2[1], clause140.5 of Article 140 of this Code. At the same time, other adjustments provided for in this subclause are not applied, and the amount of this adjustment for such a transaction is reduced by the amount of the adjustment provided for in paragraph six of this subclause if the taxpayer has already independently applied this adjustment for such a transaction".

Changes to subclause 140.5.6 of the TCU

This regulation provides that the financial result of the tax (reporting) period is increased by the amount of royalty accrual expenses (except for transactions recognized as controlled according to Article 39 of the TCU) in favour of a non-resident (including a non-resident registered in the states (territories) specified in subclause 39.2.1.2 of the TCU), exceeding the amount of income from royalties, increased by 4% of net income from sales of products (goods, works, services) according to the financial statements for the year preceding the reporting year (except for business entities that carry out activities in the field of television and radio broadcasting according to the Law of Ukraine "On Television and Radio Broadcasting"), and for banks — in the amount exceeding 4% of income from operating activities (net of value added tax) for the year preceding the reporting year.

From January 1, 2022, an addition will be made in paragraph 2 of subclause 140.5.6 of the TCU, according to which *"the financial result before taxation is increased by the entire amount of royalty accrual expenses (except for transactions recognized as controlled according to Article 39 of this Code) in favour of a non-resident (including a non-resident registered in the states (territories) specified in subclause 39.2.1.2, subclause 39.2.1, clause 39.2 of Article 39 of this Code) if such transactions do not have a business purpose.* ***The obligation to prove the circumstances provided for in this paragraph is imposed on the controlling body with the application of the relevant provisions of Article 39 of this Code****. At the same time, other adjustments provided for in this subclause are not applied, and the amount of this adjustment for such a transaction is reduced by the amount of the adjustment provided for in paragraph one of this subclause if the taxpayer has already independently applied this adjustment for such a transaction*".

At the same time and currently, by the regulations of paragraphs 3 and 4 of subclause 140.5.6 of the TCU from January 1, 2022, it will be provided that the requirements of this subclause are not applied by the taxpayer, if the transaction is not controlled and the amount of such expenses is confirmed by the taxpayer at prices determined on the principle of "arm's length", according to the procedure established by Article 39 of the TCU, but without submitting a report.

However, the new regulations of paragraph 5 of subclause 140.5.6 of the TCU will establish from January 01, 2022:

"If the requirements of this subclause are not applied based on paragraphs three and four of this subclause, the financial result before taxation will be increased according to the procedure provided for in subclause 140.5.2[1], clause 140.5 of Article 140 of this Code. However, other adjustments provided for in this subclause are not applied".

Thus, we can say that **adjustments taking into account the business purpose doctrine from January 1, 2022** will become more problematic for "high-income" payers.

Controlling bodies will pay more attention to analysing the compliance of transactions with "problematic" non-residents (indicated in Lists No. 480 and No. 1045) with the business purpose doctrine, even in those transactions that are not controlled.

Although supervisors should prove such a discrepancy, in practice it is different. Therefore, it makes sense for these payers to think about this problem right now and find ways to avoid it. For example, prepare a justification for the transaction's compliance with the business purpose or find ways to cooperate with less problematic non-resident counterparties.

Please also note that clarifying changes have been made to subclause 75.1.2 of the TCU, according to which the issue of compliance by the taxpayer with the "arm's length" principle cannot be subject to a planned documentary check, **except in cases of verification of the taxpayer's compliance with the requirements** of **subclauses 140.5.4, 140.5.5[1], 140.5.6 of the TCU** (until January 1, 2021, this norm specified subclauses 140.5.4, 140.5.6 of the TCU). These changes came into force on January 1, 2021, but in fact they will start operating from January 1, 2022, when the corresponding changes made to subclause 140.5.5[1] of the TCU take effect.

The tax authorities can still check the issue of compliance of a transaction with the business purpose doctrine in **uncontrolled transactions** during a regular documentary check. Given this, such issues need to be given special attention.

VALUE ADDED TAX

THE MINISTRY OF FINANCE HAS CHANGED THE FORMS OF THE TAX INVOICE AND VAT RETURN

The Ministry of Finance of Ukraine, by its Order No. 734 dated December 2, 2020, approved the following documents in a new version:
- tax invoice form;
- form of value added tax return;
- a form of clarifying calculation of value-added tax liabilities in connection with the correction of independently identified errors.

Order of the Ministry of Finance No. 734 dated December 2, 2020 (registered with the Ministry of Justice on January 26, 2021 under No. 100/35722) was published in the Official Gazette No. 8 dated February 2, 2021. Accordingly, the provisions of this Order are effective from March 1.

The need to make changes to the VAT reporting forms, tax invoice (TI) and adjustment calculation (AC) and the procedures for filling them out arose to implement the requirements of Law No. 466.
Starting **from March 1, 2021, TI and AC must be compiled according to the updated forms!**

The new VAT Return form entered into force on March 1, and it should be applied starting from reporting for March, that is, until April 20, 2021 (clause 46.4 of the TCU: definition of new forms of tax returns (calculations) that come into force for reporting for the tax period following the tax period in which they were published, the forms of tax returns (calculations) that are valid until such definition is effective).

The STS draws attention to the specifics of drawing up an updated tax invoice (hereinafter – the TI) / calculation of the adjustment of quantitative and cost indicators to the tax invoice (hereinafter – the AC) and registering them in the Unified Register of Tax Invoices (hereinafter – the URTI), approved by the Order of the Ministry of Finance No. 734 dated December 2, 2020 (hereinafter – Order No. 734).

Starting from March 1, 2021, Order No. 734 comes into force, so the TI and AC must be drawn up exclusively according to updated forms.

What has changed?

In the TI and AC, a new "**code**" detail has been added, which indicates the source of the tax number according to the Register that the person's tax number belongs to:

1 – Unified State Register of Enterprises and Organizations of Ukraine (USREOU);
2 – State Register of Individual Taxpayers (SRIT);
3 – taxpayer registration (accounting) number (for taxpayers who are not included in the USREOU);
4 – series (if available) and passport number (for individuals who refuse to accept the registration number of the record card and have a mark in the passport).

At the same time**, the line "code" in the TI and/or AC is filled in only if the line "Tax number of the taxpayer or series (if any) and passport number" of the** TI and/or AC **is filled in.**
We will take into account the specifics of drawing up a TI/AC and registering them in the URTI:

Starting from March 1, 2021, only TI and/or AC drawn up in new forms can be registered in the URTI (as amended by Order No. 734). At the same time, TI and/or AC drawn up according to the forms that were valid before March 1, 2021 will not be accepted for registration in the URTI.

If, starting from March 1, 2021, **there are grounds for drawing up an AC**, in addition to TI drawn up according to the form valid before March 1, 2021 and registered in the URTI before the specified date, **then such an AC must be drawn up according to the new form** (as amended by Order No. 734). At the same time, **the line "code" of such an AC must contain the attribute code "1", "2", "3" or "4"**, depending on the attribute of the source of the tax number according to the Register that owns the tax number of the person (supplier/recipient).

The number of items of goods/services delivered that can be specified in one tax invoice has also been clarified, namely, starting from March 1, 2021, this number must not exceed 99999 items (previously there were 9999 items).

Also, on March 12, 2021, the Order of the Ministry of Finance No. 131 dated March 1, 2021 came into force, which also approved changes to the updated VAT return and its appendices.
New formats of a tax invoice (J1201012) and VAT return (J0200123) have been approved**.**

Such changes were made to bring the forms of the tax invoice and VAT return in line with the requirements of the TCU, taking into account changes in preferential VAT rates: for certain types of agricultural products with a rate of 14%, tourism and culture with a rate of 7%, introduced by the Laws of Ukraine No. 962-IX dated November 4, 2020 and No. 1115-IX dated December 17, 2020.

NEW VAT RATE FOR AGRIBUSINESS — 14%: WHO APPLIES IT, WHEN AND HOW

Law No. 1115-IX dated December 17, 2020 "On amendments to the Tax Code of Ukraine concerning the rate of value-added tax on transactions for the supply of certain types of agricultural products" (Law No. 1115) amended the TCU, according to which importers and suppliers of agricultural products received a reduced rate of 14% VAT for a wide range of transactions.

Law No. 1115 also prescribes transitional rules.

Law No. 1115 was published in the newspaper "Holos Ukrayiny" No. 35 dated February 24, 2021, the rules for the entry into force of the legislator are indicated in Section II of this Law: comes into force on the day following the day of its publication, but its provisions apply to tax periods starting from the **first day of the month following the month of publication. Thus,** importers and suppliers of agricultural products (goods) have the right to apply the new 14% VAT rate **from March 1, 2021.**

New 14% VAT rate

The new rate is applied to transactions for the **supply** in the customs territory of Ukraine and **import** into the customs territory of Ukraine of agricultural products, which are classified according to the UCG FEA codes given further in Table 1, **except for** import transactions into the customs territory of Ukraine of goods defined in clause 197.18 of the TCU (subclause "d", clause 193.1 of the TCU as amended by Law No. 1115).

Table 1

Agricultural products whose supply and import are subject to VAT at the rate of 14%.

UCG FEA code	Product name
0102	cattle (live)
0103	pigs (live)
0104 10	sheep (live)
0401	only in part of whole milk
1001	wheat and a mixture of wheat and rye (meslin)
1002	rye
1003	barley
1004	oats
1005	corn
1201	soybeans (ground or not ground)
1204 00	flax seeds (ground or not ground)
1205	winter cress or rapeseed seeds (ground or not ground)
1206 00	sunflower seeds (ground or not ground)
1207	seeds and fruits of other oilseeds (ground or not ground)
1212 91	sugar beet

At the same time, the rate of 14% (20%) is not applied, but **there is an exemption from VAT for the import transaction** of breeding purebred animals, breeding (genetic) resources into the customs territory of Ukraine by **agricultural producers** according to the UCG FEA codes specified in clause 197.18 of the TCU (see Table 2).

Table 2

Agricultural products, the import of which into the customs territory of Ukraine is exempt from VAT.

UCG FEA code from clause 197.18 of the TCU	Product name	UCG FEA codes of the 2017 version*
0101 10 10 00	purebred breeding horses	0101 21 00 00
0102 10 10 00	purebred breeding heifers (female cattle before the first calving)	0102 21 10 00
0102 10 30 00	purebred breeding cows	0102 21 30 00
0103 10 00 00	purebred breeding pigs	0103 10 00 00
0104 10 10 00	purebred breeding sheep	0104 10 10 00
0511 10 00 00	bull sperm	0511 10 00 00
0511 99 85 10	cattle embryos	0511 99 85 10

* See Transition Tables from UCG FEA version 2007 to UCG FEA version 2012, approved by the order of the Ministry of Revenue No. 54 dated January 22, 2014, and Transition Tables from UCG FEA version 2012 to UCG FEA version 2017, approved by the order of the State Customs Service of Ukraine No. 234 dated July 1, 2020.

Transactions for the further supply of these breeding purebred animals (except horses) are subject to VAT in the general order at the rate of 14%, and breeding (genetic) resources (bull sperm, cattle embryos) and purebred breeding horses — at the rate of 20%.

Please note,

Export of agricultural products outside the customs territory of Ukraine (export), as before, is subject to VAT **at a zero rate**.

Right to a tax credit and VAT-compensating obligations

Transactions involving the supply (import into the customs territory of Ukraine, export outside the customs territory of Ukraine) of agricultural products that are subject to VAT at the rates of 0%, 20% and 14% **are considered taxable transactions**. Therefore, when purchasing goods, services and non-current assets with VAT for such transactions, VAT payers **do not need to charge VAT-compensating obligations** under clause 198.5 or clause 199.1 of the TCU.

Another thing is when, along with taxable ones, the VAT payer conducts preferential deliveries. In this case, you will have to calculate compensating tax liabilities to level the tax credit that falls on preferential deliveries and carry out an annual recalculation of VAT according to clause 199.4 of the TCU.
In turn, if goods/services, non-current assets purchased with VAT at a reduced VAT rate of 14%, are intended for use or begin to be used partly in VAT-exempt transactions, and partly in taxable transactions, then the taxpayer must calculate VAT tax liabilities according to clause 199.1 of the TCU at a tax rate of 14%. After all, it was at this tax rate that the supplier of these goods/services determined VAT tax liabilities, and the buyer formed a tax credit.
Compensating tax liabilities should be calculated at the VAT rate at which the tax credit was previously shown, which eliminates such liabilities.

Transition rules

Clause 54[1], Subsection 2, Section XX of the TCU prescribes transitional rules, the transitional points were stipulated for both VAT obligations and the tax credit.

Tax liabilities

According to the transitional rules, to apply the rate of 14% to transactions involving the import of agricultural products (goods) from Table 1 into the customs territory of Ukraine, the **VAT rate of 20% is applied in the following cases**:

1) delivery of agricultural products (goods) in the customs territory of Ukraine, which occurs **after the VAT payer transfers the prepayment (advance payment)** received before March 1, 2021;
2) adjustment of VAT obligations when returning a prepayment (advance payment) or returning products (goods) received before March 1, 2021;
3) adjustment of VAT obligations subject to changes in the contractual cost of products (goods) delivered before March 1, 2021.

Such transitional provisions are logical: if before the changes (before March 1, 2021) there was a prepayment, an advance (the first event) with 20% VAT, then the delivery of paid agricultural products (goods) (the second event) does not change anything. Shipment of the paid part of the delivery will be subject to 20% VAT, although on the date of such shipment there is already a reduced rate of 14%. In other words, we focus on the date of occurrence of VAT obligations and apply the rate that is valid on this date.

Starting from March 1, 2021, a new reduced VAT rate is applied to transactions for the supply of agricultural products (goods) that are not paid (not covered in advance) before this date.

Tax credit

If a VAT payer performs transactions for the supply of agricultural products (goods) from Table 1 in the customs territory of Ukraine, which was purchased before March 1, 2021, such VAT payer retains a VAT tax credit in the amount that was accrued during the purchase and/or delivery of such agricultural products (goods). In other words, a VAT payer who bought agricultural products (goods) with 20% VAT before the changes, but sells them after March 1, 2021 with 14% tax, **does not need to adjust the tax credit** by calculating VAT-compensating obligations.

The new reduced VAT rate is designed to reduce the tax burden on agricultural producers.

THE STATE SUPPORTS CULTURE, TOURISM AND CREATIVE INDUSTRIES

On December 23, 2020, the Law of Ukraine No. 962-IX dated November 4, 2020 "On Amendments to the Tax Code of Ukraine Concerning State Support for Culture, Tourism and Creative Industries" (hereinafter referred to as Law No. 962) came into force, published in the official publication "Holos Ukrayiny" No. 237 dated December 22, 2020.

Budget grants and a 7% VAT rate for certain services have been introduced.
Most of the rules are valid from December 23, 2020, and regarding the reduction of the VAT rate – from January 1, 2021.

Budget grants

Changes to this part came into force on December 23, 2020.

The definition of the term "budget grant" itself contains a new subclause 14.1.277[1] of the TCU:

"<...> budget grant is targeted assistance in the form of funds or property provided on a gratuitous and irrevocable basis at the expense of state and/or local budgets, international technical assistance for the implementation of a project or program in the fields of culture, tourism and in the sector of creative industries, sports and other humanitarian spheres according to the procedure established by law. The list of budget grant providers is determined by the Cabinet of Ministers of Ukraine".
There is no list of budget grant providers yet, as Law No. 962 has provided the Cabinet of Ministers with one month from the date of entry into force of this law to bring existing regulations into line and adopt new ones (clause 2, Section II of Law No. 962).

Nuances of taxation

Income tax

From now on, clause 134.1 of the TCU states that payers with an income of no more than UAH 40 million have the right **not to apply** differences with Section III of the TCU, *"(except for the negative value of the object of taxation of past tax (reporting) years and **adjustments defined by subclause 140.4.8, clause 140.4 and subclause 140.5.16, clause 140.5 of Article 140 of this Code**)"*. Therefore, the "grant" difference is exceptional, and it should be applied by all income taxpayers (regardless of the amount of income).

Accordingly, changes were made to clause 140.4 of the TCU due to the introduction of a new subclause 140.4.8 of the TCU, which provides for a reduction in the financial result by the amount of budget grants received by the taxpayer and credited to the income of the reporting period according to NAR(S) or IFRS.

A new subclause 140.5.16 of the TCU was introduced mirror-like, which provides for an increase in the financial result before tax by the amount of expenses related to the fulfilment of the terms of the budget grant agreement, made in the current reporting period at the expense of such grants (but no more than the amount of such grants) and included in the expenses of the current reporting period according to NAR(S) or IFRS.

If the recipient is an individual

Please note that income in the form of a budget grant is not taxed and is not included in the total monthly or annual taxable income of the taxpayer when it is accrued (paid, provided) in favour of the taxpayer (subclause 170.7[1].1 of the TCU).

The tax agent of a taxpayer when calculating (paying, providing) income in the form of a budget grant in his/her favour is the provider of such a grant (subclause 170.7[1].2 of the TCU). Accordingly, the tax agent should reflect such payment/accrual in the Tax Calculation, where he/she must indicate information about the concluded agreements for the provision of budget grants and their conditions, including the term of execution of the agreement, the registration number of the record card of an individual taxpayer who received a budget grant, or passport series and number, as well as information about the fact that the taxpayer used the budget grant or its part for the intended purpose or violation by the taxpayer of the terms of the agreement for the intended use of the budget grant, about the full or partial return by the taxpayer of the budget grant in favour of the tax agent – provider of budget grant (in case of such return) (subclause 170.7[1].2 of the TCU).

If the tax agent — provider of budget grants does not include in the Tax Calculation information about the violation by the taxpayer of the terms of the agreement on the intended use of the budget grant, such a budget grant provider is obliged to fulfil all duties of the tax agent in relation to income specified in clause 170.7[1] of the TCU (subclause 170.7[1].3 of the TCU).

If a taxpayer has violated the intended use of a budget grant, then he/she **is obliged to reflect the amount of income** received in the form of a budget grant (part thereof), in respect of which the relevant terms of the agreement on the intended use of the grant were violated, as part of the annual taxable income for the corresponding reporting year and **submit an annual tax return** and independently pay tax on such income (subclause 170.7[1].4 of the TCU).

If the grant funds are returned by the taxpayer (recipient) to the provider or only a part of them is returned **in the reporting year**, then such taxpayer has the right, according to the procedure established by Article 42 of the TCU, to inform the controlling body about this with the provision of copies of documents confirming the fact of such return. At the same time, the taxpayer is exempt from the obligation to reflect such a part of the paid (provided) and returned grant as part of income in the annual tax return and pay tax on the corresponding income (subclause 170.7[1].5 of the TCU).

But if the grant or part thereof is returned next year, the taxpayer has the right to submit a clarifying tax return and reduce the amount of annual taxable income for the corresponding reporting year by the returned grant amount, provided that copies of documents confirming the fact of the return of the relevant grant or part thereof in favour of the grant provider (tax agent) (subclause 170.7[1].5 of the TCU).

Single tax and individual entrepreneurs

Grants received by the individual entrepreneur are not included in income according to clause 292.1 of the TCU. Similarly, it is not an income for a system-wide individual entrepreneur to receive budget grants (subclause 177.3.2 of the TCU), as well as persons engaged in independent professional activities (clause 178.3 of the TCU).
If there is a violation of the intended use of the budget grant, then here, in fact, the individual entrepreneur (sole proprietor or system-wide employee) and a person engaged in independent professional activities will have a standard algorithm for payment and declaration as for individuals.
Budget grants received for legal entities on a single tax are also not considered income due to amendments to clause 292.11 of the TCU.

In case of misuse of the provided budget grant, the taxpayer — legal entity is obliged to increase tax liabilities based on the results of the tax period for which such violation occurs by the amount of a single tax at the rate provided for in clause 293.5 of the TCU.

Travel expenses are not an additional benefit

The corresponding changes were made to subclause "b", subclause 164.2.17 of the TCU, due to which:

«<...> the cost of goods and services paid by the subject of cinematography, namely travel, accommodation, food, security, insurance, medical care, training, training, is not considered an additional benefit of the taxpayer, which is associated with the participation of such a taxpayer in the production of audiovisual works produced (created) by the subjects of cinematography of Ukraine if this is provided for by the terms of the agreement with such taxpayers and/or the director's script of the audiovisual work.
Also, the cost of goods and services paid by a cultural institution, namely travel, accommodation, food, security, insurance, medical care, training related to the participation of such a taxpayer in the creation and display (holding) of cultural events, including touring, is not considered an additional benefit of the taxpayer, if this is provided for in the terms of the agreement with such taxpayers".

VAT benefits

Amendments to Articles 193, 197, 208 of the TCU and Subsection 2, Section XX of the TCU entered into force on January 1, 2021.

It is due to these changes that the **VAT rate has been reduced to 7%** relative to:

- supply of services for showing (holding) theatre, opera, ballet, music, concert, choreographic, puppet, circus, sound, light and other performances, productions, performances of professional art groups, artistic teams, actors and artists (performers), cinematic premieres, cultural and artistic events;
- provision of services for displaying original musical works, demonstrating exhibition projects, conducting excursions for groups and individual visitors in museums, zoos and nature reserves, visiting their territories and objects by visitors;
- delivery of services for distribution, demonstration, public notification and public screening of films adapted according to the legislation in Ukrainian versions for people with visual and hearing impairments;
- delivery of temporary lodging services (accommodation) provided by hotels and similar temporary accommodation facilities (class 55.10, group 55, KVED SC 009:2010).

Please note: **the "hotel" reduced VAT rate will be valid until January 1, 2023** (clause 74, Subsection 2, Section XX of the TCU).

Due to the amendments to clause 208.2 of the TCU, the VAT rate of 7% is also applied in the case of delivery of the above-mentioned services by non-residents, the place of delivery of which is located in the customs territory of Ukraine.

There are no transitional or corrective requirements for the introduction of the 7% rate. Thus, everything that was sold/paid for in this part before January 1, 2021 is subject to VAT at the rate of 20%, but from January 1, 2021 the rate of 7% is applied.

Starting from January 1, 2021**,** transactions involving the import of **goods that are part of the national cinematic heritage** into the customs territory of Ukraine under the customs regime of import **are exempt from VAT** (clause 197.25 of the TCU).

In addition, Law No. 962 extended the "cinematic" benefit until January 1, 2025, but the situation there is as follows:

- until January 1, 2023, transactions for the supply of services for demonstration, distribution, screening and/or public notification of national films and foreign films, dubbed, voiced in the state language on the territory of Ukraine, by demonstrators, distributors and/or broadcasting organizations (public detectors) are exempt from VAT (clause 13^1, Subsection 2, Section XX of the TCU);

- from January 1, 2023 to January 1, 2025, these transactions will be exempt from VAT, provided that such national films and foreign films are adapted according to the legislation in the Ukrainian versions for persons with visual impairments and hearing impairments (clause 13^2, Subsection 2, Section XX of the TCU).

Until January 1, 2025, the exemption from VAT transactions for the supply of national films is extended defined by the Law of Ukraine "On Cinematography", by producers, demonstrators and distributors of national films, as well as for the supply of works and services for the production of national films, as well as for the supply of works and services for the production of an archive set of source materials of national films and films created on the territory of Ukraine, for the supply of works and services for the replication of national films and foreign films, dubbed, voiced in the state language on the territory of Ukraine, as well as for the supply of works and services for dubbing, voicing in the state language of foreign films on the territory of Ukraine, for the supply of works and services for the preservation, renovation and restoration of the national cinematic heritage (clause 12, Subsection 2, Section XX of the TCU).

FINANCIAL STATEMENTS

FINANCIAL STATEMENTS FOR 2020

The financial statements for 2020 are submitted together with the audit report. For the first time, the annual financial statements for 2020, together with the audit report, should be submitted no later than June 10, 2021. Please note for whom this is mandatory and what liability is provided for non-submission.

The amendments introduced by Law No. 466-IX to clause 46.2 of the TCU provide that income taxpayers who, according to the Law of Ukraine "On Accounting and Financial Reporting in Ukraine" are required to publish annual financial statements and annual consolidated financial statements together with the audit report, submit to the controlling body:

- together with the tax return for the corresponding annual tax (reporting) period, the statement of financial position (balance sheet) and profit and loss statement and other comprehensive income (statement of financial performance) prepared prior to the audit of the financial statements by the auditor;
- annual financial statements together with the audit report to be published no later than June 10 of the year following the reporting year. In case of failure to submit (late submission) the annual financial statements together with the audit report to be published, the liability provided for in clause 120.1 of the TCU for filing tax returns (calculations) is applied.

At the same time, since this change entered into force on May 23, 2020 and the deadline for submitting the tax return and financial statements for the reporting period (2019) has already expired, for the first time, the norm of this clause regarding the mandatory submission of annual financial statements together with the audit report no later than June 10 of the year following the reporting year **is applied in the current 2021 based on the results of the 2020 reporting year**.

Who needs to submit financial statements together with the audit report?

According to clause 3, Article 14 of the Law on Accounting (Law No. 996), depending on the category of the business entity, financial statements together with the audit report must be submitted by:

- enterprises of public interest (except for large enterprises that are not issuers of securities), public joint-stock companies, subjects of natural monopolies in the national market and business entities operating in extractive industries-no later than April 30 of the year following the reporting period, must publish the annual financial statements and annual consolidated financial statements together with the audit report on their webpage (in full) and in other ways in cases defined by law;

- large enterprises that are not issuers of securities and medium-sized enterprises – no later than June 1 of the year following the reporting period, must publish the annual financial statements together with the audit report on their webpage (in full);

- other financial institutions pertaining to micro-enterprises and small businesses – no later than June 1 of the year following the reporting period, must publish the annual financial statements together with the audit report on their own webpage (in full).

FOR 2020, IT IS NECESSARY TO SUBMIT FINANCIAL STATEMENTS COMPILED ON THE BASIS OF THE UA TAXONOMY XBRL OF IFRS

The National Securities and Stock Market Commission informs that enterprises defined in Part 2, Article 12-1 of the Law on Accounting submit financial statements for 2020, the first quarter, the first half of the year and nine months of 2021 according to the procedure and terms determined by law, according to the forms approved by Order No. 73, and banks submit financial statements according to the forms defined by the NBU.

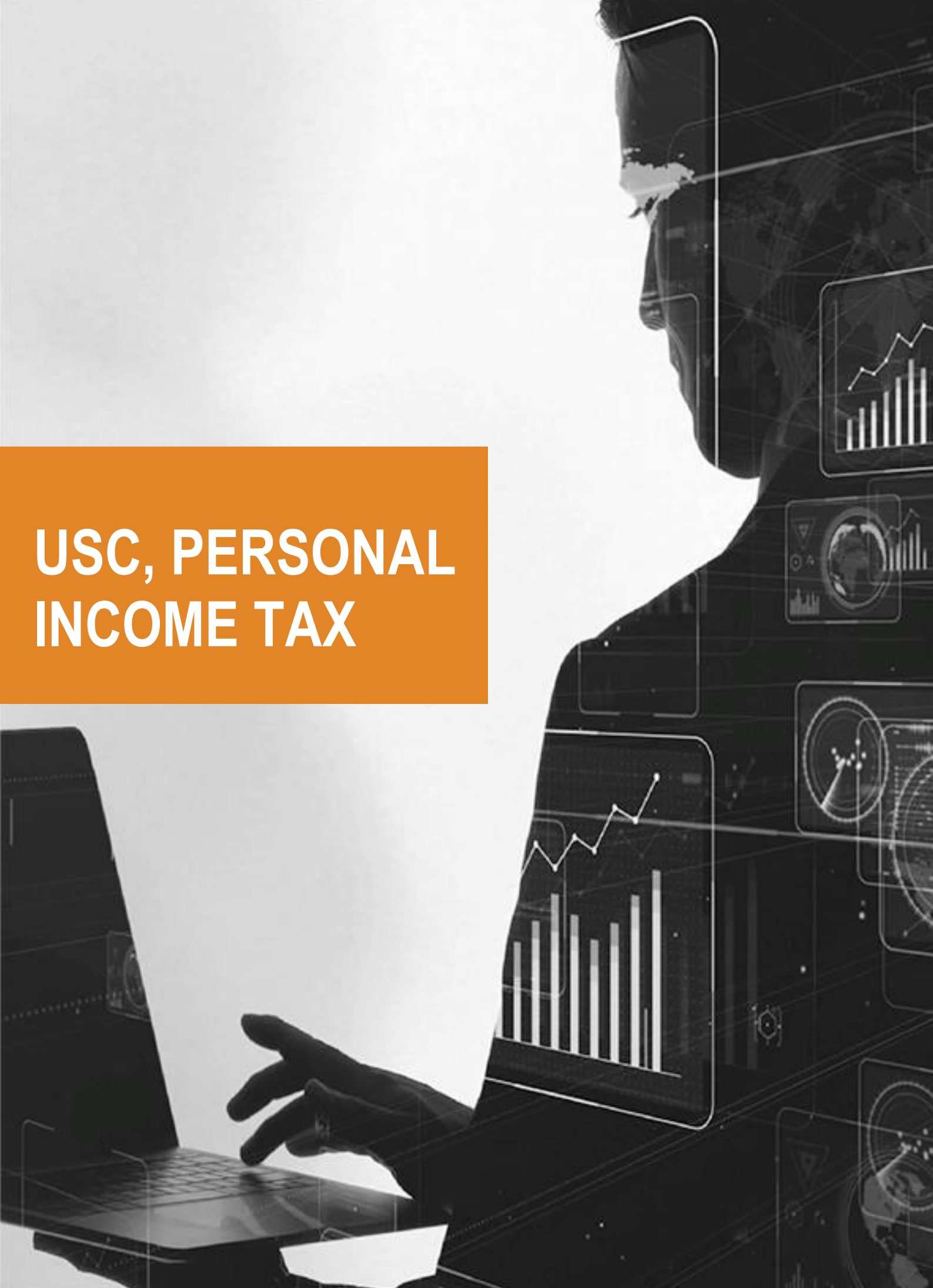
At the same time, such enterprises, in compliance with clause 2 of the Financial Reporting Procedure, will also have to prepare financial statements in electronic form based on the UA Taxonomy XBRL of IFRS 2020 and submit them to the financial reporting collection centre.

On December 24, 2020, the Financial Reporting System Management Committee decided to recommend that financial market regulators, within the limits of their powers, provide the necessary measures to extend the deadlines for submitting financial statements and consolidated financial statements based on the UA Taxonomy XBRL of IFRS 2020, to the financial reporting collection centre for 2020, the first quarter, first half and nine months of 2021 and not apply sanctions for failure to submit such reports by business entities within the time limits set by law during 2021.

To be able to submit financial statements based on the UA Taxonomy XBRL of IFRS, businesses must pre-register with the financial reporting collection centre.

Please note that according to Part 2, Article 12-1 of the Law on Accounting, enterprises of public interest, public joint-stock companies, business entities that operate in extractive industries, as well as enterprises that carry out economic activities by type, the list of which is determined by the Cabinet of Ministers of Ukraine, prepare financial statements and consolidated financial statements according to international standards.

USC, PERSONAL INCOME TAX



INTRODUCTION OF A SINGLE TAX ACCOUNT

From January 1, 2021, it was possible (but not necessary!) to switch to a single account for paying taxes, fees and USC.

According to the STS, this requires three simple steps:

1. To submit a "Notification about using a single account" using the form J/F 1307001 through the personal account.

2. To get a receipt for inclusion in the Register of payers who use a single account.

3. To submit settlement documents to the servicing bank indicating the details of a single account for the total amount without determining the recipients or with the definition of recipients.

To opt out of using a single account (if you switched to it) is possible starting from January 1 of the next calendar year.

THE MINISTRY OF FINANCE APPROVED UNIFIED REPORTING ON PERSONAL INCOME TAX, MILITARY LEVY AND USC FOR EMPLOYERS

The Ministry of Finance has set out a new version of Form No. 1DF. It will now contain six more applications. For the first time, it must be submitted for Q1 of 2021.

The Ministry of Finance by Order No. 773 dated December 15, 2020 set out a new version:

- the form of Tax Calculation of the amounts of income accrued (paid) in favour of individual taxpayers, and the amounts of tax withheld from them, as well as the amounts of the accrued single contribution. It now includes the content of the USC Report.
- Procedure for filling out and submitting Tax Calculations by tax agents of the amounts of income accrued (paid) in favour of individual taxpayers and the amounts of tax withheld from them, as well as the amounts of the accrued single contribution.

Please note that according to Laws No. 115 and 116, starting from January 1, 2021, it is planned to submit reports on the accrual of USC as part of personal income tax reports (for tax agents as part of Form No. 1DF). Such reports should be submitted to the tax authority at the main place of registration of the USC payer.

The Order comes into force on January 01, 2021, but no earlier than the day of its official publication. The document was published in the Official Gazette of Ukraine No. 101 dated December 28, 2020.

New reports will need to be submitted quarterly, broken down by month.

For the first time, it is necessary to submit a new tax calculation under Form No. 1DF for Q1 of 2021. This is provided for by Order No. 773**.**

The updated form is called "Tax calculation of the amounts of income accrued (paid) in favour of individual taxpayers, and the amounts of tax withheld from them, as well as the amounts of the accrued single contribution".
The new calculation consists of:

- the main part (Section I of the Calculation "Accrual of income and a single contribution for employees in the context of months of the reporting quarter", Section II of the Calculation "Accrual of monetary security and a single contribution for military personnel, police officers, ordinary and commanding personnel and for the amount of maternity benefits in the context of months of the reporting quarter (except for conscripts);
- Appendix 1 "Information on the calculation of wages (income, monetary security) to insured persons";
- Appendix 2 "Information about persons who take care of a child before reaching the age of three, when adopting a child, and persons from among unemployed able-bodied parents, adoptive parents, guardians, custodians who actually take care of a child with a disability";
- Appendix 3 "Information about persons undergoing military service";
- Appendix 4 "Information on the amounts of accrued income, withheld and paid personal income tax and military levy";
- Appendix 5 "Information on employment relations of persons and the period of military service";
- Appendix 6 "Information on the existence of grounds for accounting for seniority for certain categories of persons according to the legislation".

For the first time, it is necessary to submit a new tax calculation under Form No. 1DF – for Q1 of 2021.

If an employee appears at the enterprise who is retiring or applying for payments from funds, it will be necessary to submit a report for him/her as a "reference".
In other words, the "**reference**" type is indicated if the Tax Calculation must be submitted with the information necessary for an assignment to insured persons:

- **pension;**
- **material security, insurance payments**.

Such a report will only contain appendices with information about the employee necessary for assigning the corresponding payment.
The reason for submitting reports will be indicated in the "header" of the corresponding application, which is submitted as part of a Tax Calculation with the "reference" type.
If marked:

- "for assigning a pension" (Appendices D1 (line 035), D5 (line 036) and D6 (line 034), if they contain information about the insured person), then the Appendices must contain information for assigning a pension to the insured person. We will submit them for the period before the date of forming the application for pension assignment;
- "for assigning material security, insurance payments" (Appendix D1 (line 035) and, if necessary, Appendix D5 (line 036)) — in this case, you will need to specify information for assigning other social payments to the insured person.

The frequency of submission of such reference reports is not clearly spelt out in updated Procedure No. 4.

It is only indicated that **the reference Tax Calculation is submitted if there are grounds for its submission.**

The Tax Calculation has 6 appendices. However, regular employers will only deal with 4 of them.

The prototypes of Appendices D1, D5, and D6 were Tables 6, 5, and 7 of the USC Report, respectively. Appendix 4DF is an upgraded form No. 1DF.
The reporting period for which the Tax Calculation is submitted is the tax quarter. However, if necessary (retirement, receiving payments from social funds), a reference Tax Calculation will be submitted for the employee.

The fact that some employees were provided with information about certain months in the interim "Reference" Calculation does not relieve you of the obligation to provide information about them in the "Reporting" Calculation.

Information about the persons indicated in the reference Calculation should also be duplicated in the reporting Calculation for the corresponding reporting period (quarter). In other words, information about the same individuals is displayed twice: the first one is displayed in the "Reference" section within the quarter, and the second one is displayed in the quarterly "Reporting" section after the end of the quarter.

If the reporting quarter has come to an end, and you need data for the quarter to assign a pension, material support, or insurance payments, you should submit a Calculation that is no longer "Reference", but simply "Reporting".

Such explanations are provided in the letters of the Pension Fund of Ukraine (hereinafter – the PFU) and the Ministry of Finance of Ukraine (hereinafter – the MFU): PFU letter No. 2800-050102-1/2832 dated January 22, 2021 and MFU letter No. 11220-02-62/2362 dated January 27, 2021.

STARTING FROM 2021, "SOLE PROPRIETORS" SUBMIT ONE REPORT ON THE SINGLE TAX AND USC

The Ministry of Finance, by Order No. 670 dated November 5, 2020, amended the Procedure for forming and submitting a report by policyholders on the amounts of the accrued USC (Procedure No. 435).

The document entered into force on January 1, 2021 (from the 1st day of the month following the month of its official publication, it was published on December 28, 2020).

Important clarifications in Procedure No. 435.

1. In case of termination or de-registration with the revenue and duties authorities, the policyholder is obliged to submit the USC Report for the last reporting period before the day of state registration of the termination, in which**:**

- state registration of termination of the policyholder or business activity has been carried out;
- independent professional activity has been terminated according to the Register of Policyholders;
- the payer has lost the status of a member of a farm, acquired the status of a person subject to insurance on other grounds, and is exempt from paying USC.

In other cases, policyholders who are not covered by the Law of Ukraine "On State Registration of Legal Entities, Individual Entrepreneurs and Public Formations" are required to submit the USC Report before the date of submitting an application to the revenue and duties authority for de-registration of the USC payer, in which the application for de-registration is submitted.

With the USC Report for the last reporting period, policyholders are required to submit reports for previous reporting periods, if they were not submitted.

Amendments to Procedure No. 435 also provide for what reporting periods and when to submit the USC Report with an indication of the "liquidation" form.

2. It has been clarified that Table 5 of the USC Report is submitted if during the reporting period:

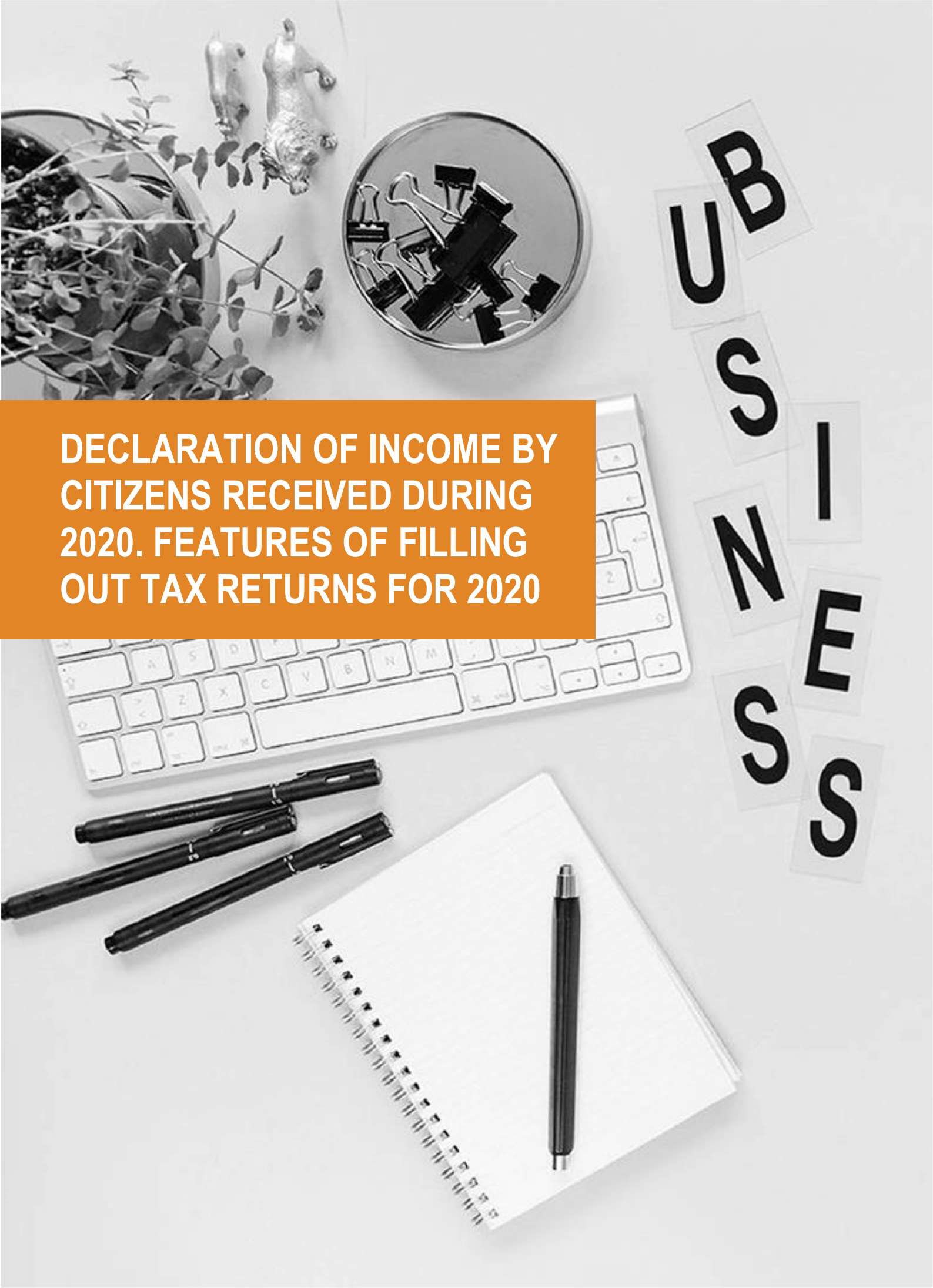
- the person was moved from one structural division to another, transferred to another permanent position or job with the same policyholder;
- the person is appointed to a new position with the same policyholder.

3. Table 5 of the USC Report is set out in a new version. **It has a new column "Professional Job Title".**

Also, column 17 was set out in the new version "Document-basis on the beginning, end of labour or civil law relations, transfer to another position, work and vacations".

4. In Table 1 of the USC Report, line 2 received the updated name "enterprises, institutions and organizations, individual entrepreneurs, including those who chose the simplified taxation system, working persons with disabilities (8.41%)", which allows the individual entrepreneur to enter information about the accrued salary of employees with disabilities.

5. There are new positions in the Table of Code Correspondence of categories of insured persons and the codes of accrual and the USC amounts.



DECLARATION OF INCOME BY CITIZENS RECEIVED DURING 2020. FEATURES OF FILLING OUT TAX RETURNS FOR 2020

DECLARATION OF INCOME BY CITIZENS RECEIVED DURING 2020. FEATURES OF FILLING OUT TAX RETURNS FOR 2020

The deadline for submitting a tax return for the reporting (tax) year 2020 for individual entrepreneurs under the general tax system is February 9, 2021, for individuals and those engaged in independent professional activities – April 30, 2021.

Since the beginning of 2021, a campaign for citizens to declare income received during 2020 has been launched.

It is the constitutional duty of citizens to submit an annual tax return of property status and income for the past year (Part 2 of Article 67 of the Constitution of Ukraine).

At the taxpayer's choice, the tax return is submitted at the place of its tax address in person or by an authorized person; by mail or by means of electronic communication.

For the convenience of payers and simplification of the procedure for declaring income by citizens, the official web portal of the STS in the Personal Account in the Section "Personal Account for Citizens" has an electronic service "Tax Return of Property Status and Income". Using this service, you can fill out a tax return and send it to the controlling body in electronic form with copies of primary documents, in particular, to use the right to a tax discount.

Deadlines for submitting a tax return for the reporting (tax) year 2020:

- for individual entrepreneurs engaged in business activities under the general tax system – within 40 calendar days following the last calendar day of the reporting (tax) year. The last day is February 9, 2021;
- for citizens who, according to the norms of Section IV of the TCU, are required to submit a tax return, and persons engaged in independent professional activities – by May 1 of the year following the reporting year. The last day is April 30, 2021;
- for individuals who declare the right to a tax discount – by December 31 inclusive following the reporting year. The last day is December 31, 2021.

Taxpayers are required to submit a tax return:

- when receiving income not from tax agents (i.e. from other individuals who are not registered as self-employed persons). Such income includes, in particular, income from leasing movable property or real estate to other individuals; inheritance or receiving as a gift of property not from family members of the first and second degree of kinship, etc.;
- when receiving income from tax agents that was not subject to taxation at the time of payment, but is not exempt from taxation. Such income includes, in particular, transactions with investment assets;
- when receiving foreign income;
- and in other cases provided for by law, in particular, when obtaining ownership of property by a court decision.

At the same time, it should be noted that the taxpayer's obligation to submit a tax return is considered fulfilled and the tax return is not submitted if such a taxpayer received income exclusively:

- from tax agents that are not included in the total monthly (annual) taxable income;
- exclusively from tax agents, regardless of the type and amount of accrued (paid, provided) income, except in cases expressly provided for in Section IV of the TCU;
- from transactions of sale (exchange) of property, donation, income from which is not taxed according to Section IV of the TCU, is taxed at a zero rate and/or from which tax was paid during certification of agreements according to Section IV of the TCU;
- in the form of inheritance objects taxed at a zero tax rate and/or from which tax is paid according to clause 174.3 of the TCU.

The economic development of the state, its financial security and the level of social protection depend on a responsible attitude to the requirements of the legislation and timely fulfilment of the constitutional duty by citizens.

DO YOU RETURN FUNDS AND PROPERTY TO INDIVIDUALS THROUGH WITHDRAWAL FROM THE FOUNDERS: WHAT ABOUT PERSONAL INCOME TAX?

The issuer of corporate rights acts as a tax agent only in terms of reflecting in Form No. 1DF under the income attribute "112" transactions for the return of funds or property (property rights) to an individual that it has previously contributed to the authorized capital.

Amounts of income in the form of property and non-property contributions to the authorized capital of a legal entity issuing corporate rights in exchange for such rights are not included in the total taxable income of an individual.

Consequently, the amount of an individual's property contribution to the authorized capital of a resident legal entity is not subject to personal income tax and military duty.

A legal entity that issues corporate rights acts as a tax agent only in terms of reflecting in the tax calculation under Form No. 1DF under the income attribute "178" the amount of funds or property contributed by an individual to the authorized capital of such a legal entity in exchange for corporate rights. Accordingly, the tax calculation under Form No. 1DF is filled in as follows:

- column 3a shows the amount of accrued income;
- column 3 shows the amount of income paid;
- dashes are placed in column 4a and column 4;
- column 5 indicates the income attribute "178".

Regarding the transaction to return funds or property (proprietary rights) to an individual that they have previously contributed to the authorized capital, the following should be taken into account.

The total monthly (annual) taxable income of the taxpayer includes investment profit from transactions with securities, derivatives and corporate rights issued in forms other than securities (subclause 164.2.9 of Article 164 of the TCU).

The reporting period is considered to be a calendar year, according to the results of which the payer is required to submit an annual tax return on property status and income, which reflects the total financial result obtained during such a reporting year (subclause 170.2.1 of Article 170 of the TCU).

Investment profit is calculated as the positive difference between the income received by the taxpayer from the sale of an individual investment asset, taking into account the exchange rate difference (if any), and its value, determined from the amount of documented expenses for the purchase of such an asset (subclause 170.2.2 of Article 170 of the TCU).

The sale of an investment asset is a transaction to return to the payer funds or property (property rights) previously contributed to the authorized capital of the issuer of corporate rights, in the event of such a taxpayer's withdrawal from the list of founders (participants), reduction of the authorized capital of such issuer or its liquidation.

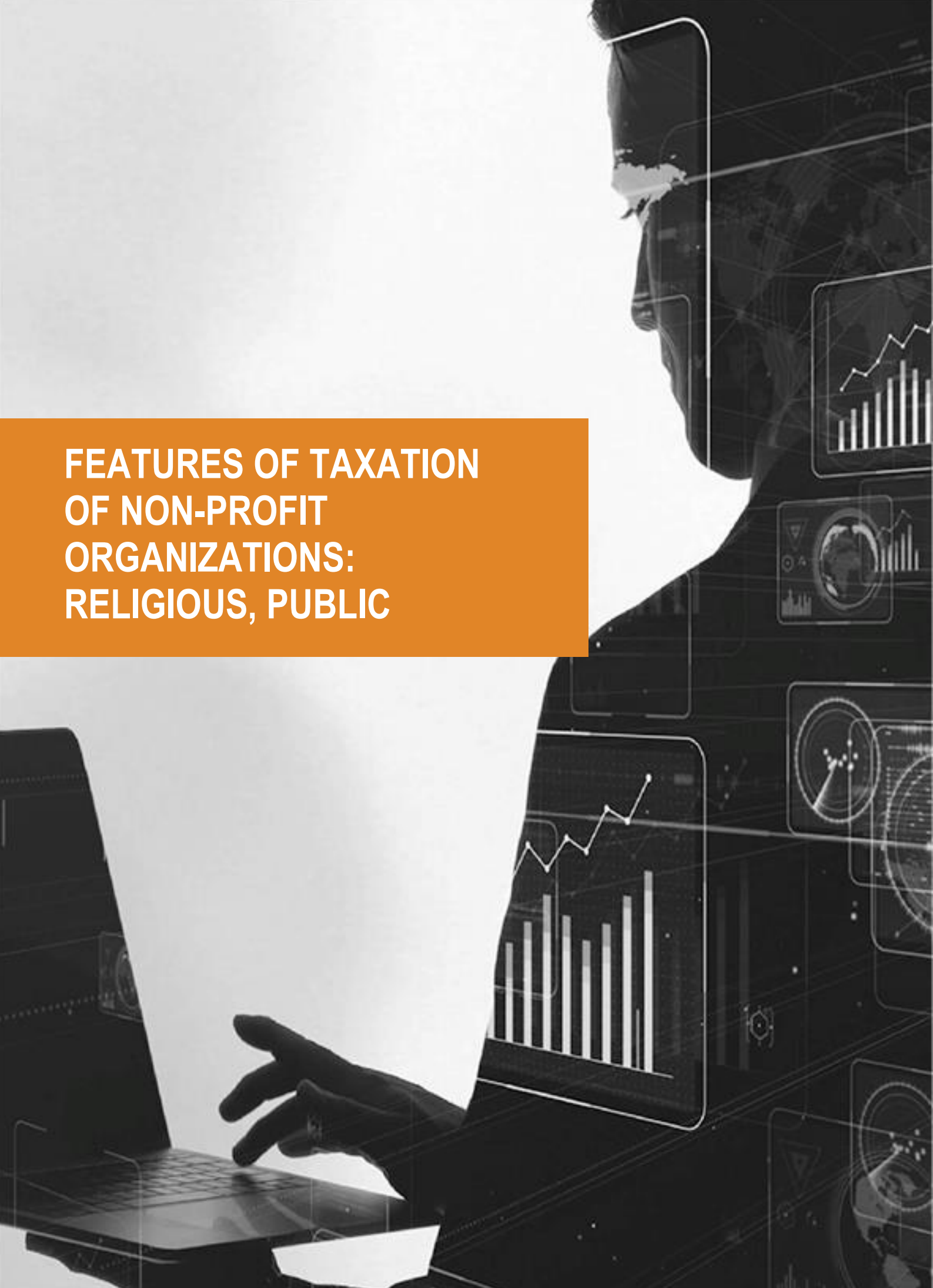
Acquisition of an investment asset is a transaction involving the payer's contribution of funds or property to the authorized capital of a resident legal entity in exchange for the corporate rights issued by it.

The issuer of corporate rights (legal entity) acts as a tax agent, only in terms of reflecting in the tax calculation under Form No. 1DF under the income attribute "112" transactions for the return of funds or property (property rights) to an individual, previously contributed by it to the authorized capital.

At the same time, an individual must determine the financial result of transactions with investment assets and submit a tax return by May 1 of the year following the reporting year. Investment profits are subject to personal income tax at the rate of 18% and military duty at the rate of 1.5%.

It should be noted that income received by the taxpayer during the reporting tax year from the sale of investment assets is not subject to taxation and is not included in the total annual taxable income if the amount of such income does not exceed the amount specified in paragraph one of subclause 169.4.1 of Article 169 of the TCU, that is, in 2020 – UAH 2,940 (subclause 170.2.8 of Article 170 of the TCU).

FEATURES OF TAXATION OF NON-PROFIT ORGANIZATIONS: RELIGIOUS, PUBLIC



FEATURES OF TAXATION OF NON-PROFIT ORGANIZATIONS: RELIGIOUS, PUBLIC

Consideration of the specifics of taxation of non-profit organizations should begin with the fact that such organizations cannot receive "other income" that can be taxed on income, and continue to remain in non-profit status. If you receive other income – do you lose your non-profit status?

Conditions of having non-profit status

Non-profit enterprises, institutions and organizations (hereinafter referred to as non-profit organizations) are non-profit organizations that are not payers of corporate income tax according to clause 133.4 of the TCU (see subclause 14.1.121 of the TCU).

But already subclause 133.4.1 and subclause 133.4.2 of the TCU set the appropriate conditions. According to the norms of these subclauses, a non-profit organization is an organization that simultaneously meets the following requirements:

1. It is formed and registered according to the procedure established by the law regulating the activities of the relevant non-profit organization.

2. The constituent documents of which (or the constituent documents of a higher-level organization, based on which a non-profit organization operates according to the law) contain a ban on the distribution of income (profits) received or part of them among the founders (participants — within the meaning of the Civil Code of Ukraine), members of such an organization, employees (except for their remuneration, accrual of the USC), members of management bodies and other related persons. Moreover, it is not considered the distribution of received income (profits) to finance expenses defined in subclause 133.4.2 of the TCU.

3. The income (profits) of a non-profit organization is used exclusively to finance the expenses for the maintenance of such a non-profit organization, the implementation of the goal (aims, objectives) and areas of activity defined by its constituent documents. The income of non-profit religious organizations is also used to carry out non-profit (charitable) activities provided for by law for religious organizations, including providing humanitarian aid, conducting charitable activities, and charity.

4. The constituent documents of which (or the constituent documents of a higher-level organization, based on which a non-profit organization operates according to the law) provide for the transfer of assets to one or more non-profit organizations of the appropriate type, other legal entities that carry out non-state pension provision according to the law (for non-state pension funds), or crediting to budget income in the event of termination of the legal entity (due to its liquidation, merger, spin-off, accession or transformation). However, this condition does not apply to unions and associations of unions of co-owners of blocks of flats and housing and construction cooperatives.

5. Entered by the controlling body in the Register of Non-Profit Institutions and Organizations.

In addition, the first and fourth requirements for the availability of constituent documents do not apply to budgetary institutions.

Let's take a closer look at each of the above requirements.

The first criterion: education according to the relevant Law

Religious organization. The relevant Law is the Law on Religious Organizations (Law No. 987).

Here are some provisions of Law No. 987 that cover our issue:

- they are formed to meet the religious needs of citizens to profess and spread the faith (Article 7 of Law No. 987);
- in canonical and organizational matters, they may be subordinate to any religious centres (departments) operating in Ukraine and abroad (Article 8 of Law No. 987);
- a religious organization operates based on its charter, which is adopted at general meetings of religious citizens or religious congresses, conferences and must contain the information provided in Article 12 of Law No. 987;
- the charter is subject to mandatory state registration (Article 14 of Law No. 987);
- each religious organization (according to Article 7 of Law No. 987 – religious communities, administrations and centres, monasteries, religious fraternities, missionary societies (missions), spiritual educational institutions, as well as associations consisting of the above-mentioned religious organizations) is a separate legal entity (Article 13 of Law No. 987), etc.

Thus, if a religious organization has fulfilled these requirements of the relevant Law, we can say that the first criterion has been met.

Public association. The relevant Law is the Law on Public Associations (Law No. 4572).

According to its organizational and legal form, a public association is formed as a public organization (founders and members are individuals) or a public union (founders are legal entities, and members can also be individuals) (Article 1 of Law No. 4572).

Regarding the formation and registration of a public association the relevant Law No. 4572 states:

- requirements for founders (Article 7 of Law No. 4572);
- requirements for participating members (Article 8 of Law No. 4572);
- form it at the constituent assembly, which is drawn up in minutes (Part 1 of Article 9 of Law No. 4572);
- within 60 days from the date of holding the constituent assembly, it must be registered according to the procedure provided for by Law No. 755 (Part 8 of Article 9 of Law No. 4572);
- requirements to the charter (Article 11 of Law No. 4572).

A public association that has met these requirements meets the first criterion.

The second criterion: prohibition of income distribution among founders, employees, and related parties

The relevant norm must be recorded in the organization's charter. A similar requirement for a public association is also provided for in Part 6 of Article 3 of Law No. 4572. And there is no such requirement in Law No. 987. However, if a religious organization prefers to be non-profit, this requirement must be included in its charter.

This prohibition does not apply to the payment of wages among employees, founders, and members working in the organization. For this rule to be fully applicable, a non-profit organization should adhere to all personnel technology. In other words, the organization must have an approved staffing table. Employees must be hired based on an application, and an employment order must be issued.

In particular, the specifics of labour relations in religious organizations are given in Article 25 of Law No. 987. The only special feature is the conclusion of an employment contract with an employee in writing. However, this Law also specifies the registration of an employment contract according to the established procedure. But there is no such procedure. Therefore, you do not need to register the contract.

Employment contracts and salary payments are more or less clear.

What to do with other payments, such as under civil contracts, and payments on other grounds?

For example, payments to clergymen and churchmen in a religious organization do not fall under the category of wages. After all, these persons do not work based on labour legislation, but according to the norms of internal church law. Such persons do not work, but serve (analogous to service in the Armed Forces, police, etc.).

Taking into account the existing tax legal structures in Ukraine, the work of clergymen and churchmen fits comfortably into the concept of "independent professional activity". Although to do this, ministers should be registered as self-employed persons. This is not always done, so ministers can be registered both as employees under an employment contract and a civil contract. Or simply pay other income equal to wages.

Isn't such payment distribution of income among the founders (participants, etc.)?

We believe that such payments, as well as payments under civil contracts, are quite legal. Because according to paragraph 3, subclause 133.4.1 the TCU financing expenses defined in subclause 133.4.2 of the TCU is not a distribution of received income (profits). That is why the income (profits) of a non-profit organization should be used exclusively to finance the expenses for the maintenance of such a non-profit organization, the implementation of the goal (aims, objectives) and areas of activity defined by its constituent documents.

And the payments that we are considering are made not for beautiful eyes, but for performing some work in the organization that is aimed at fulfilling the statutory goals. The same opinion regarding the payment of income to the founder (participant), employee or member of a non-profit organization for works performed (services rendered) based on the civil law agreement is given in the Individual Tax Advice of the Main Directorate of the State Fiscal Service in Donetsk region No. 5028/ITA/05-99-12-03-12 dated November 30, 2018, Individual Tax Advice of the State Fiscal Service of Ukraine No. 757/6/99-99-13-01-02-15/ITA dated June 21, 2017, No. 2529/C/99-99-15-02-02-14/ITA dated November 6, 2017.

The TCU provides the only significant sign of appropriate expenses – their connection with the costs of maintaining the organization, etc.

Therefore, it should be understood that if there is no connection between the payment and the costs of maintenance, implementation of the goal and/or areas of activity, then payments can no longer be considered made according to the provisions of clause 133.4 of the TCU.

Does a non-profit organization's provision of a loan (financial repayable assistance) to its employee or founder (participant) fit into the expenses of a non-profit organization?

We believe as follows: a non-profit organization should use its income only for its own maintenance and implementation of the purpose of creation. But if the employee has some difficult life circumstances and needs help. In turn, the employee works in the organization, makes a lot of effort to ensure that the organization achieves its goal. Then it is logical that the organization helps the employee by providing a loan. And thus, such a transaction is quite suitable for the concept of "retention". Actually, there is no clear line between where the content is and where the non-content is.

On the other hand, in practice, sometimes a loan covers up the transaction of distributing the organization's profits between employees, founders and participants. For example, they give a loan for 10, 20, 30 years, and when these years pass, the loan is extended for another 10, 20, 30 years.
The loan is sure to have been issued without the intention of paying it back. That is, in form it is a loan, and in essence, it is profit distribution. Nevertheless, the loan may also be granted for a year or two. After that, the employee returns it. And then why the latter is not the cost of maintaining the organization? Moreover, these are not irrevocable, but refundable expenses.

If the employee does not repay such a loan, it seems that the organization indirectly distributed the profit?

In this case, in general, the provision of loans to employees and participants may fit into the concept of maintaining the organization. But if you allow this practice, it will probably lead in reality to continuous fraud. Moreover, if for certain reasons the loan is not repaid, most likely, this is recognized as an indirect distribution of profit. Therefore, we would not recommend non-profit organizations to provide loans.

Another situation is the payment of non-refundable financial assistance to an employee or member of an organization.

Does such assistance fit into the costs of maintaining the organization or achieving its goal?

The considerations here are the same as for the loan. Again, we do not advise non-profit organizations to provide financial assistance.

However, not when it comes to paying an employee financial assistance, which is included in the salary fund according to the instructions on salary statistics approved by Order No. 5 of the State Statistics Committee of Ukraine dated January 13, 2004. Payments to employees included in the salary fund are not a distribution of the organization's profit and can be made by it in the status of non-profit (see Individual Tax Advice of the State Fiscal Service of Ukraine No. 3018/6/99-99-15-02-02-15/ITA dated December 15, 2017, Individual Tax Advice of the State Fiscal Service of Ukraine No. 830/6/99-00-07-02-02-15/ITA dated October 18, 2019, No.1587/6/99-00-07-02-02-06/ITA dated April 17, 2020).

Of course, this restriction does not apply to the provision of charitable and humanitarian aid by relevant non-profit organizations. Religious organizations are allowed to provide "humanitarian aid and charity (see subclause 133.4.2 of the TCU): the income of non-profit religious organizations is also used to carry out non-profit (charitable) activities provided for by law for religious organizations, including providing humanitarian aid, carrying out charitable activities, charity.

In addition, it is worth considering the situation when according to the lease agreement of communal property, the tenant independently distributes each regular payment for the lease of property and sends the corresponding parts of the rent directly to the municipal non-profit enterprise (balance holder) and to the budget of the territorial community, and the municipal non-profit enterprise, in turn, as part of its income for accounting purposes reflects the part of the rent received from the tenant, which is fully used to finance the costs of its maintenance, the implementation of the goal (aims, objectives) and activities defined by its constituent documents. According to the General Tax Consultation approved by Order No. 23 of the Ministry of Finance of Ukraine dated January 19, 2021, such a calculation procedure does not constitute the distribution of income (profits) or part of them among the founders (participants) of such an enterprise. However, it is necessary to comply with other requirements of subclauses 133.4.1 and 133.4.2 of the TCU regarding the presence of such a municipal non-profit enterprise in the Register of Non-Profit Institutions and Organizations.

We have given some examples, and ultimately it is important to understand how to distinguish the distribution of income between founders from other expenses for maintaining an organization and achieving its goals.

First, we would advise you to make out the financial activities of non-profit organizations with estimates. An estimate is a list by type and amount of income and expenses. Plus – the cost part is given in sections, for example:

- for the maintenance of the organization (salary, accruals, rent, utilities, etc.);
- for the implementation of statutory goals (distribution of advertising materials, conducting educational lectures, etc.).

The revenue side can also be divided into sections, for example:

- receiving charitable donations;
- distribution (sale) of relevant literature;
- passive income (bank interest, etc);
- provision of property for rent;
- sale of excess property of the organization, etc.

Estimates may vary. For example, you can make one planned estimate for the entire year (quarter, month, etc.), and then distribute all funds received by the organization within this estimate. At the end of the year, the planned estimate is updated to the actual level. Alternatively, you can make estimates for the actual funding received. It is recommended to fix the specifics of drawing up and executing estimates in the charter of the organization and/or in its internal documents.

Secondly, you can classify maintenance costs, etc. based on the fact of payments for services received, works performed, goods purchased, which are purchased to fulfil the organization's goals according to the principle: "you give to me – I give to you". Therefore, if payments are not made according to this principle (financial assistance, gift, loan, etc.), they immediately fall into the category of problematic ones, which may raise questions about their relevance. Of course, this does not apply to charity.

The third criterion: the income (profit) received by the organization is distributed to finance the costs of maintaining the organization, implementing its goals and activities
In general, we discussed this criterion above. Nevertheless, here the question arises about the acceptable sources of income (profit) received by the organization.

The TCU does not contain any restrictive rules regarding this and does not establish acceptable sources. That is, from the point of view of the TCU, sources of income can be different, as long as they are spent for the established purpose. It is another matter if the sources of income are determined by the relevant legislation.

For example, according to Articles 18, 22, and 23 of Law No. 987:

- religious organizations own, use and dispose of property that belongs to them by right of ownership;
- religious organizations have the right to apply for and receive voluntary financial and other donations;
- religious organizations do not have the right to conduct compulsory taxation of believers;
- religious organizations have the right to produce, export, import and distribute religious items, religious literature and other information materials of religious content;
- religious organizations have the right to conduct charitable activities and charity both independently and through public foundations.

From the above-mentioned provisions of the Law, acceptable basic sources of income also follow, such as:

- rent for renting out property;
- funds from the sale of property;
- voluntary donations;
- sale of religious items, literature, and information materials.

You can also add the interest received on the deposit to these sources. The fee for conducting services, religious rites, and ceremonies is questionable, because conducting services, religious rites, and ceremonies is one of the main goals of a religious organization.

Moreover, according to Article 18 of Law No. 987, religious organizations do not have the right to conduct compulsory taxation of believers.

First, in any case, it is advisable to specify sources of income in the organization's charter.

Secondly, the issue of analysing sources of income does not fall within the competence of fiscal authorities.

If a non-profit organization has sold its property.

We found out a similar question when considering the second criterion: if the income received is directed only to finance the expenses of such an organization, its maintenance, implementation of the goal (aims, objectives) and areas of activity defined by the statutory documents of such an organization, then it is not subject to taxation (see the advice of the Main Directorate of the State Fiscal Service in Zakarpattia region).

The same conclusion was made in the explanation of the STS from category 102.04 of the Section "FAQ from the Knowledge Base" of the Public Reference Resource (zir.tax.gov.ua), in particular regarding the sale of fixed assets owned by a non-profit organization:

"...formed according to the law regulating the activities of the relevant non-profit organization, and entered in the Register, a non-profit organization does not charge and does not pay income tax according to the established procedure on income received by it within the framework of its statutory activities from the performance of works, provision of services, sale of goods or fixed assets, etc., provided that such income (profits) is used by such non-profit organization exclusively to finance the costs of its maintenance, the implementation of the goal (aims, objectives) and areas of activity defined by its constituent documents, as provided for in subclause 133.4.2, clause 133.4, Article 133 of the TCU, and the distribution of income (profits) among the founders (participants), members of such an organization, employees (except for their remuneration, accrual of a single social contribution), members of management bodies and other related persons is not carried out.

If a non-profit organization does not comply with the requirements established by clause 133.4, Article 133 of the TCU, and for a religious organization — with the requirements defined in the second paragraph of subclauses 133.4.1 and 133.4.2, clause 133.4, Article 133 of the TCU, such an organization is subject to exclusion from the Register with the determination of the tax liability for corporate income tax according to subclauses 133.4.3 and 133.4.4, clause 133.4, Article 133 of the TCU".

Consequently, the tax authorities generally do not care what sources of funds are received, as long as they are spent on the needs of the organization and not distributed among the founders (participants, employees). However, all sources of funds received must be stipulated by the organization's charter.

The fourth criterion: the fate of property in the event of termination of a non-profit organization is prescribed in the charter

The charter should specify that in the event of termination of an organization (liquidation, merger, spin-off, accession or transformation), its property will be transferred to one or more organizations of the appropriate type or credited to the budget revenue. This does not apply to unions and associations of unions of co-owners of blocks of flats.

The fifth criterion: the organization must be included in the Register of Non-Profit Institutions and Organizations

The procedure for maintaining the Register of Non-Profit Institutions and Organizations, including non-profit enterprises, institutions and organizations in the Register and excluding them from the Register was approved by resolution of the Cabinet of Ministers of Ukraine No. 440 dated July 13, 2016.

According to clause 6 of Procedure No. 440, to be included in the Register, a non-profit organization must submit to the controlling body:

- registration application under Form 1-RN according to Appendix 1 and certified by the signature of the head or representative of such organization and sealed (if any) copies of the constituent documents of the non-profit organization, except for those published on the portal of electronic services according to Law No. 755,
- and housing and construction cooperatives – also certified by the signature of the head or representative of such a cooperative and sealed (if any) copies of documents confirming the date of commissioning of a completed residential building and the fact of construction or purchase of such a house by a housing and construction (housing) cooperative.

Non-profit organizations operating based on the constituent documents of a higher-level organization, according to the law, submit together with the registration application under Form 1-RN according to Appendix 1, a copy of the document certified by the signature of the head or representative of such an organization and sealed (if any), which confirms inclusion in the higher-level organization and gives the right to act based on the constituent documents of such a higher-level organization.
Documents can be submitted:

- personally the head or representative of a non-profit organization or an authorized person;
- by mail with return receipt requested and a list of enclosures;
- by means of electronic communication in electronic form;
- to the state registrar as an appendix to the application for state registration of changes to information about a legal entity in case of making changes to the constituent documents that affect the tax system of a non-profit organization.

Inclusion in the Register (if there are no refusals to include it) occurs within 3 business days from the date of receipt by the controlling body of the specified set of documents (clause 8 of Procedure No. 440).

Newly created organizations are considered non-profit from the date of their state registration, if they submitted documents for entry in the Register during or within 10 days from the date of state registration and which, based on the results of consideration of these documents, are entered in the Register (subclause 133.4.1 of the TCU).

Reporting of non-profit organizations on income tax

According to subclause 133.4.7 of the TCU, for non-profit organizations entered in the Register, an annual tax (reporting) period is established. That is, taking into account the norms of subclause 49.18.3 of the TCU, a Report on the Use of Income (Profits) of a non-profit organization (the form of which is approved by the order of the Ministry of Finance of Ukraine No. 553 dated June 17, 2016) is submitted based on the results of the year only once during 60 business days following the last calendar day of the reporting (tax) year, that is, by March 1 of the following year. Together with the Report on the Use of Income, non-profit organizations submit annual financial statements (clause 46.2 of the TCU).

Please note!
According to Part 3 of Article 11 of the Law of Ukraine "On Accounting and Financial Reporting in Ukraine" dated No. 996-XIV July 16, 1999, for non-profit organizations, National Accounting Regulations (Standards) establish reduced financial statements as part of the balance sheet and statement of financial performance.

If a non-profit organization entered in the Register violated the requirements of the TCU, what to do?

The procedure is provided for in clause 133.4.3 of the TCU, in particular:

- within the period specified for the monthly tax (reporting) period (until the 20th day of the month following the reporting period – subclause 49.18.1 of the TCU), the organization submits a report on the use of income (profits) of a non-profit organization for the period from the beginning of the year (or from the beginning of recognition of the organization as non-profit according to the established procedure, if such recognition occurred later) to the last day of the month in which the violation was committed;
- the report should indicate the amount of the self-accrued income tax liability. The tax liability is calculated according to the amount of the transaction(s) of misuse of assets;
- a certain amount of the accrued tax liability is paid within 10 business days following the last day of the corresponding deadline (clause 57.1 of the TCU). In fact, until the 30th day of the month following the reporting month;
- a violating non-profit organization is excluded by the STS from the Register of Non-Profit Institutions and Organizations and is considered an income taxpayer from the first day of the month following the month in which the violation was committed;

- for the period from the 1st day of the month when the organization became an income taxpayer, and until the end of the current year, the organization must submit a quarterly income tax return (with an accrual result), pay tax within the period determined for the quarterly period, and submit financial statements according to the procedure established for income taxpayers;
- starting the next year, the organization becomes an income taxpayer on general grounds.

Can a non-profit organization be a VAT payer?

A non-profit organization is non-profit only when paying income tax. But it does not have any specific VAT benefits. Therefore, a non-profit organization, if it receives income from transactions for the supply of goods/services for its activities, is registered as a VAT payer on a mandatory or voluntary basis according to the norms of Articles 181 and 182 of the TCU.

It is mandatory to register it if the total amount from the transactions for the supply of goods/services subject to taxation according to Section V of the TCU, including using a local or global computer network, accrued (paid) to such a person during the last 12 calendar months, collectively exceeds UAH 1,000,000 (excluding VAT). Registration is carried out with the controlling body at the location of the non-profit organization.

The calculation of the maximum amount of UAH 1,000,000 includes delivery transactions that are generally subject to taxation (at the rate of 20%, 7%, 0%) and are exempt (conditionally exempt) from VAT. Transactions that are not subject to VAT are not included.

A special feature of non-profit organizations is the possibility of significant deliveries of goods/services free of charge, for example, charitable, humanitarian aid, etc. But after all, free deliveries of goods/services are also subject to VAT, so they are also included in the volume of deliveries of goods/services to determine the maximum amount of UAH 1,000,000 (subclause 14.1.185, subclause 14.1.191, clause 185.1 of the TCU).

In turn, according to clause 188.1 of the TCU, the tax base for transactions involving the supply of goods/services cannot be lower than the purchase price of such goods/services. Therefore, in fact, when providing goods/services for free, the VAT base will not be lower than the purchase price of such goods/services.

LABOUR RELATIONS

LAW ON REMOTE WORK

Law No. 1213-IX dated February 4, 2021 "On Amendments to Certain Legislative Acts on the Improvement of the Legal Regulation of Remote Work" was published in the “Holos Ukrayiny” newspaper No. 37 dated February 26, 2021 and is effective from February 27, 2021.

The Law provides for improving legal relations in the field of regulating remote and home-based work.
The Law introduces two independent types (forms) of work – remote and home-based.

When entering into an employment contract for remote or home-based work, the employer is granted the right to receive information about the place of residence or another place of his/her choice where the labour function will be performed (to properly register the employee for remote work).

The Law provides an opportunity for employees to familiarize themselves with the internal labour regulations, the collective agreement, local regulations of the employer, notices and other documents that the employee must be familiar with in writing, by exchanging electronic documents.

According to the Law, an employee can remotely get acquainted with the requirements for labour protection through the use of modern information and communication technologies, in particular video communication.

The Law provides for the ability of an employee to combine remote work with performing work in the usual mode at workplaces on the premises or on the territory of the employer.

The Law imposes on the owner or the body authorized by him/her obligations to ensure safe and harmless working conditions at workplaces on the territory and on the premises of the owner.

The Law introduced relevant amendments to the Labour Code of Ukraine and the Law of Ukraine "On Labour Protection".

LAW ON ELECTRONIC EMPLOYMENT RECORD BOOKS HAS BEEN PUBLISHED

On March 10, the "Holos Ukrayiny" newspaper published Law No. 1217-IX "On Amendments to Certain Legislative Acts of Ukraine on the Accounting of an Employee's Labour Activity in Electronic Form". The Law will come into force on June 10, 2021, except for certain provisions that provide that within three months from the date of publication of this Law, the Cabinet of Ministers must approve regulatory legal acts arising from this Law.

The Law introduces registration of an employee's work activity in electronic form in the Register of Insured Persons of the State Register of Mandatory State Social Insurance.

The Law regulates the mechanism of accumulation, processing and use of this information, in particular, to confirm the existing work experience and assign pensions.

The relevant amendments were made to the Labour Code of Ukraine, the fundamentals of the legislation of Ukraine on mandatory state social insurance, the Laws of Ukraine "On the Collection and Accounting of a Single Contribution to Mandatory State Social Insurance", "On Mandatory State Pension Insurance", "On Service in Local Self-Government Bodies", "On Civil Service" and some other legislative acts on the introduction.

The Law provides for:

- establishing a **five-year transition period for inclusion in the State Register of information from paper employment record books about the employee's work activity** (during this period, both the paper employment record book and the electronic form of existing or entered information about the employee's work activity from the State Register will be used);

- determining that the entry of information about employment in the State Register through the web portal of electronic services of the Pension Fund of Ukraine in the form of scanned or digitized copies of documents provided for by law (employment record books, certificates, etc.) is carried out by the employee and the employer with the mandatory imposition of a qualified electronic signature;

- establishing that **after entering information about the employee's work activity in the State Register, the employer is obliged to issue the original paper employment record book** in his/her hands against the signature, and also **provides for the employer's obligation to make entries on employment, transfer and dismissal in the paper employment record book at the request of the employee;**

- **introducing the possibility of automatic pension assignment** (without a person's personal request) while retaining the right to postpone retirement, while if a person has postponed the pension assignment and extended their stay in an employment relationship, the amount of their pension will increase by 0.5–0.75%. As part of the automatic assignment of pensions, it is also possible to determine the most profitable option for assigning a pension using the State Register software tools, including the date of such appointment.

Such reform will create opportunities for:

- reducing employers' expenses for paper document management;
- simplification of access to information about the length of service of employees for assigning payments under mandatory state social insurance, primarily in case of temporary disability;
- taking into account data on education and qualifications that the working population has and that young people receive, to ensure the coordination of proposals that exist on the labour market, and planning the training (retraining) of specialists in relevant areas;
- elimination of possible risks and negative consequences of loss of the employment record, its physical damage, falsification and entering false information in this document.

HOW TO BE PROPERLY EMPLOYED UNDER CIVIL LAW CONTRACTS?

Civil law contracts cannot be concluded for an indefinite period. Such a contract is drawn up only for the period for which the result of the work must be provided.

The main feature that distinguishes civil law relations from labour relations is that labour legislation regulates the process of labour activity and its organization.

Under a civil law contract, the process of organizing labour activity remains outside it, and the purpose of the contract is to obtain a certain material result.

According to Part 1 of Article 21 of the Labour Code, an employment contract is an agreement between an employee and the owner of an enterprise, institution, organization or an authorized body or individual, according to which the employee undertakes to perform the work defined by this agreement, subject to internal labour regulations, and the owner of the enterprise, institution, organization or an authorized body or individual undertakes to pay the employee wages and provide the working conditions necessary for performing the work provided for by labour legislation, collective agreement and agreement of the parties.

Under an employment contract, an employee is hired (position) included in the company's staff to perform certain work (certain functions) for a specific qualification, profession or position. The employee is guaranteed wages, guarantees established by labour legislation, benefits, compensations, etc.

Under a civil law contract, it is not the labour process that is paid for, but its results, which are determined at the end of the work and issued with delivery and acceptance acts of works completed (services rendered), based on which their payment is made. The contract may also provide for advance or phased payment. The employment record book does not record the performance of work under civil law contracts.

Indeed, the current legislation does not prohibit the conclusion of civil law contracts, but when concluding such contracts, business entities very often make mistakes, mixing labour relations with civil ones.

Thus, when concluding civil law contracts, business entities do not specify the quantitative scope of works performed, which is the basis for conclusions about the performance of these works on a permanent basis. When entering into a civil law contract, the scope of works performed and the period for which these works must be completed must be clearly indicated.

There are also certain questions about the term of the contract. Thus, some "business" entities provide that the contract is valid until the parties fulfil their obligations, and if one month before the end of the contract, neither party demands its termination in writing, the contract is considered extended for a year. At the same time, it should be noted that according to the requirements of the current legislation, the term of the service agreement is established by agreement of the parties according to Article 905 of the Civil Code of Ukraine, and the terms of performance of work or its individual stages are established in the contract according to Article 846 of the Civil Code of Ukraine.

In other words, **civil law contracts cannot be concluded for an indefinite period**. Such a contract is drawn up only for the period for which the result of the work must be provided (i.e., the service provided or the work performed provided for in the terms of the contract). After all, the civil law contract does not pay for the labour process, but for its final result, which is determined at the end of work and drawn up by an act. **Thus, civil law contracts concluded for an indefinite period indicate signs of labour relations**.

As for the price and payment of services, very often contracts specify that the remuneration of contractors under civil law contracts for work performed is calculated based on the minimum wage, which also has signs of labour legislation. It should be noted that for performing work under a civil law contract, the contractor is paid remuneration (Article 1147 of the Civil Code of Ukraine), which is in no way associated with the minimum wage, and with wages in general. It is the presence of such a condition that indicates labour, not civil law relations.
Conducting on-the-job training when entering into civil law contracts also allows to re-qualify civil relations as labour relations. After all, such instruction is provided for in Article 29 of the Labour Code of Ukraine, which regulates labour relations.

Separately, it is necessary to highlight the issue of material liability within the limits of earnings, which sometimes sounds in civil law contracts. According to Article 132 of the Labour Code of Ukraine, such liability is provided only in the event of damage caused in the performance of labour duties.

PRESIDENT ZELENSKYI SIGNED A LAW ON AMENDMENTS TO THE LAW ON COMPENSATION TO CITIZENS FOR THE LOSS OF PART OF THEIR INCOME DUE TO VIOLATION OF THE TERMS OF ITS PAYMENT

The Law No. 1214-IX dated February 4, 2021 "On Amendments to the Law of Ukraine "On Compensation to Citizens for Loss of Part of Income due to Violation of the Terms of Its Payment" entered into force on February 26, 2021 (the document was officially published in the "Holos Ukrayiny" newspaper on February 25, 2021).

The document establishes an exhaustive list of types of monetary income, for violation of the payment terms of which citizens should be compensated.

In particular, the following types of income have been added to pensions, social benefits, scholarships and salaries:

- amount of indexation of monetary incomes of citizens;
- amounts of compensation for damage caused to an individual by injury or other damage to health;
- funds paid to persons entitled to survivor's benefit.

The provisions of the Law of Ukraine "On Compensation to Citizens for the Loss of Part of Their Income due to Violation of the Terms of Its Payment" regarding the sources of compensation payment in connection with the creation of the Social Insurance Fund of Ukraine have also been clarified.

SENDING A NON-EMPLOYEE ON A BUSINESS TRIP: IS IT POSSIBLE?

Consider the question:

Can a public organization send a manager with whom an employment contract has not been concluded on a business trip? The head was appointed based on the minutes of the founders' meeting. He/she is included in the USREOU Register as a manager, but the employment agreement with him/her is not concluded, he/she does not receive salaries.

A business trip is considered to be a trip of an employee by order of the head of the enterprise for a certain period to another locality to perform an official assignment outside the place of his/her permanent work. This definition of a business trip is given by **Instruction No. 59**.

However, its provisions are mandatory only for "state employees". But "other" enterprises may not comply with the requirements of this Instruction: it is recommendatory for them (see letters of the STS No. 5742/6/15-1415 dated March 31, 2012, Ministry of Finance No. 31-07230-16-25/11433 dated May 4, 2011 and No. 31-07230-16-10/28802 dated November 22, 2011, Ministry of Justice No. 54-0-2-12/7.2 dated February 13, 2012). In addition, this conclusion was reached by the Supreme Administrative Court of Ukraine in its Resolution No. K/800/4207/14 dated October 7, 2014.

Instruction No. 59 refers only to business trips of employees. Despite this, we believe that the company has every right to send its founder on a business trip, even if he/she is not listed in the staff list.

The TCU only refers to the taxation of amounts provided for business trips (see subclause 170.9.1 of the TCU). The amount of reimbursed travel expenses is not the income of an individual, including a member of the company's governing body.

At the same time, according to Article 89 of the Commercial Code of Ukraine, the management of the activities of a business entity is carried out by its bodies and officials, the composition and procedure for electing (appointing) of which are determined depending on the type of company, and in cases defined by law – by the **company's participants** (through the **general meeting of the business entity, which is its supreme body**). Thus, the founder is considered a member of the company's governing body and can be sent on a business trip.

Who are the members of the company's governing bodies?

Officials of the company are recognized as the chairman and members of the executive body, the chairman of the audit commission (auditor), and in case of creation of the company's council (supervisory board) – the chairman and members of this council (letter of the Ministry of Justice No. 10-0-3-12/8.1 dated February 8, 2012).

The company's management bodies are the general meeting of its participants and the executive body unless otherwise established by law (Part 2 of Article 97 of the Civil Code of Ukraine).

According to Article 99 of the Civil Code of Ukraine:

- the general meeting of the company's participants shall create an executive body by its decision and establish its competence and composition;
- the company's executive body may consist of one or more persons;
- the name of the company's executive body according to the constituent documents or the law may be "management board", "directorate", etc.
- according to Article 65 of the Commercial Code of Ukraine:
- the enterprise is managed according to its constituent documents;
- the owner exercises his/her rights to manage the enterprise directly or through the bodies authorized by him/her according to the company's charter or other constituent documents;
- to manage the economic activities of an enterprise, the owner(s) directly or through authorized bodies or the supervisory board of such an enterprise (in case of its formation) appoints (elects) the head of the enterprise, who is accountable to the owner, his/her authorized body or the supervisory board;
- the head of the enterprise, the chief accountant, **members of the supervisory board (in case of its formation), the executive body and other management bodies** of the enterprise according to the charter **are officials of this enterprise**. Other persons may also be recognized as officials by the company's charter.

Consequently**, the general meeting of a business entity is its supreme governing body. Therefore, the founders are members of the company's governing body and can be sent on a business trip**.

In order to avoid misunderstandings with controlling bodies, it is necessary to note the procedure for sending founders and members of governing bodies on a business trip in the regulations on business trips. There must also be a decision of the founder (founders, participants of the company), an administrative act on sending on a business trip.

FOREIGN ECONOMIC RELATIONS

INNOVATIONS IN TRADE WITH UK

The State Customs Service of Ukraine draws the attention of foreign economic entities to the fact that the Agreement on Political Cooperation, Free Trade and Strategic Partnership between Ukraine and the United Kingdom of Great Britain and Northern Ireland comes into force after 1 am on January 1, 2021.

Simultaneously with the entry into force of this Agreement, the EU – Ukraine Association Agreement ceases to apply to the United Kingdom.

The Agreement provides for the introduction of tariff preferences for goods originating from the United Kingdom and Ukraine, in particular:

- until 2026, reduction to zero of import (export) duty rates on import/export of goods (the reduction schedule is identical to the schedule used in trade between Ukraine and the EU, except for natural gas for export from Ukraine);
- application of tariff quotas (exemption from import duties) to imports of pork, chicken and sugar within certain volumes;
- import duty taxation of used clothing item 6309 according to the UCGFEA, depending on the "input price".

To confirm the preferential origin of goods from Ukraine when exporting to the United Kingdom, customs of the State Customs Service is authorized to issue certificates for the transportation of EUR.1 upon applications to exporters during or after the export of goods at the place of customs clearance of goods or after the export of goods at the place of state registration of the exporter.

Goods that are in transit or temporary storage, in customs warehouses or free transit or storage zones in the United Kingdom or Ukraine as of the date of entry into force of this Agreement are subject to tariff preferences, provided that a certificate for the carriage of goods for EUR.1 is submitted to the customs authorities of the importing country within twelve months from the specified date issued retroactively by the customs authorities of the exporting country.

***Source**: explanation of the State Customs Service*

TRANSFER PRICING, CONTROLLED TRANSACTIONS

FROM JANUARY 1, 2021, NEW TP RULES FOR RAW MATERIALS ARE IN EFFECT

On January 1, 2021, the list of raw materials approved by the resolution of the Cabinet of Ministers of Ukraine No. 1221 dated December 9, 2020 came into force. At the same time, the list of goods with an exchange quote, approved by the resolution of the Cabinet of Ministers of Ukraine No. 616 dated September 8, 2016, has become invalid.

The new list includes 54 new product groups, in particular: fish and fish meat (0302, 0303, 0304); sunflower seeds (1206); sunflower oil (1512, 11) and other oils (1509, 1513, 1514); ores and metal concentrates (2602, 2604, 2606, 2610, 2613, 2614, 2615); ferroalloys (7202).

According to the transfer pricing rules, when performing transactions with commodities, the use of the comparable uncontrolled price method is a priority. At the same time, the controlled price can be compared with the price of comparable uncontrolled transactions that are actually performed by the taxpayer or other persons with unrelated and/or quoted prices.

The list of information sources for obtaining quotation prices includes information and analytical products of international pricing agencies and companies (Argus Media Ltd, FastMarkets, IHS Markit Ltd, Refinitiv Holdings Ltd, S&P Global Platts), as well as information and analytical products of two national enterprises of the State Enterprise "National Research and Information Center for Monitoring International Commodity Markets" ("Derzhzovnishinform") and the State Enterprise "Ukrainian Industrial External Expertise" ("Ukrpromzovnishexpertyza") (the specified list, the State Tax Service of Ukraine published on the official website).

THE MINISTRY OF FINANCE APPROVED THE REPORT FORM OF THE INTERNATIONAL GROUP OF COMPANIES BY COUNTRY

The report of an international group of companies by country is compiled for the financial year and should contain information in the context of each jurisdiction in which a member of an international group of companies is registered or in which an international group of companies operates.

The Ministry of Finance, by Order No. 764 dated December 14, 2020 (registered with the Ministry of Justice on February 4, 2021 under No. 155/35777), approved:

- Report form of an international group of companies by country;
- Procedure for filling out the Report of an international group of companies by country.

Order No. 764 came into force on February 19, 2021.

When is this report submitted?

According to the Procedure, this report is submitted if the total consolidated income of the international group of companies that includes the taxpayer for the financial year preceding the reporting year exceeds the equivalent of EUR 750 million and in the presence of one of the following circumstances:

1. the taxpayer is the parent company of an international group of companies;

2. the parent company of an international group of companies authorizes a resident taxpayer of Ukraine to submit a country-specific report to the controlling body;

3. according to the legal requirements of the location of the parent company of an international group of companies, submission of the Report from such an international group of companies is not required, and the parent company of such a group does not authorize another member of the international group to submit the Report in another foreign jurisdiction where it is provided for;

4. between Ukraine and the relevant foreign jurisdiction of the location of the parent company of an international group of companies or another member of this group authorized by the parent company of such group to submit a report by country, an international agreement has been signed providing for the possibility of exchanging tax information, but the procedure for exchanging reports by country has not entered into force, or there are facts of systematic non-compliance with this procedure.

Report form

The Report consists of the following integral parts and sections:

the **title part** ("General information") contains general information about the Report, the taxpayer submitting the report, the name of the international group of companies, and the reporting period;

the **main part** ("Individual reports by country") is a set of separate reports for all states (territories) in which an international group of companies operates. Each such report consists of the following sections:

- Section I "Information on the distribution of income, taxes and business activity by state (territory)" of the Report, which indicates information on the distribution of income, taxes and business activity of an international group of companies in the relevant state (territory);
- Section II "List of participants of the international group of companies by state (territory)" of the Report, which contains information about the list of all participants of the international group of companies in the relevant state (territory);
- the **Part "Additional information" of the Report** allows providing any brief information or explanations that, in the taxpayer's opinion, are considered necessary or that facilitate understanding of the mandatory information contained in the main part of the Report.

What information should the report contain?

The report of an international group of companies by country is compiled for the financial year and should contain information in the context of each jurisdiction in which a member of an international group of companies is registered or in which an international group of companies operates, namely:

- name of the state (territory) of registration;
- total amount of income (revenue), including broken down into individual transactions;
- amount of accrued and paid corporate income tax (corporate tax);
- amount of authorized capital;
- amount of retained (accumulated) profit;
- number of employees;
- book value of tangible assets;
- main activities carried out by the group members.

Deadline for submitting the report

According to the Procedure, the Report is submitted within twelve months after the end of the financial year. If there is no information about the financial year established by the parent company of the international group of companies, the report is submitted within twelve months after the end of the calendar year.

If the last day of the Report submission deadline falls on a weekend or holiday, then the last day of the deadline is considered to be the operational (banking) day following the weekend or holiday.

Submission of the Report by taxpayers is applied for the first time for a financial year that ends in 2021, but no earlier than the year in which the competent authorities have concluded a Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports.

NON-RESIDENTS ARE REQUIRED TO REGISTER WITH THE TAX SERVICE BY MARCH 31, 2021

Non-residents who are not registered with the STS are required to submit documents to the controlling body for registration within three months, namely from January 1, 2021 to March 31, 2021.

The Law of Ukraine No. 1117 dated December 17, 2020 "On Amendments to the Tax Code of Ukraine and Other Laws of Ukraine on Ensuring the Collection of Data and Information Necessary for the Declaration of Individual Objects of Taxation" amended clause 60, Subsection 10, Section XX of the TCU, according to which non-residents (foreign companies, organizations) that carry out economic activities on the territory of Ukraine and/or that have duly accredited (registered, legalized) on the territory of Ukraine separate divisions, including permanent representative offices, and as of on January 1, 2021, those who are not registered with the controlling body are required to submit documents to the controlling body for registration within three months, namely from January 1, 2021 to March 31, 2021, according to the procedure established by clause 64.5 of the TCU.

After registering a foreign company as an income taxpayer, its permanent representative office is removed from the register as an income taxpayer and, depending on whether such a permanent representative office is accredited as a separate subdivision on the territory of Ukraine, as a payer of other types of taxes must:

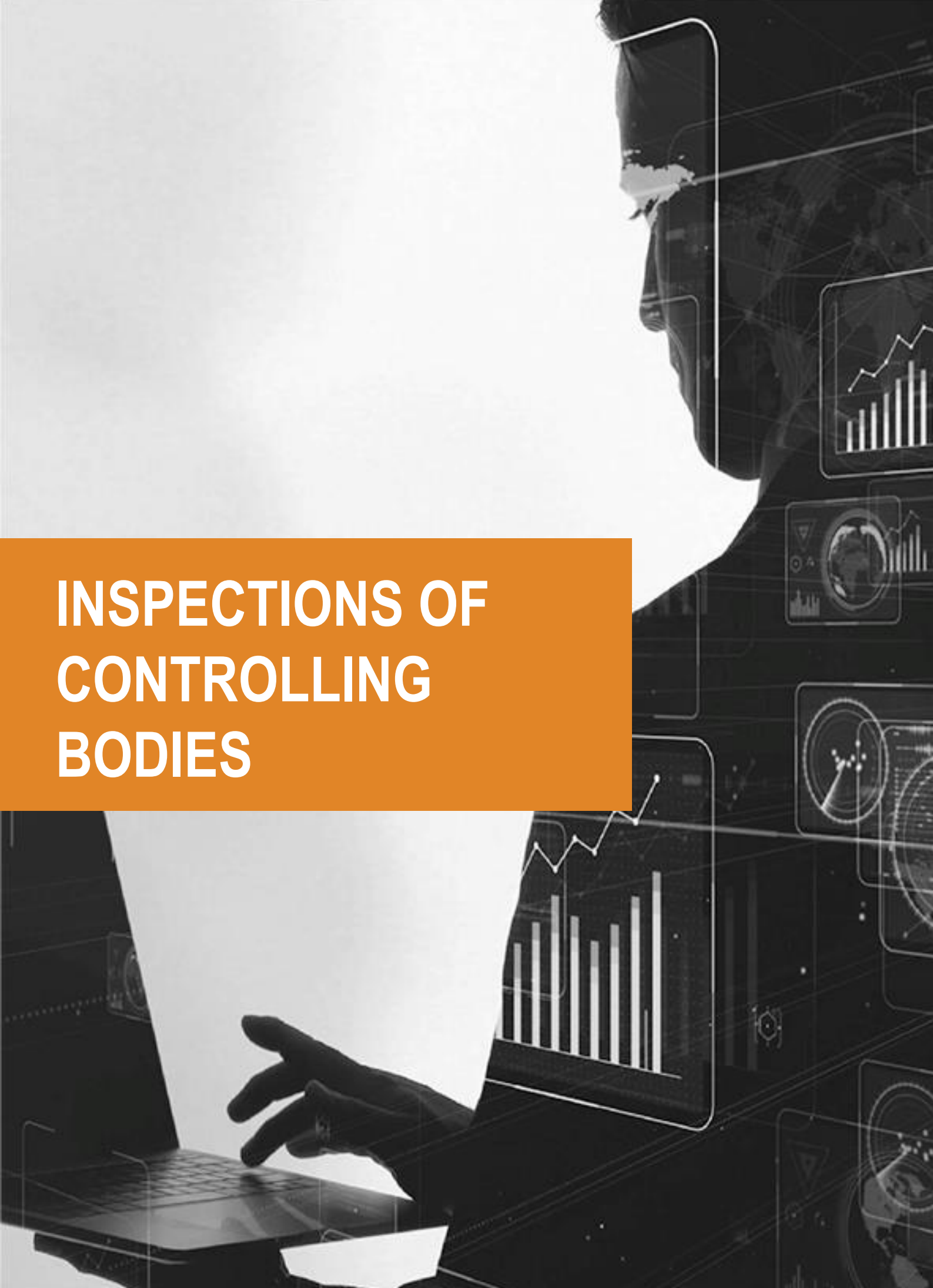
- continue to be registered with controlling bodies, if we are talking about an accredited separate subdivision of a non-resident that has the USREOU code;
- be removed from registration with controlling bodies (upon application, according to the established procedure), if the permanent representative office is not accredited as a separate subdivision of a non-resident and is registered using the 9-digit registration (accounting) number of the taxpayer, which is assigned by controlling bodies.

At the same time, Law No. 1117 amended clause 141.4 of the TCU, according to which, until December 31, 2020 inclusive, the obligation to withhold corporate income tax when paying income to non-residents is reserved for permanent representative offices of non-residents who make appropriate payments.

Thus, the obligation to determine tax liabilities, submit tax reports on corporate income tax, and withhold tax on income with its source of origin from Ukraine is reserved for permanent representative offices of non-residents until the relevant non-residents are registered as payers of this tax.
The amount of income of non-residents operating on the territory of Ukraine through a permanent representative office is taxed according to the general procedure. At the same time, such a permanent representative office is equated for tax purposes with a taxpayer who carries out its activities independently of such a non-resident.

If a non-resident carries out its activities in Ukraine and abroad and does not determine the profit from its activities conducted by it through a permanent representative office in Ukraine, the amount of profit subject to taxation in Ukraine is determined based on drawing up a separate balance of financial and economic activities by a non-resident, agreed with the controlling body at the location of the permanent representative office, taking into account the requirements defined in Article 39 of the TCU.
If it is impossible to determine by direct calculation the profit received by non-residents with its source of origin from Ukraine, the taxable profit is determined by the controlling body as the difference between income and expenses determined by applying a coefficient of 0.7 to the amount of income received, taking into account the requirements defined in Article 39 of the TCU.

***Source**: letter of the STS of Ukraine No. 2367/7/99-00-21-02-01-07 dated January 27, 2021*.



INSPECTIONS OF CONTROLLING BODIES

STS FOCUSES ON THE "SMALL SALARY" OF THE ENTERPRISE EMPLOYEES

It is not the first year that the tax authorities have been trying to influence the legalization of employees' salaries and their increase to fill the budget. They do this, including by sending letters to employers. How to respond to requests from the tax service if they are received by email without a signature and do not contain the addressee's instructions?

What are they asking?

Recently, employers have started receiving letters from the Tax Service regarding the increase in the level of remuneration of employees. This is usually a scanned copy of the text of a letter printed on paper without a date or number, where the recipient is "Dear taxpayer".

The letters note that the tax authorities analyzed the tax calculation submitted by the employer and found that the average monthly salary per employee of such an employer is less than the legally established minimum wage. Consequently, the employer allegedly violates labour laws.

That is, such an estimated "average salary" based on the submitted reports is compared with the norm. Based on this, they suggest that the employer consider raising the level of wages of employees.

The purpose of such an electronic mailing list is to fill the revenue side of the budget with taxes and fees by increasing the salary level at the enterprise.

Further, the emails indicate that it is necessary to provide explanations and send them to the tax service with copies of supporting documents.

How to respond to such emails? And is it necessary to react?

Any request of the STS must be answered only if it is drawn up according to legal norms.

The requirements for the request are spelt out in **clause 73.3 of the TCU** and the "Procedure for periodic submission of information to the STS bodies and receipt of information by these bodies upon written request", approved by **resolution of the Cabinet of Ministers of Ukraine No. 1245 dated December 27, 2010 (Procedure No. 1245).**

The request of the STS body must contain the **number and date**, as well as:

1) grounds for sending a request according to clause 73.3 of the TCU, indicating information confirming this;
2) a list of information that is requested and a list of documents that are proposed to be provided;
3) the seal of the controlling body and be signed by the head (his/her deputy or authorized person) of the controlling body.

If the request of the tax authorities is made in violation of the current legislation, this gives the taxpayer the right not to respond to it. This rule is explicitly provided for in clause 73.3 of the TCU and clause 16 of Procedure No. 1245.

Thus, emails are not requests within the meaning of the Tax Code of Ukraine: there is no number, date, signatures, the basis for sending the request, specific points, articles of legislative acts that were violated are not specified.

Such emails are essentially informational. You are informed that you must comply with labour laws.
You may not respond to such an email, or you may reply that such an email (request) does not meet the legally established standards.

The STS has the authority to control the salary level of employees. The tax authorities control labour issues from the point of view of compliance with tax legislation (Article 259 of the Labour Code and clause 20.1.47 of the TCU).

If you receive a properly executed request, or, nevertheless, decide to respond to the email – in the response, you must indicate your awareness of Article 96 of the Labour Code and Article 6 of the Law of Ukraine "On Labour Remuneration" – the minimum official salary (tariff rate in monthly amount) cannot be less than the subsistence minimum established for able-bodied persons on January 1 of the calendar year.

According to Article 3-1 of the Law of Ukraine "On Labour Remuneration", the amount of an employee's salary for a fully completed monthly (hourly) labour rate cannot be lower than the minimum wage. However, if an employment contract is concluded for part-time work, as well as if the employee does not fully comply with the monthly (hourly) labour norm, the minimum wage is paid in proportion to the completed labour norm.

The legislation allows that in case of conclusion of an employment contract for part-time work, as well as if the employee does not fully comply with the monthly (hourly) labour norm, the actual salary of the employee may be lower than the legally established minimum wage. At the same time, the requirements of Article 3-1 of the Law of Ukraine "On Labour Remuneration" regarding guarantees of ensuring the minimum wage are met.

OTHER NEWS

LEGAL ISSUES

On February 25, Volodymyr Zelenskyi signed the Law of Ukraine No. 1183-IX dated February 3, 2021 "On Amendments to the Commercial Code of Ukraine concerning the Elimination of Legal Conflicts in the Requirements to the Charter of Limited and Additional Liability Companies".

The Law was published in the "Holos Ukrayiny" newspaper No. 37 dated February 26, 2021 and entered into force on February 27, 2021.
The Law provides for:

- exclusion from the Commercial Code of the provision on the need to determine in the charter the shares of LLC and ALC participants;

- determination that the list of mandatory requirements to the charters of LLC and ALC is determined exclusively by the Law "On Limited and Additional Liability Companies".

THANK YOU FOR YOUR ATTENTION

The issue is prepared for publication
by practical experts in
Financial Management and Accounting
Outsourcing

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

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We would appreciate your feedback!