

# EBS QUARTERLY REVIEW

OVERVIEW OF  
LEGISLATIVE  
AMENDMENTS



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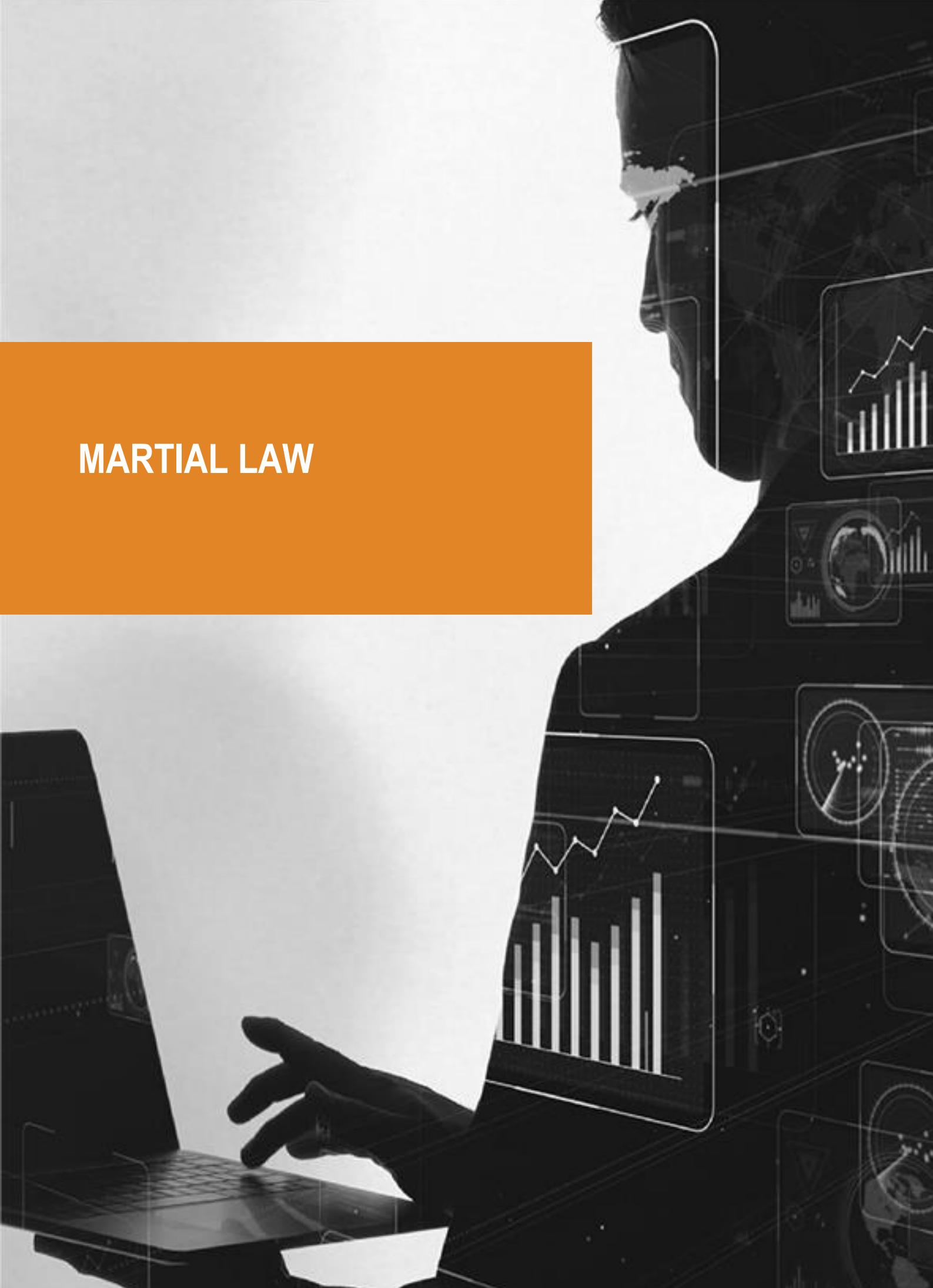
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# MARTIAL LAW



# DIRECTOR IS ABROAD: WHO REPLACES THE DIRECTOR?

The director went abroad in February 2022. The company is operating, the salary to the director is not accrued. How to document it properly? What kind of leave should be granted? What application is required? What should be specified in the time sheet? Who should perform the functions of the director?

## Documentation

The work of the director, who went abroad because of the war, can be documented in three ways.

1. The director may take a leave without pay, using the quarantine. It is provided for by Article 84 of the Labor Code of Ukraine, Part 3 of Article 26 of the Law "On Leaves":

- the quarantine was extended until March 31 inclusive by the Resolution of the Cabinet of Ministers of Ukraine No. 1336 dated December 15, 2021, which amended the Resolution of the Cabinet of Ministers of Ukraine No. 1236 dated December 09, 2020;
- the quarantine was extended until May 31 inclusive by the Resolution of the Cabinet of Ministers of Ukraine No. 229 dated February 23, 2022, which amended the Resolution of the Cabinet of Ministers of Ukraine No. 1236 dated December 09, 2020;
- the quarantine was extended until August 31 inclusive by the Resolution of the Cabinet of Ministers of Ukraine No. 630 dated May 27, 2022, which amended the Resolution of the Cabinet of Ministers of Ukraine No. 1236 dated December 09, 2020;
- the quarantine was extended until December 31 inclusive by the Resolution of the Cabinet of Ministers of Ukraine No. 928 dated August 19, 2022, which amended the Resolution of the Cabinet of Ministers of Ukraine No. 1236 dated December 09, 2020.

To receive the above leave, the director must write four separate applications (for each quarantine), for example: *"I apply for the leave without pay for the period of quarantine established in the territory of Ukraine from April 01, 2022 to May 31, 2022"*, and the employer must issue relevant orders.

Due to the fact that the director is abroad, it is problematic to submit applications in person, and the director may send a photo of such an application by electronic means of communication. The letter mark "HA" or the digital code "18" shall be specified in the time sheet.

2. The director may take a leave without pay for the duration of martial law. It is provided for by Part 2 of Article 12 of Law No. 2136. We remind you that the martial law has been extended until December 31, 2022. The content of the application can be as follows: *"I apply for the leave without pay for the period of martial law and until the day the martial law ends."*

3. The director may take a basic annual leave. The letter mark "B" or the digital code "08" shall be specified in the time sheet.

Who should perform the functions of the director?

In the absence of the director, the duties of the director shall be assigned to:

- the deputy;
- another employee of the company, if there is no deputy. And in this case, everything depends on whether the director has the right to delegate the right to sign or not.

### **The director has the right to delegate the right to sign**

The director can transfer their powers in full to another person during their absence, but only if the director has such a right under the constituent documents of the company.

That is, in the absence of the deputy and if the director has the right to delegate their powers to be fulfilled by the another person, the director shall issue an order that a person is appointed to perform their duties for the period of their leave without pay.

### **The director has no right to delegate the right to sign**

Under Paragraph 2 of Part 2 of Article 207 of the Civil Code of Ukraine, the transaction made by a legal entity shall be signed by persons authorized to do so by its constituent documents, power of attorney, law or other acts of civil legislation.

That is, in order for the person who will replace the director to be able to represent the interests of the company in legal relations with third parties, it is necessary to issue a power of attorney to such person. And in order for such another person to have the opportunity to close transactions on behalf of the company without a power of attorney, for this purpose, the founder must include the information into the Unified State Register about other persons who, in addition to the director, can act on behalf of the company without a power of attorney.

Please note: if the Articles of Association do not provide the director with the opportunity to transfer their powers to another person, then the issue of replacement must be decided by the general meeting of members.

It is not necessary to notify the state registrar that the functions of the director during his/her leave without pay will be performed by another person (under the decision, minutes, order, power of attorney), because the information about the change of the director is entered into the Unified State Register, and in this case the director does not change and his/her powers are not terminated.

We recall the need that the employee who will temporarily perform the duties of the director and is not their full-time deputy shall be paid the difference in salaries.

# PRIMARY ACCOUNTING DOCUMENTS WERE LOST DURING HOSTILITIES: WHAT IS COMING NEXT?

Primary accounting documents are important not only for accounting, but also for tax purposes. The Tax Code of Ukraine provides for **the rules for the restoration of** destroyed primary accounting documents, accounting registers, financial statements, other documents related to the calculation and payment of taxes and fees, the maintenance of which is provided for in Paragraph 44.5 of the Tax Code of Ukraine.

The rules are as follows:

- **firstly**, the taxpayer is obliged to **notify in writing the State Tax Service of Ukraine at the place of registration** of the loss of primary accounting documents **within 5 days** from the date of such event;
- **secondly**, the **notice** must be **accompanied by the documents** that confirm the occurrence of the event that resulted in the loss, damage or premature destruction of primary accounting documents;
- **thirdly**, for the **restoration** of primary accounting documents the taxpayer **has 90 calendar days** from the day following the day of notification thereof of the tax authorities.

In wartime, there are a number of "military" special regulations for cases where the payer is unable to provide documents (the Law of Ukraine "On Amendments to the Tax Code of Ukraine and Other Laws in Relation to Administration of Certain Taxes During Martial Law and State of Emergency" No. 2173-IX). Such amendments/special regulations were introduced into Subparagraph 69.28 of Subsection 10 of Section XX of the Tax Code of Ukraine, they apply to those payers who cannot present the primary accounting documents on the basis of which the indicators related to the determination of the objects of taxation and/or tax liabilities were formed.

There are the following reasons for the impossibility of presenting primary accounting documents:

- loss (destruction or damage) of primary accounting documents or their presence in the territories where hostilities are (were) taking place, and in the territories temporarily occupied by the armed forces of the Russian Federation;
- the impossibility to take out documents or such take out is associated with a risk to the life or health of the taxpayer, individuals, or is impossible due to administrative obstacles established by the authorities.

Please note that these special regulations apply to those payers who conducted activities in:

- the territories where **hostilities are (were) taking place**;
- the territories **temporarily occupied** by the armed forces of the Russian Federation.

## PAY ATTENTION!

If the loss of documents is not related to hostilities, the taxpayer (tax agent) has no right to apply special regulations of Subparagraph 69.28 of Subsection 10 of Section XX of the Tax Code of Ukraine.

## What can one do?

It is necessary to solve two main issues:

- 1) **restoration** of lost primary accounting documents and
- 2) timely **notification** of loss of taxpayers.

## ***Restoration of Primary Accounting Documents***

The process of restoring lost documents depends on many factors (their availability in electronic form, the possibility of restoring through counterparties or government agencies, etc.).

Obviously, it is the easiest to restore the primary accounting documents, which were saved in **electronic format** (of course, provided that the relevant data media were not damaged during the hostilities). In this case, it will be sufficient (if necessary) to print the relevant documents and certify with the signatures of persons authorized to do so (head, general accountant, etc.).

Further, on the basis of the restored primary accounting documents, it is possible to create relevant accounting **registers**, and, as a result, **reporting** (financial, tax, etc.).

A similar scenario can be used in case of restoration of documents held by counterparties and government agencies. In particular, it is sufficient to contact them in written or electronic form to receive the relevant duplicates or copies.

### **Notifying the Tax Authorities**

It is necessary to submit a **written notice** of the impossibility of taking out or loss of primary accounting documents to the State Tax Service of Ukraine at the place of registration.

Such a notice shall be made **in an arbitrary form** signed by the head and the chief accountant.

At the same time, the notice shall contain:

- **circumstances** that led to the loss and/or impossibility to take out primary accounting documents;
- **tax (reporting) periods**;
- a general **list** of primary accounting documents (if possible, **with details indicated**).

The data and indicators of the taxpayer's (tax agent's) tax reporting for the tax (reporting) periods specified in the notice cannot be questioned only on the basis of the absence of primary accounting documents.

The **notice provided shall be the basis** for:

- **the preservation of expenses** (including expenses in connection with the acquisition of securities / corporate rights);
- **the negative value** of the object of taxation with the income tax (including the negative financial result from transactions with securities / corporate rights);
- **the tax credit** from VAT;
- the amount of **negative value** of VAT of previous tax (reporting) periods;

**without the availability** of contractual, settlement, payment and other primary accounting documents, the mandatory maintenance and storage of which is stipulated by the rules of accounting and tax accrual.

The procedure for submitting a notice is not detailed in the special regulation of Subparagraph 69.28 of Subsection 10 of Section XX of the Tax Code of Ukraine. Thus, you can send a notice through the electronic account in the "Correspondence with the State Tax Service" menu.

If, after submitting the notice, the taxpayer (tax agent) **becomes aware of the loss of the primary accounting documents** (we are talking about the final loss of the documentation), it is necessary **to submit a notice to such effect to the State Tax Service of Ukraine indicating the circumstances of such loss**.

Such payers (agents) **shall not be subject to verification** by the State Tax Service of Ukraine regarding the tax (reporting) periods specified in the notice, including **after the end of martial law**.

### **Warning!**

The taxpayer (tax agent) who **unreasonably** applied the provision of Subparagraph 69.28 of Subsection 10 of Section XX of the Tax Code of Ukraine, shall be considered to be a **tax evader** and bear the responsibility provided for by the Tax Code of Ukraine and other laws of Ukraine.

**The duty to prove the effect of grounds** for the application of the provisions of Subparagraph 69.28 of Subsection 10 of Section XX of the Tax Code of Ukraine **shall be assumed by the State Tax Service of Ukraine**.

In case of a **refusal** to apply the above-mentioned special regulations, the State Tax Service of Ukraine shall **not later than one month** from the date of receipt of the relevant notice from the taxpayer (tax agent) **issue a reasoned decision** indicating the grounds and evidence of such refusal.

Such a decision may be appealed in an administrative or judicial manner.

Until the final decision on the case is made, the State Tax Service of Ukraine **cannot call into question the indicators** of the tax reporting, as well as initiate any audit of the taxpayer (tax agent) regarding the tax (reporting) periods specified in the relevant notice.

Also, in the tax (reporting) periods specified in the relevant notice, **the following cannot be revised upwards:**

- the specified amounts of tax liabilities from taxes and fees declared in tax declarations for tax (reporting) periods;
- the amounts of the negative value of the object of taxation with the income tax declared in tax declarations / calculations for the specified tax (reporting) periods;
- the amounts of budgetary VAT refunds declared in tax declarations for the specified reporting periods.

## BRANCH IN THE OCCUPIED TERRITORY: TAX ACCOUNTING OF SETTLEMENTS WITH COUNTERPARTIES

Peculiarities of recording on tax accounting of transactions with counterparties located in the temporarily occupied territories are regulated by the relevant norms of Subsection 10 of Section XX of the Tax Code of Ukraine.

Under Paragraph 26.4 of Subsection 10 of Section XX of the Tax Code of Ukraine, in case of economic transactions between persons who have a tax address in the temporarily occupied territory and taxpayers who have a tax address in another territory of Ukraine, the provisions of Article 39 of the Tax Code of Ukraine, taking into account the criteria specified in Subparagraph 39.2.1 of the Tax Code of Ukraine, shall apply to such transactions.

Since the branch is a part of the company, the operations of the branch with counterparties located in the temporarily occupied territory are the operations of the company and are regulated by the aforementioned norms of Paragraph 26.4 of Subsection 10 of Section XX of the Tax Code of Ukraine.

Operations of a branch (company) with counterparties located in the temporarily occupied territory will be considered controlled if the following conditions are met at the same time (Subparagraph 39.2.1.7 of the Tax Code of Ukraine):

- the taxpayer's annual income from any activity, determined according to the rules of accounting, exceeds UAH 150 million (excluding indirect taxes) for the relevant tax (reporting) year;
- the volume of such business operations of the taxpayer with each counterparty, determined according to the rules of accounting, exceeds UAH 10 million (excluding indirect taxes) for the relevant tax (reporting) year.

If these criteria are not met, the operations of the branch with its counterparties shall be reflected in the company's accounting in the usual manner.

In addition, the norms of Paragraph 38.4 of Subsection 10 of Section XX of the Tax Code of Ukraine establish the following: if the actual location of a branch, representative office, separate or other structural subdivision of a legal entity is a temporarily occupied territory, and the location of the relevant legal entity is another territory of Ukraine or the territory of settlements on the contact line, such a legal entity, separate or other structural subdivision, authorized to charge, maintain and pay (transfer) taxes and fees to the single account or budget, in the cases provided for by the Tax Code of Ukraine, shall be released from the liability specified by the Tax Code of Ukraine, within the scope of the activities carried out through such branches, representative offices, separate or other structural subdivisions, for the entire period of the anti-terrorist operation and/or the implementation of measures to ensure the Joint Forces Operation.

*Regarding the preparation of primary accounting documents for operations with counterparties.* Norms of Subparagraph 69.28 of Subsection 10 of Section XX of the Tax Code of Ukraine provide for that the special rules for confirming the data specified in the tax reporting shall apply to taxpayers / tax agents who carried out activities in the territories where hostilities are (were) taking place and in the territories temporarily occupied by the armed forces of the Russian Federation, and cannot present primary accounting documents on the basis of which accounting of income, expenses and other indicators related to the determination of objects of taxation and/or tax obligations, as an exception to the provisions of Article 44 of this Code.

The reasons for the impossibility of presenting the primary accounting documents are the loss (destruction or damage) of the primary accounting documents or their presence in the territories where hostilities are (were) taking place and in the territories temporarily occupied by the armed forces of the Russian Federation, in case that they cannot be taken out or take out is associated with a risk to the life or health of the taxpayer, individuals or is impossible due to the administrative obstacles established by the authorities.

In case of loss and/or impossibility of taking out the primary accounting documents, the taxpayer / tax agent submits a notice of the impossibility of taking out the primary accounting documents, signed by the head of the company and the chief accountant, in an arbitrary form to the control body, which must contain:

- circumstances that led to the loss and/or impossibility to take out primary accounting documents,
- tax (reporting) periods, and
- a general list of primary accounting documents (if possible, with details indicated).

The data and indicators of the taxpayer's / tax agent's tax reporting for the tax (reporting) periods specified in the notice cannot be questioned only on the basis of the absence of primary accounting documents. The notice submitted shall be also a basis for maintaining expenses (including expenses in connection with the acquisition of securities / corporate rights) and/or the negative value of the object of taxation with the income tax (including the negative financial result from operations with securities / corporate rights), and/or tax credit from value added tax, and/or the amount of the negative value of value added tax of previous tax (reporting) periods without the presence of contractual, settlement, payment and other primary accounting documents, the obligation to maintain and store which is provided for by the rules of accounting and tax accrual.

After submitting a notice to the supervisory body of the impossibility of taking out the primary documents in connection with their presence in the territories where hostilities are (were) taking place and in the territories temporarily occupied by the armed formations of the Russian Federation, a moratorium shall be introduced on conducting documentary checks for the tax (reporting) periods specified in the notice.

If, after submitting a notice of the impossibility of taking out the primary accounting documents, the taxpayer / tax agent becomes aware of the loss of such documents, such taxpayer / tax agent is obliged to submit a notice of the loss of primary accounting documents to the supervisory authority, indicating the circumstances of such loss.

Taxpayers / tax agents who submitted a notice of the loss of primary accounting documents under this Subparagraph shall not be subject to inspection by the controlling authority regarding the tax (reporting) periods specified in the notice, including after the end of martial law.

The loss of documents, which is not related to the hostilities in the territories where hostilities are (were) taking place and in the territories temporarily occupied by the armed forces of the Russian Federation, shall not entitle the taxpayer / tax agent to apply the provisions of this Subparagraph.

The duty to prove the absence of grounds for the application of the provisions of Subparagraph 69.28 of Subsection 10 of Section XX of the Tax Code of Ukraine shall be assigned to the supervisory authority. The taxpayer / tax agent who unreasonably applied the provision of this Subparagraph shall be considered to be a tax evader and bear the responsibility provided for by this Code and other laws of Ukraine.

In case of a refusal to apply the provisions of Paragraph 69.28 of Subsection 10 of Section XX of the Tax Code of Ukraine, the supervisory authority shall not later than one month from the date of receipt of the relevant notice from the taxpayer tax / agent issue a reasoned decision indicating the grounds and evidence of such refusal.

A decision of the supervisory authority may be appealed in an administrative or judicial manner. Until the final decision on the case is made, the supervisory authority cannot call into question the indicators of the

tax reporting, as well as initiate any audit of the taxpayer / tax agent regarding the tax (reporting) periods specified in the relevant notice.

In the tax (reporting) periods specified in the relevant notice, the following cannot be revised upwards: the amounts of tax liabilities from taxes and fees declared in tax declarations for the specified tax (reporting) periods, the amounts of the negative value of the object of taxation with the income tax declared in tax declarations / calculations for the specified tax (reporting) periods, the amounts of budgetary VAT refunds declared in tax declarations for the specified reporting periods.

The list of territories where hostilities are (were) taking place and territories temporarily occupied by the armed formations of the Russian Federation shall be determined by the Cabinet of Ministers of Ukraine. At the moment, only the List of Territorial Communities that are located in the areas of military (combat) operations or that are under temporary occupation, encirclement (blockade), approved by the Order of the Ministry for Reintegration of the Temporarily Occupied Territories of Ukraine No. 75 dated April 25, 2022, shall be valid.

# WRITE-OFF OF REAL ESTATE FROM THE REGISTER DUE TO THE WAR

As a result of war, real estate can be either partially damaged or completely destroyed. What should be done in each of these situations in order to avoid negative tax consequences?

## Conducting an Inventory and Inspection

The first steps to writing off real estate are an inventory, and sometimes even an additional inspection of damaged fixed assets (hereinafter referred to as fixed assets).

Mandatory inventory of fixed assets before their write-off shall be provided for by Paragraph 7 of the Regulation on Inventory of Assets and Liabilities, approved by the Order of the Ministry of Finance of Ukraine No. 879 dated September 02, 2014. To carry out such an inventory, a permanent commission shall be created at the company.

In cases where fixed assets by the class of consequences (responsibility) belong to objects with medium and significant consequences, in addition to the inventory, it is necessary to carry out an additional inspection (Part 3 of Article 39-2 of the Law of Ukraine "On the Regulation of Urban Planning Activities"). Based on the results of such an inspection, a report shall be drawn up with recommendations on the possibility of further operation of fixed assets.

Thus, the decision of the head of the company on full or partial write-off of the real estate object will be based on the results of the inventory and inspection of fixed assets and based on the recommendations of the special commission.

In documents on the validity of writing off fixed assets, it is necessary to explain the technical and economic inexpediency of repairing fixed assets and the need to write them off. For this purpose, for example, technical or operational standards for the use of a particular asset and a detailed description of the non-compliance of the damaged property with such standards can be given.

## Documentation of write-off

The commission of the company, which carries out the inventory, shall draw up the Certificate of Write-Off of the Fixed Asset. On the basis of such Certificate, the head of the company shall draw up an order on the liquidation of fixed assets. But in practice, it is desirable to liquidate fixed assets with a package of documents:

- official confirmation of the destruction of the real estate object, for example, a certificate from the State Emergency Service or other state authorities;
- order of the head on the creation of a permanent commission;
- real estate inspection report (if necessary);
- expert independent assessment of damaged property (optional);
- documentation of inventory results;
- a certificate of write-off of fixed assets;
- a decision of the head on the liquidation of fixed assets.

## Tax implications

**Income tax.** The complete liquidation of fixed assets is expenses for the company in the amount of the residual value of the written-off object of fixed assets, as well as related costs (for example, for dismantling) associated with the disposal of fixed assets (Paragraph 34 of Accounting Regulation (Standard) 7 "Fixed Assets").

Partial liquidation of fixed assets is expenses for the company in the amount of the residual value of the written-off part of the asset. That is, the initial cost and depreciation of fixed assets are reduced by the amount of the initial cost and depreciation of the liquidated part of fixed assets (Paragraph 35 of Accounting Regulation (Standard) 7 "Fixed Assets").

**Tax differences for high income earners.** When liquidating fixed assets, the payer must reduce the financial result by the accounting residual value of fixed assets and increase it by the tax residual value of fixed assets (Article 138 of the Tax Code of Ukraine).

**VAT.** Under Paragraph 189.9 of the Tax Code of Ukraine, VAT may not be charged in the event of liquidation of fixed assets in three cases:

- fixed assets are destroyed as a result of force majeure;
- fixed assets are stolen;
- fixed assets are destroyed, disassembled in another way, as a result of which such fixed assets cannot longer be used.

Obtaining a certificate of force majeure from the Chamber of Commerce and Industry for non-accrual of VAT liabilities is only **one of three possible ways** to formalize the liquidation of real estate objects without VAT implications.

Therefore, the correct preparation of documents regarding the inventory and write-off of fixed assets destroyed as a result of the war is a sufficient reason for not accrual of VAT liabilities during the liquidation of fixed assets, even in the absence of a certificate from the Chamber of Commerce and Industry.

At the same time, it is advisable to submit the certificate of write-off of fixed assets together with the VAT declaration to the supervisory authority, or, as a last resort, to be always ready to provide such a certificate of write-off of fixed assets at the written request of the tax service.

### Conclusions

The above recommendations will help you not to charge VAT when liquidating fixed assets damaged as a result of the war. Including, but not limited to, it is mandatory to carry out an inventory and, if necessary, an inspection of the destroyed object of fixed assets. After that, it is necessary to draw up a certificate of write-off of real estate objects and formalize the liquidation of fixed assets by the decision of the head of the company.

At the same time, obtaining a certificate from the Chamber of Commerce and Industry is one of three possible options for not charging VAT when liquidating real estate. That is, the certificate from the Chamber of Commerce and Industry is not a mandatory document for writing off fixed assets.

The key to success will be the correct documentation of the procedure for writing off fixed assets, which will allow not to charge VAT.

# CHARITABLE ASSISTANCE DURING THE WAR: CHANGES IN TAXATION

Laws No. 2516 and No. 2520 amended the Tax Code of Ukraine regarding the exemption from taxation of charitable assistance paid to the families of wounded and dead combatants.

On September 2, the Law "On Amendments to the Tax Code of Ukraine and Other Laws of Ukraine Regarding Exemption from Taxation of Charitable Assistance Paid to Family Members of the Wounded and Dead Combatants Participating in the Repulse of Armed Aggression and Ensuring the National Security of Ukraine" No.2516-IX dated August 15, 2022.

## What has changed since September 2

Taxation of the **charitable assistance to victims of war** with the personal income tax shall be regulated by special Subparagraph 165.1.54 of the Tax Code of Ukraine. Including, but not limited to, it exempts from taxation the amount (value) of such charitable assistance paid (provided) to individuals by both officially registered volunteers and charitable organizations.

Regarding the latter, i.e., charitable assistance paid (provided) in accordance with the procedure defined by the Law "On Charitable Activities and Charitable Organizations", Law No. 2516 introduced the following amendments:

Since September 2, 2022, the personal income tax will not be charged on income (amounts) paid (provided) by benefactors, including benefactors who are individuals, in favor of:

- combatants - servicemen (reservists, conscripts) and employees of the Armed Forces of Ukraine, the National Guard of Ukraine, the Security Service of Ukraine, the Foreign Intelligence Service of Ukraine, the State Border Guard Service of Ukraine, rank-and-file, senior officers, military personnel, employees of the Ministry of Internal Affairs of Ukraine, the Administration of State Guard of Ukraine, the State Service of Special Communications and Information Protection of Ukraine, other military formations formed in accordance with the laws of Ukraine, voluntary formations of territorial communities, police officers and employees of the National Police of Ukraine, including those who received injuries, contusions or other damage to health, died, died as a result of injury, concussion or mutilation, who defend (defended) the independence, sovereignty and territorial integrity of Ukraine, take (took) direct participation in repelling armed aggression and ensuring national security, eliminating the threat of danger to the state independence of Ukraine, its territorial integrity during the period of martial law, state of emergency in Ukraine, being directly in the areas of implementation of these measures, **or in favor of family members of such combatants**;
- employees of companies, institutions, organizations, civil defense forces, who are (were) involved and take (took) direct participation in the implementation of measures to ensure national security and defense, repulse and deter the armed aggression of the Russian Federation, being directly in the areas of hostilities and in the period of military operations, in accordance with the procedure established by law, **or in favor of their family members**:
- individuals who live (lived) in the territory of settlements where hostilities are (were) taking place, and/or who were forced to leave their place of residence in connection with hostilities in such settlements.

**Attention!** Family members of combatants include the following persons:

- parents (if they were not deprived of their parental rights before the person reached the age of majority);
- grandfather and grandmother (if parents are deceased);
- another spouse (if he (she) has not married a second time);
- minor and/or underage children;

- adult children studying in institutions of professional (vocational), professional higher and higher education (full-time or dual form of education), until they graduate from educational institutions, but not more than until they reach the age of 23;
- adult children who do not have their families;
- adult children who have their own families, but became persons with disabilities before reaching adulthood;
- dependents of the deceased to whom a pension is paid in this regard.

The specified incomes are not included in the total monthly (annual) taxable income of taxpayers up to and including December 31 of the year following the year in which the anti-terrorist operation was completed and/or the martial law and state of emergency in Ukraine were terminated or canceled, and/or upon the implementation of measures for ensuring the national security and defense, repelling and deterring the armed aggression of the Russian Federation.

In other words, **such assistance to the above recipients will be tax free until the end of the calendar year in which the war ends.**

Another norm regarding this "military" charitable assistance is contained in Paragraph 170.7.8 of the Tax Code of Ukraine, and it was also amended!

**Pay attention!** This subparagraph refers to two different types of assistance:

- assistance with personal protective equipment and medicines, food products, etc., in a word, with everything that Ukrainians and not only help our military;
- assistance to war victims to restore lost property, housing, social and household needs, etc. This is where the mention of the restoration of housing appeared for the first time. However, as before, the list of what will be given to the victims free of charge and without taxation must be approved by the Cabinet of Ministers of Ukraine. However, there are still limitations regarding the amount! Assistance for the specified purposes within the limits of 500 minimum salaries at the beginning of the year (that is, in 2022 – within the limits of UAH 3,250,000.00) is not taxed. And the excess amount is taxed with both personal income tax rate of 18% and military tax rate of 1.5%, and the recipient of the assistance has to declare such an amount and pay taxes on it.

### **What has changed since September 3?**

Law No. 2520 is also related to the provision of charitable assistance during the war, which was adopted to amend the Tax Code of Ukraine regarding the promotion of the development of volunteer activities and the activities of non-profit institutions and organizations in the conditions of the armed aggression of the Russian Federation against Ukraine.

This law entered into force the day after its publication, namely on September 3, 2022.

There are the following changes:

- **The deadlines for submitting the annual declaration by individuals who pay the personal income tax have been made universal.** That is, as early as 2022, both ordinary citizens and self-employed persons (entrepreneurs on the general taxation system, individuals engaged in the independent professional activity, and farmers) will submit a declaration **within the same time frame - until May 1**. That is, **the special reporting period for entrepreneurs until February 9 (Subparagraph 49.18.5 of the Tax Code of Ukraine) has been cancelled!**
- **Clarifications regarding the tax discount.** Legislators emphasize that: for documentary confirmation of expenses included in the tax discount, the supervisory authority has no right to demand from the taxpayer to provide documents and/or their copies **contained in automated information and reference systems, registers, banks (databases) of state authorities and/or local self-government bodies**, the information from which is obtained free of charge by the supervisory authority and is contained in the information databases of the central executive body that implements the state tax policy (i.e. the State Tax Service of Ukraine).

As for charity, the changes are as follows.

Norms of Law No. 2120 on introducing amendments to Subparagraphs 165.1.54, 165.1.56 and Subparagraphs 170.7.2, 170.7.8 of the Tax Code of Ukraine, in essence, regarding the types of assistance mentioned above apply to tax (reporting) periods starting from January 1, 2022.

And the procedure for confirming the status of persons who suffered as a result of the armed aggression of the Russian Federation against Ukraine during the legal regime of martial law, state of emergency, with the aim of not including in the taxable income of individuals - payers of tax on income received in the form of targeted or non-targeted charitable assistance, must be determined by the Cabinet of Ministers of Ukraine (Subparagraph 170.7.2 of the Tax Code of Ukraine was supplemented with a new paragraph).

But since the Cabinet of Ministers of Ukraine does not have time to draft such regulations, this **law introduced several temporary norms**.

**Temporarily**, starting from the date of the introduction of martial law in Ukraine, which was introduced by Decree No. 64/2022, approved by Law No. 2102-IX, until its termination or cancellation, the provisions of paragraph 4 of Subparagraph "c" of Subparagraph 165.1.54 of the Tax Code of Ukraine shall be applied, taking into account the following features: prior to the adoption by the Cabinet of Ministers of Ukraine of the list of territories where hostilities are (were) taking place or temporarily occupied by the armed forces of the Russian Federation, the status of individual taxpayers who receive the charitable assistance paid (provided) by benefactors, including benefactors, who are individuals, in order, determined by the Law "On Charitable Activities and Charitable Organizations", **shall be determined independently by the providers of charitable assistance**.

Temporarily, starting from the date of the introduction of martial law in Ukraine, which was introduced by Decree No. 64/2022, approved by Law No. 2102-IX, until its termination or cancellation, the provisions of Subparagraph "c" of Subparagraph 170.7.2 of the Tax Code of Ukraine shall be applied, taking into account the following features: before the adoption by the Cabinet of Ministers of Ukraine of the procedure confirming the status of persons who suffered as a result of the armed aggression of the Russian Federation against Ukraine during the legal regime of martial law, state of emergency, with the aim of not including in the taxable income of individuals - payers of tax on income received in the form of targeted or non-targeted charitable assistance, the status of such persons **shall be determined independently by the providers of targeted or non-targeted charitable assistance**.

The total monthly (annual) taxable income of the taxpayer for 2022 and 2023 tax (reporting) years **does not include** incomes in the form of sums of money or free goods (services) (hereinafter referred to as the assistance) provided at the expense of budget funds of foreign countries and their state funds to such a taxpayer and their family members of the first degree of kinship as persons who suffered as a result of the armed aggression of the Russian Federation against Ukraine and exercised the right to temporary protection in accordance with the legislation of such a foreign state.

The effect of such exemption from taxation applies to all forms of providing the specified assistance, including in the case of receiving it as an additional benefit, as well as from foreign companies and organizations that, in accordance with the legislation of the relevant foreign jurisdiction, carry out charitable activities.



# ACCOUNTING AND TAXATION OUTSOURCING

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# THE MINISTRY OF FINANCE OF UKRAINE APPROVED THE PROCEDURE REGARDING THE IMPOSSIBILITY OF FULFILLING TAX OBLIGATIONS DURING THE WAR

The procedure for confirming the possibility or impossibility of the taxpayer to fulfill their obligations (observance of tax and fee payment deadlines, submission of reports, registration of tax invoices and adjustment calculations, submission of electronic documents on actual balances and circulation of fuel or alcohol), which was approved by the Order of the Ministry of Finance of Ukraine No. 225 dated July 29, 2022 (Procedure No. 225), registered in the Ministry of Justice of Ukraine on August 25, 2022 under No. 967/38303 and **entered into force on September 6, 2022**, is published in the Official Gazette on September 6, 2022.

<https://tax.gov.ua/zakonodavstvo/podatkove-zakonodavstvo/nakazi/77593.html>

**Thus, from September 6 to September 30 (inclusive), you can submit applications in an arbitrary form and supporting documents to the State Tax Service of Ukraine.**

Annexes to Procedure No. 225 provide for:

- a list of documents confirming the impossibility of the taxpayer, which is a legal entity, including, but not limited to, in relation to its branch, representative office, separate or other structural subdivision, to timely fulfill its tax obligations, including the obligation of a tax agent;
- a list of documents confirming the impossibility of the individual taxpayer, including a self-employed person, to timely fulfill their tax obligations, including the obligation of a tax agent;
- a decision/preliminary decision regarding the possibility or impossibility of timely fulfillment of the tax obligation by the taxpayer.

The State Tax Service of Ukraine considers the submitted application and documents within 20 calendar days from the date of their receipt and makes a decision.

If it is not enough of supporting documents, the supervisory authority sends the payer a preliminary decision with a proposal to provide specific additional documents to confirm the grounds specified in the application within 10 calendar days.

The State Tax Service of Ukraine sends a decision/preliminary decision in accordance with the procedure established by Article 42 of the Tax Code of Ukraine.

A decision of the supervisory authority may be appealed in accordance with the Code in an administrative or judicial manner.

## What are the grounds for the impossibility of fulfilling obligations?

Procedure No. 225 introduced separate grounds for legal entities and individuals.

**For legal entities.** The grounds for the impossibility of taxpayers, which are legal entities, and their separate subdivisions to fulfill tax obligations (including the obligations of tax agents) are as follows:

1. loss (destruction or damage) of primary accounting documents, computer and other equipment as a result of hostilities, terrorist acts, sabotage caused by the military aggression of the Russian Federation;
2. impossibility to use or take out documents, computer and other equipment as a result of hostilities, terrorist acts, sabotage caused by the military aggression of the Russian Federation;
3. use or take out of documents, computer or other equipment are associated with a risk to the life or health of an official of the taxpayer or are impossible in connection with the establishment of prohibitions and/or restrictions by authorized bodies of state power in accordance with the law in the conditions of martial law;
4. possibility of leakage of information about the volumes and places of storage of fuel or ethyl alcohol and their destruction in the future as a result of the preparation and registration of excise invoices, and/or submission of electronic documents containing data on the actual balance of fuel and the volume of circulation of fuel or ethyl alcohol, and/or filing applications for the transportation of fuel or ethyl alcohol by vehicles that are not excise rolling stock, etc. (exclusively in terms of fulfilling the obligations specified in this paragraph);
5. if the taxpayer does not have other officials authorized in accordance with the legislation to charge, collect and pay taxes and fees to the budget, as well as keep accounting records, prepare and submit tax and financial statements; the inability of the owner to appoint such officials, provided that such taxpayer does not have objects of taxation, or indicators that are subject to declaration, in accordance with the requirements of this Code, may be associated with the following circumstances:
  - the official is simultaneously one of the owners of the legal entity, provided that the absence of such a co-owner (shareholder, member, founder) makes it impossible to make a decision on the appointment of another official on a permanent or temporary basis;
  - a legal entity is based on the ownership of a separate individual who is also the sole official of such a legal entity.
6. location (tax address of the taxpayer and/or actual location / location of production facilities, etc.) on the territory of a settlement in which military (combat) operations are (were) conducted, which is (are) surrounded (in the blockade) or temporarily occupied by the armed forces of the Russian Federation;
7. other force majeure confirmed by documents.

**For individuals.** The grounds for the impossibility of the individual taxpayer, including a self-employed person, to fulfill tax obligations, in addition to the grounds established by Subparagraphs 102.6.1 - 102.6.5 of Paragraph 102.6 of Article 102 of Chapter 9 of Section II of the Code, are as follows:

1. stay in the territory of the settlement, which is the tax address of such a payer and in which military (combat) actions are being conducted, which is surrounded (in the blockade) or temporarily occupied by the armed forces of the russian federation;
2. inpatient treatment in health care institutions (including foreign ones) in connection with an injury (contusion, trauma, mutilation) associated with the performance of military service duties, or sick leave or treatment after a serious injury under the conclusion (decree) of a military medical commission;
3. inpatient treatment in health care institutions (including foreign ones) in connection with an injury (contusion, trauma, mutilation), disease received as a result of hostilities and related accidents or as a result of injuries received from the violent actions of employees of the armed forces of the russian federation in the area of hostilities or temporary occupation;
4. call for military service during the general mobilization announced by the Decree of the President of Ukraine "On General Mobilization" No. 65 dated February 24, 2022, approved by the Law of Ukraine "On Approval of the Decree of the President of Ukraine "On General Mobilization" No. 2105-IX dated March 03, 2022, or service in the territorial defense forces;
5. pertinence to law enforcement officers, military personnel or employees of the Armed Forces of Ukraine, the National Guard of Ukraine, the Security Service of Ukraine, the Foreign Intelligence Service of Ukraine, the Main Directorate of Intelligence of the Ministry of Defense of Ukraine, the State Border Guard Service of Ukraine, rank-and-file, senior officers, military personnel, employees of the Ministry of Internal Affairs of Ukraine, the Administration of State Guard of Ukraine, the State Service of Special Communications and Information Protection of Ukraine, the State Emergency Service of Ukraine, other military formations formed in accordance with the laws of Ukraine and other persons who take a direct part in the implementation of measures to ensure the national security and defense, repulse and deter the armed aggression of the russian federation;
6. loss/absence (death, recognition as missing, etc.) of persons who, in accordance with paragraph 2 of Paragraph 179.6 of Article 179 of Section IV of the Code, are responsible for filling out and submitting a tax declaration on behalf of the taxpayer, who is a minor/underage child or person recognized by the court as incapable, if such persons are not fully dependent on others persons or the state;
7. loss (destruction or damage) of primary accounting documents, computer and other equipment as a result of hostilities, terrorist acts, sabotage caused by the military aggression of the russian federation, or their stay in the territories where military (combat) actions are (were) taking place, which are surrounded (in the blockade) or temporarily occupied by the armed forces of the russian federation;



8. impossibility to use or take out documents, computer and other equipment as a result of military (combat) operations, encirclement (blockade) or if the territory where the documents, computer and other equipment are located is temporarily occupied by the armed forces of the Russian Federation;

9. use or take out of documents, computer or other equipment are associated with a risk to the life or health of the taxpayer or are impossible in connection with the establishment of prohibitions and/or restrictions by authorized bodies of state power in accordance with the law in the conditions of martial law;

10. possibility of leakage of information about the volumes and places of storage of fuel or ethyl alcohol and their destruction in the future as a result of the preparation and registration of excise invoices, and/or submission of electronic documents containing data on the actual balance of fuel and the volume of circulation of fuel or ethyl alcohol, and/or filing applications for the transportation of fuel or ethyl alcohol by vehicles that are not excise rolling stock, etc. (exclusively in terms of fulfilling the obligations specified in this paragraph);

11. other force majeure confirmed by documents.

**The deadline for submitting a statement to the State Tax Service about the impossibility of performing obligations**

In case of impossibility of the taxpayer to fulfill the tax obligation, the taxpayer must submit **not later than September 30, 2022**, a statement about the lack of such possibility (except for the fulfillment of the obligation to register excise invoices and/or submit electronic documents containing data on the actual remaining fuel and volume of circulation of fuel or ethyl alcohol, and/or to submit an application for the transportation of fuel or ethyl alcohol by vehicles that are not excise rolling stock, etc.) together with an exhaustive list of documents (copies of documents) and information provided for by the List of Documents confirming the impossibility to the State Tax Service of Ukraine.

## How to make a statement correctly

The statement is submitted in an arbitrary form, however, Paragraph 3 of Procedure No. 225 contains its mandatory details. Thus, it must contain:

- full name of the taxpayer according to the registration documents or surname, given name and patronymic (if any) of the taxpayer;
- taxpayer code according to the Unified State Register of Companies and Organizations of Ukraine or tax number;
- registration number of the taxpayer's registration card or series (if any) and number of the passport (for individuals who, due to their religious beliefs, refuse to accept the registration number of the taxpayer's registration card and have notified the relevant supervisory authority thereof and have a mark in the passport);
- tax address of the taxpayer;
- name of the supervisory body to which the statement is submitted;
- date of submission of the statement;
- clear and concise justification of the grounds for confirming the inability of the taxpayer to fulfill tax obligations with reference to documentary confirmation of the stated facts;
- a comprehensive list of annexes indicating the number of pages of each document, their full name and details (date, number, name of the body that issued the document);
- which tax obligations the taxpayer did not have / cannot fulfill;
- information about tax periods during which it is impossible to fulfill tax obligations, or information about circumstances related to military (combat) actions, acts of terrorism, sabotage or other circumstances of force majeure caused by the military aggression of the Russian Federation and the temporary occupation by the armed forces of the Russian Federation;
- signatures of the individual taxpayer or taxpayer's officials certified by the taxpayer's seal (if any).

## **How will the state tax service of Ukraine consider the statement?**

The Procedure No. 225 contains a separate section regarding the consideration by the State Tax Service of Ukraine of taxpayers' documents regarding the possibility or impossibility of timely fulfilling their tax obligations. According to it, taxpayers' statements together with documents must be considered by the State Tax Service of Ukraine within 20 calendar days from the day of their receipt. And if it is not enough of documents confirming the impossibility of the taxpayer to fulfill tax obligations, the State Tax Service of Ukraine sends a preliminary decision with a proposal to provide specific additional documents to confirm the reason(s) indicated in the Statement for the impossibility of the taxpayer to fulfill tax obligations.

The taxpayer can submit additional documents (copies of documents) with substantiation / explanation to the State Tax Service of Ukraine in order to confirm the reason(s) specified in the application for the impossibility of fulfilling tax obligations within 10 calendar days from the day following the day of receipt of the previous decision.

## **Supporting documents regarding the impossibility of fulfilling tax obligations must be kept within 1095 calendar days**

Taxpayers shall keep the originals of relevant documents confirming the impossibility of fulfilling the tax obligation during the statute of limitations established by the State Tax Service of Ukraine (according to the general rules - 1095 calendar days).

## WHAT OPERATIONS FOR THE SUPPLY OF FOOD SERVICES ARE VAT EXEMPT?

Operations related to the supply of services (Subparagraphs "c" - "f" of Subparagraph 197.1.7 of the Tax Code of Ukraine), which are exempt from taxation, including, but not limited to:

- food and overnight accommodation and provision of other social services to homeless persons in registration centers, social protection institutions for homeless persons, as well as to persons released from prisons, in social adaptation centers for persons released from prisons;
- food for children in preschool, general education and vocational and technical educational institutions and citizens in health care institutions. The procedure for providing such services shall be approved by the Cabinet of Ministers of Ukraine;
- food, provision of property, utilities and other services provided to persons detained in institutions of the penitentiary system;
- food, provision of property, utilities and other social services at the expense of state funds provided to persons detained in rehabilitation institutions, territorial centers of social services (provision of social services), institutions, companies, organizations of all-Ukrainian public associations of persons with disabilities and their unions, which are engaged in rehabilitation, recovery and physical culture and sports activities, registration centers and social protection institutions for homeless persons, centers for social adaptation of persons released from prisons, sanatoriums for veterans and persons with disabilities, boarding houses for elderly citizens, persons with disabilities and children with disabilities, psychoneurological and specialized boarding houses, boarding houses for war and labor veterans, geriatric boarding houses.

## WARTIME CURRENCY RESTRICTIONS – UPDATED FROM SEPTEMBER 6

By Resolution No. 197 dated September 02, 2022, the National Bank introduced amendments to Resolution No. 18, which relate to the following issues:

- *cash segment of the foreign exchange market.*
- *restructuring of external debt of bank clients.* Temporary regulations do not allow the transfer of foreign currency abroad to repay debts owed to non-residents, the National Bank of Ukraine recommends to reconstruct such debts.
- *purchase of currency by business for settlements in foreign currency. Including, but not limited to, now in order to carry out settlements in foreign currency, the company must first use the foreign currency available to it, and then, if necessary, buy it on the currency market of Ukraine.*
- *currency supervision of banks over compliance by the Ukrainian business with the settlement deadlines for the operations of export or import of goods under documents on the termination of obligations by offsetting.*

## PECULIARITIES OF IMPOSING THE PERSONAL INCOME TAX ON THE GIG SPECIALIST

**Gig contract** means a civil law contract under which a gig specialist undertakes to perform works and/or provide services in accordance with the tasks of the resident of Dii.a.City as the customer, and the resident of Dii.a.City undertakes to pay for the works performed and/or services provided and to provide the gig specialist with appropriate conditions for performing works and/or providing services, as well as social guarantees provided for in Section V of the Law of Ukraine "On Stimulating the Development of the Digital Economy in Ukraine" No. 1667-IX dated July 15, 2021 (Law No. 1667).

Gig specialist means an individual who is a contractor and/or agent under a gig contract. When hiring an employee, a resident of Dii.a.City can conclude a contract with them as a special form of employment contract, aimed at ensuring the conditions for initiative and independence of the employee, taking into account their individual abilities and professional skills, increasing the mutual responsibility of the parties.

Therefore, a gig contract means a **special form of hiring specialists that combines the attributes of a labor and civil law contract**, where employees are engaged in specific projects and provide social guarantees to the gig specialist.

Law No. 1667 provides employees with **social guarantees**:

- the right to payment for temporary disability and assistance for pregnancy and childbirth (Article 22 of Law No. 1667, Article 24 and 26 of Law No. 1105);
- the right to an annual paid break (Article 21 of Law No. 1667);
- additional compensation payments or guarantees (Article 20 of Law No. 1667), which are determined by the gig contract or internal documents of the resident of Dii.a. City, etc.

In addition, Part 7 of Article 22 of Law No. 1667 states that a **resident of Dii.a.City can pay for** tangible or intangible values, services or other additional benefits for a gig specialist at their own discretion or if it is stipulated by a gig contract.

Other guarantees are provided to the employee under the gig contract at the sole discretion of the resident or if it is stipulated in the gig contract.

Such additional guarantees can be: subscription to the gym and swimming pool, assistance at the birth of a child, voluntary health insurance (Subparagraph "d" of Subparagraph 164.2.16 of the Tax Code of Ukraine), language courses, etc.

Under Part 3 of Article 3 of the Labor Code of Ukraine, the effect of Labor Code of Ukraine and labor legislation does not apply to relations between gig specialists and residents of Dii.a.City defined by Law No. 1667.

Part 1 of Article 1 of Law No. 1667 defines that a **gig contract** is a civil law contract under which a gig specialist undertakes to perform works and/or provide services in accordance with the tasks of resident of Dii.a.City as the customer, and the resident of Dii.a.City undertakes to pay for the works performed and/or services provided and to provide the gig specialist with proper conditions for performing works and/or providing services, as well as social guarantees provided for in Section V of the Law; gig specialist is an individual who is a contractor and/or perform under a gig contract.

When hiring an employee, a resident of Dii.a.City can conclude a contract with them as a special form of employment contract, aimed at ensuring the conditions for initiative and independence of the employee, taking into account their individual abilities and professional skills, increasing the mutual responsibility of the parties.

Therefore, a gig contract means a special form of hiring specialists that combines the features of a labor and civil law contract, where employees are engaged in specific projects and provide social guarantees to the gig specialist.

The social guarantees provided by the resident to the gig specialist **are taxed in the same way as the salary** (remuneration), because the Tax Code of Ukraine does not contain exceptions for such payments.

The amount of the guarantees must be taxed with:

**1) income tax:**

- at the rate of 5% — if the annual income does not exceed **EUR 240,000.00**;
- at the rate of 18% — if the amount of received income exceeds the specified amount (Subparagraph 170.14-1.3 of the Tax Code of Ukraine);

**2) military tax** at the rate of 1.5% (Paragraph 16-1 of Subsection 10 of Section XX of the Tax Code of Ukraine). Also, these amounts will be charged with a single social contribution — **22%** of the amount of the minimum salary (Part 14-1 of Article 8 of the Law of Ukraine “On the Collection and Accounting of the Single Contribution to the Mandatory State Social Insurance” No. 2464-VI dated July 08, 2010).

### **Is it possible a gig specialist on a business trip?**

Business trip means a trip of a person who is in labor relations with the company (employee) to another settlement outside the place of their permanent work.

A gig specialist does not conclude an employment contract, therefore **such a specialist cannot be sent on a business trip**, because there is no production need, because they are not an employee.

To compensate for travel expenses, it is possible to increase the amount of the gig specialist's remuneration, but such an increase will be taxed according to the rules discussed above.

## THE GOVERNMENT DETERMINED THE TERMS OF TRANSITION TO NON-CASH PAYMENTS FOR MERCHANTS

On August 17, 2022, the Resolution of the Cabinet of Ministers of Ukraine No. 894 dated July 29, 2022 entered into force. It defines the terms before which merchants must ensure the possibility of making non-cash payments (including using electronic means of payment, payment applications or payment devices) for the goods sold (services provided) by them, including goods (services), sale (provision) of which are carried out remotely:

- from January 1, 2023 - merchants who conduct business in settlements with a population of more than 25 thousand people (except for merchants specified in Subparagraph 4);
- from January 1, 2024 - merchants who conduct business in settlements with a population of 5 to 25 thousand people (except for merchants specified in Subparagraph 4);
- from January 1, 2025 - merchants who conduct business in settlements with a population of less than 5 thousand people (except for merchants specified in Subparagraph 4);
- from January 1, 2026 - merchants - individual entrepreneurs - payers of the single tax of the first group, merchants who carry out trade using vending machines, exit (takeaway) trade, sale of self-grown or fattened products.

# PAYROLL OUTSOURCING



## FROM OCTOBER 1, 2022, THE MINIMUM SALARY IS UAH 6,700.00

From October 1, 2022, the amount of the minimum salary has increased. This has consequences for payment of salary, sick leave, maternity leave, and vacation leave.

### New amounts

From October 1, 2022, the amount of the minimum salary is:

- in the monthly amount – UAH 6,700.00,
- in the hourly rate – UAH 40.46.

At the same time, the subsistence minimum for able-bodied persons has not changed yet and is UAH 2,600.00. From December 1, 2022, it will also increase up to UAH 2,684.00.

The increase in the minimum salary in October has certain consequences for the employer.

### Salary in October

General rules for the application of the “minimum salary” indicator for salaries follow from the norms of Article 3-1 of the Law “On Salaries”.

**Rule 1.** The amount of an employee's salary for a fully completed monthly (hourly) rate of work cannot be lower than the amount of the minimum salary. But when calculating the amount of an employee's salary to ensure its minimum amount, the following is not taken into account:

- additional payments for work in unfavorable working conditions and increased risk to health, for night and overtime work, traveling nature of work,
- bonuses for holidays and anniversaries.

**Rule 2.** Payments that are not taken into account are listed in Rule 1. Accordingly, all other components of the employee's salary are taken into account! Including, but not limited to, indexation.

**Rule 3.** All components of the employee's salary must be accrued to the employee. If the resulting accrued salary (minus the exceptions from Rule 1) is less than the minimum salary, an additional payment must be made up to its level.

**Rule 4.** If the employee does not fulfill the monthly work rate, the minimum payment for the employee's work is carried out in proportion to the completed work rate.

**Rule 5.** Any amounts of average earnings are not included in the salary to ensure its minimum level.

However, the size of the subsistence minimum for able-bodied persons also affects the salary. Under Article 6 of the Law “On Salaries”: **the minimum official salary (tariff rate) is set at an amount not less than the subsistence minimum established for able-bodied persons on January 1 of the calendar year.**

Therefore, the amount of salary during the year may not be revised. But if the salary is less than the minimum salary, the employee will have to make an additional payment – in proportion to the employee's working hours.

**However, another rule applies to hourly salaries:** the hourly rate for the position of an employee should be set not lower than the minimum salary in the hourly rate. That is, here the minimum that should be fulfilled is no longer UAH 6,700.00 per month, but UAH 40.46 per hour.

### **Is it necessary to revise the staffing list in October?**

If at the beginning of the year, the **monthly** salaries (tariff rates) are not lower than the subsistence minimum for an able-bodied person on January 1, it is not necessary to revise them in October. The requirements of the law are being met, so it is possible to increase salaries only if there is a financial possibility.

But it is easier for the salary to be equal not to the subsistence minimum, but to the minimum salary of UAH 6,700.00 - that way you will not have to make an additional payment up to its level. Therefore, it is possible to change the staffing list in October.

If employees are paid on an hourly basis, then in connection with the increase in the minimum salary per hour, it is necessary to revise the staffing list. If the hourly rate of any employee is less than UAH 40.46, it must be raised up to this level (it may be higher, but it is not obligatory).

It is necessary to make changes to the staffing list by the end of September, so that, from October 1, the remuneration of employees meets the requirements of the law.

### **Will there be any changes in salary indexation?**

No, there won't be. Because under Paragraph 4 of Procedure No. 1078, salaries, including for working pensioners, financial support, the amount of alimony determined by the court in a fixed monetary amount, unemployment benefits provided depending on the length of pensionable service as a percentage of the average salary, scholarship **are indexed within the subsistence minimum established for able-bodied persons**.

That is, in October, as well as in September, the salary should be indexed in the range of UAH 2,600.00. Or in the actual amount, if the salary is accrued in the amount less than UAH 2,600.00.

### **How to calculate leave days in October?**

Leave days will not be affected in any way by the increase in minimum salaries. According to the current rules of the Procedure for Calculating the Average Salary (Procedure No. 100), even an increase in the salary in the month when the leave is granted will not lead to the obligation to adjust the amount of leave pay, according to the current legislation, the adjustment of the average salary by the coefficient of increase in official salaries is not provided for.

But it is possible to make such an adjustment, if it is provided for in the collective agreement and the procedure for such an adjustment is established by the internal regulatory document of the company.

### **How to pay sick leave and maternity leave in October?**

Both sick and maternity leaves have **a maximum monthly amount**.

The amount of temporary disability allowance (including care for a sick child or a sick family member), as well as allowance in connection with pregnancy and childbirth per month should not exceed the maximum value of the base for calculating the single social contribution (Part 3 of Article 24, of Part 2 of Article 26 of Law No. 1105).

In 2022, during the period from January to September, this indicator amounted to UAH 97,500.00. From October 1, it is UAH 100,500.00 (6,700.00 x 15).

Therefore, **the maximum amount of sick and maternity leaves for October for an employee (for all workplaces in total) is UAH 100,500.00**.

This should be taken into account by the first employer, who will calculate the amount of sick leave or maternity leave - at the main place of employment.

As for part-time employees, in order to fulfill this rule, a requirement has been established for them - a part-time employee must provide a certificate from the main place of employment regarding the calculation of the average salary, which was used to calculate sick and maternity leaves (Part 1 of Article 3 of Law No. 1105).

Under Paragraph 30 of Procedure No. 1266, the total salary, from which payments are calculated, **for the months of the calculation period** at the main place of employment and at the place (places) of part-time employment cannot exceed the maximum value of the accrual base of the single social contribution (15 minimum salaries).

### **The minimum amount of the maternity leave:**

Under Part 2 of Article 26 of Law No. 1105, the monthly amount of assistance for pregnancy and childbirth cannot be less than the amount of assistance calculated from the minimum salary established **at the time of the occurrence of the insured event**.

**If the length of pensionable service for the last year is insufficient, sick leave and maternity leave are accrued with reference to the minimum salary.**

Under Part 4 of Article 19 of Law No. 1105, employees who have less than 6 months of the length of pensionable service during 12 months prior to the occurrence of the insured event (i.e., the month of the opening of the disability certificate) are entitled to the financial assistance in the following amounts:

1. temporary disability allowance – based on the accrued salary (income) from which insurance premiums are paid, but not more than the amount of the allowance calculated from the minimum salary established at the time of the occurrence of the insured event. The same rule applies to the payment of the first 5 days of temporary disability (Paragraph 5 of Regulation No. 440);
2. maternity allowance – based on the accrued salary (income) from which insurance premiums are paid, but not more than the amount of the allowance calculated from the double amount of the minimum salary established at the time of the occurrence of the insured event.

### **Single social contribution**

The minimum and maximum amounts of insurance premiums from the single social contribution are tied to the amount of the minimum salary.

The minimum amount of the single social contribution from January to September 2022 is UAH 1,430.00 (6,500.00 x 22%), and from October it is UAH 1,474.00 (6,700.00 x 22%). These indicators are for the full salary at the main place of employment, if the salary is lower, then it is necessary to pay the single social contribution in proportion to the time worked. If the employee is a part-time employee, then 22% of the single social contribution is applied to their actual salary.

The maximum base for calculation of the single social contribution from January to September 2022 is UAH 97,500.00, from October 2022 it is UAH 100,500.00 (6,700.00 x 15).

When accruing a single social contribution on the salary of employees with disabilities, all employers should apply the rate of 8.41% to the actual amount of the accrued salary.

### **Personal income tax and military tax**

As for the personal income tax and military tax, nothing will be change. After all, all the main indicators related to the taxation of both salary (sick leave) and other income of individuals (per diem, gifts, non-targeted charitable assistance, tuition fees, etc.) are tied to the size of the minimum salary or subsistence minimum for able-bodied persons as of 1<sup>st</sup> of January. Therefore, the growth of these minimums during the year does not affect them.

The same applies to the tax social benefit - the rules of its application will not change in October 2022.

## AMENDMENTS TO THE INSTRUCTIONS FOR THE SINGLE SOCIAL CONTRIBUTION CALCULATION CAME INTO EFFECT ON SEPTEMBER 2

Amendments have been introduced in the part of calculation and payment of the single social contribution by payers who are called up for military service from among the reservists, and display of features of determining the base of accrual of the single social contribution for employees of residents of Diia.City.

By order of the Ministry of Finance of Ukraine No. 216 dated July 28, 2022 (registered in the Ministry of Justice of Ukraine on August 15, 2022 under No. 914/38250) **amendments to the Instructions on the Procedure for Accrual and Payment of the Single Social Contribution were approved.**

The amendments came into effect on September 2 (the order was published in the Official Gazette under No. 68 on September 2, 2022).

### **Amendments are made to the following part:**

- 1) accrual and payment of the single social contribution by payers who are called up for military service from among the reservists in the special period, for the entire period of their military service and provision for the said payers of the submission of an application after dismissal from military service. In view of this, the Application form, Annex 1 to the Instructions, has also been updated;
- 2) display of the features of determining the basis of calculation of the single social contribution for the payers of the single contribution of the resident of Diia.City.

So, if individual entrepreneurs and persons carrying out independent professional activities have a main place of employment or have entered into a gig contract with a resident of Diia.City in the manner and on the terms provided for by the Law "On Stimulating the Development of the Digital Economy in Ukraine", then such payers shall be exempted from paying the single social contribution for themselves for the months of the reporting period for which the employer (a resident of Diia.City) paid an insurance premium for them in the amount of not less than the minimum insurance premium.

At the same time, if the employer (a resident of Diia.City) paid the insurance premium for such persons for the months of the reporting period in the amount of less than the minimum insurance premium, then such persons may be payers of the single social contribution under the condition of independently determining the basis for calculating the single contribution for the months of the reporting period, for which the employer (a resident of Diia.City) paid an insurance premium for such persons in the amount of less than the minimum insurance premium. The calculation base independently determined by such persons cannot exceed the maximum value of the single contribution calculation base established by this Law. At the same time, the amount of the single contribution cannot be less than the amount of the minimum insurance premium.

There were no rules for non-charging and non-payment by the individual entrepreneurs - employees of the resident of Diia.City in the Instructions before. Now it is already clearly stated that the exemption from the payment of the single social contribution for individual entrepreneurs - main employees, which came into force on January 1, 2021, also applies to employees of the resident of Diia.City.

## THE UNIFIED REPORTING ON THE SINGLE SOCIAL CONTRIBUTION, PERSONAL INCOME TAX AND MILITARY TAX WAS UPDATED

For the first time, it is necessary to report according to the updated form of the unified reporting on the single social contribution, personal income tax and military tax for the 4th quarter of 2022.

Law of Ukraine No. 2120-IX dated March 15, 2022 "On Amendments to the Tax Code of Ukraine and Other Laws of Ukraine Regarding the Application of Norms for the Period of Martial Law" amended Law of Ukraine No. 2464-VI dated July 8, 2010 "On the Collection and Accounting of the Single Contribution to the Mandatory State Social Insurance" (hereinafter referred to as Law No. 2464), including Section VIII "Final and Transitional Provisions" of Law No. 2464 is supplemented by Paragraph 9-20, according to the provisions of which employers, who are payers of the single tax and chose the simplified taxation system - individual entrepreneurs belonging to the second and third groups of single tax payers, as well as legal entities belonging to the third group of single tax payers (hereinafter referred to as the Employers), **have the right, by their own decision, not to pay a single contribution to the mandatory state social insurance** (hereinafter referred to as the single contribution) for employees called up during mobilization for military service in the Armed Forces of Ukraine.

The sums of the single contribution accrued and not paid by the employers, determined by paragraph 1 of Paragraph 9-20 of Section VIII "Final and Transitional Provisions" of Law No. 2464, are paid from the state budget, except for the periods in which the employees, specified in paragraph 1 of this Paragraph, received income in the form of financial support, from which a single contribution was paid at the expense of the state budget.

In this regard, the tax calculation of the amounts of income accrued (paid) for the benefit of individual taxpayers and the amounts of tax withheld from them, as well as the amounts of the accrued single contribution (hereinafter referred to as the Calculation) was adjusted and set out in a new version and the procedure for filling out and submitting by the tax agents of the tax calculation of the amounts of income accrued (paid) for the benefit of individual taxpayers and the amounts of tax withheld from them, as well as the amounts of the accrued single contribution (hereinafter referred to as the Procedure) was amended.

### **Regarding changes for payers of the single contribution in the form of the Calculation and Annex 2 to this Calculation**

Amendments have been made to Section I of the Calculation "Accrual of Income and Single Contribution for Employees by Months of the Reporting Quarter" in the part of supplementing this Section with new lines 1.6, 2.6, 3.7, 4.4, 6.4, which will allow Employers to display the amounts of accrued salaries for employees, who were called up for military service in the Armed Forces of Ukraine during the mobilization period, who did not receive income in the form of monetary allowance.

In the relevant lines of Section II of the Calculation "Accrual of Monetary Allowance and Single Contribution for Military Personnel, Police Officers, Rank-And-File and Senior Officers and for the Amounts of Allowance to Female Military Personnel in Connection with Pregnancy and Childbirth by the Months of the Reporting Quarter (Except for Conscript Military Personnel)" was clarified regarding the allowance in connection with pregnancy and childbirth for female military personnel.

### **Regarding amendments to the Procedure**

There have been no changes to the structure of the Procedure, it also contains five sections.

## As for the general innovations of the Procedure:

- amendments have been made to the descriptive part of the Procedure regarding the new lines added to the Calculation, related to the display by the Employers of salaries and, accordingly, the single contribution for mobilized employees;
- editorial amendments have been made to the descriptive part of the relevant lines of the Calculation regarding the allowance in connection with pregnancy and childbirth for female military personnel;
- amendments have been made to Annex 1 to the Procedure in the part of supplementing this Annex with the code of the category of insured persons 75 "Citizens of Ukraine who have signed the Territorial Defense Volunteer Contract."

Also, Annex 1 to the Procedure is supplemented with the codes of categories of insured persons 76 - 80, called up during mobilization for military service in the Armed Forces of Ukraine, for whom the Employers had the right, by their own decision, not to pay a single contribution:

- **76** – employees called up during mobilization for military service in the Armed Forces of Ukraine, who did not receive income in the form of monetary allowance;
- **77** – persons who work at companies and in organizations of all-Ukrainian public organizations of persons with disabilities, including, but not limited to, companies of the Ukrainian Society of the Deaf and the Ukrainian Society of the Blind, who were called up during mobilization for military service in the Armed Forces of Ukraine, who did not receive income in the form of monetary allowance;
- **78** – a person with a disability working at the company or in the organization of public organizations of persons with disabilities, in which the number of persons with disabilities is more than 50%, who was called up during mobilization for military service in the Armed Forces of Ukraine, who did not receive income in the form of monetary allowance;
- **79** – an employee with a disability who works in the companies of the Ukrainian Society of the Deaf and the Ukrainian Society of the Blind, who was called up during mobilization for military service in the Armed Forces of Ukraine, who did not receive income in the form of monetary allowance;
- **80** – an employee with a disability who works at companies and organizations of all-Ukrainian public organizations of persons with disabilities, including, who was called up during mobilization for military service in the Armed Forces of Ukraine, who did not receive income in the form of monetary allowance.

## Regarding the start of the application of the new calculation form

Since Order No. 189 entered into force on the day of its official publication (published on August 9, 2022), it will be necessary to report according to the new Calculation form for the quarter IV of 2022.



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## FROM AUGUST 10, 2022, EMPLOYERS CAN USE A NEW FORM OF THE EMPLOYMENT CONTRACT WITH NON-FIXED WORKING HOURS

The Law of Ukraine "On Amendments to Some Legislative Acts of Ukraine Concerning the Regulation of Some Non-Standard Forms of Employment" No. 2421-IX dated July 18, 2022 (Law No. 2421-IX) entered into force on August 10, 2022 (it was published in the issue of the Holos Ukrayny Gazette No. 162 dated August 09, 2022). This law provides for the introduction of a special form of employment contract - with non-fixed working hours. Law No. 2421-IX regulates the issue of non-standard forms of employment for persons who perform work on a non-permanent basis, provides flexibility in choosing the organization of labor relations, and increases employee mobility when exercising the right to work.

The Labor Code of Ukraine ([the Labor Code of Ukraine](#)) establishes a **new form of employment contract - "Employment Contract with Non-Fixed Working Hours"** as a special type of employment contract, the terms of which do not pre-establish a specific time for performing works, and the employee's obligation to perform such work, arising exclusively in the event that the owner or the body authorized by the owner provides the work provided for in this employment contract without guaranteeing that such work will be provided constantly. The standard form of an employment contract with non-fixed working hours must be approved by the Ministry of Economy of Ukraine.

The employer independently determines the necessity and time of the employee's involvement in work, the scope of work and, within the period stipulated by the employment contract, agrees with the employee on the mode of work and the duration of the working hours necessary to perform the relevant work.

The number of concluded employment contracts with non-fixed working hours cannot exceed 10% of the total number of employment contracts.

Legal entities and individual entrepreneurs that employ less than 10 employees may enter into not more than one employment contract with non-fixed working hours.

The contract provides for information on:

- method and minimum period of notifying the employee of the start of work;
- method and maximum period of notice from the employee of the readiness to start work or to refuse to perform it in the cases provided for in part 7 of this article;
- intervals during which the employee may be required to work (base hours and days).

The number of base hours cannot exceed 40 hours per week and the number of base days cannot exceed 6 days per week.

The employee may refuse to perform work in the following cases:

- if the employer requires the performance of work outside the basic days and hours;
- if the employee was notified of the availability of work in violation of the minimum terms specified in the employment contract with non-fixed working hours.

However, the employee's refusal to perform work on the basic days and in the basic hours specified by the contract is grounds for bringing the employee to disciplinary liability.

The minimum working time of an employee who performs work under the employment contract with non-fixed working hours during a calendar month is 32 hours. If an employee worked less than 32 hours during a calendar month, such employee must be paid a salary for at least 32 hours of working time in accordance with the terms of remuneration specified in the employment contract.

According to the amendments to Part 5 of Article 8 of the Law "On Single Social Contribution", during the accrual of salaries (income) to employees who work under the employment contract with non-fixed working hours, the single social contribution rate established by this part is applied to the specified calculation base, regardless of its amount.

## ON JULY 19, THE LAW ON THE OPTIMIZATION OF LABOR RELATIONS ENTERED INTO FORCE

The Law "On Amendments to Certain Laws of Ukraine on Optimizing Labor Relations" No. 2352-IX dated July 01, 2022 entered into force on July 19 (it was published in the issue of the Holos Ukrayn Gazette No. 147 (7897) dated July 18, 2022).

**The main amendments to the legislation on labor relations are as follows:**

- the employer is released from the obligation to maintain the average earnings of employees **called up for military service, with the preservation of workplaces (positions) for these employees**;
- during the declaration of martial law or a state of emergency, all notices and documents on issues of labor relations, orders of the owner or the body authorized by the owner can be made and kept in electronic form;
- an additional ground for dismissing an employee was introduced – the impossibility of providing the employee with working conditions;
- an additional reason for terminating the employment contract was introduced - the employee's absence from work and information about the reasons for such absence for more than four months;
- the procedure for terminating an employment contract with an employee or an individual who uses hired labor in the event of their death, recognition by the court as missing or declared dead was defined;
- the concept of part-time employment is defined, which will provide an opportunity for employees who were forced to leave their workplaces to find employment in another job;
- it was determined that certain categories of employees (who are on idle time, leave without pay, or whose employment contracts may be suspended) may carry out other paid or entrepreneurial activities (for this period, certain restrictions provided for by legislation in the field of corruption prevention are canceled);
- a clearly defined period is established when the salary for the leave period must be paid, namely not later than the last day preceding the day the leave starts;
- the issue of payment of monetary compensation for the employee's unused annual leave days, as well as additional parental leave in the event of the employee's death, was defined, namely, such payments are part of the inheritance.

# THE PROCEDURE FOR SUBMITTING E- INFORMATION ON LABOR ACTIVITY TO THE PENSION FUND OF UKRAINE CAME INTO EFFECT ON JULY 15, 2022

By Resolution No. 8-3, the Pension Fund of Ukraine introduced the order of submission of data on the labor activity of employees, the procedure for re-submission of this data, as well as the submission of individual pages of employment history record books. These amendments came into effect on July 15.

From July 23, 2021, the Procedure for Submitting Information about the Labor Activity of an Employee, Individual Entrepreneur and Self-Employed Individual in Electronic Form has been in effect.

According to it, information about the employee's labor activity is submitted by the insured for the employees or by the employee himself/herself to the Pension Fund of Ukraine in the e-form.

The Resolution of the Pension Fund of Ukraine No. 8-3 dated June 02, 2022 amended this procedure.

Resolution No. 8-3 enters into force on July 15, 2022 (published in the Official Gazette on July 5, enters into force ten days after its official publication).

By Resolution No. 8-3, the following was introduced:

- **the sequence of submission of data on the labor activity of employees in e-form.** Thus, from the date of entry into force of the amendments, data on the labor activity of the employee can be submitted in electronic form within 5 years from the date of entry into force of Law No. 1217, but first of all, it is necessary to submit data on the labor activity of persons who have 2 or less years left before the retirement age, and on the labor activity of persons for the period up to July 1, 2000;
- **amendments to the rules for transferring employment history record books to the service portal.** Data on the labor activity of the employee is submitted through the web portal of electronic services of the Pension Fund of Ukraine in electronic form in the form of an xml file (its structure is given in the Annex approved by Resolution No. 8-3) in one of the following ways:
  - in the form of copies of documents provided for by law, made by scanning;
  - in digitized form - by creating a corresponding electronic record in the electronic account of the insured person, to which scanned copies of the documents on the basis of which the record is created are attached.
- **the need to submit only completed pages of employment history record books;**
- **the procedure for resubmission of employment history record books.** Including, but not limited to, data on the labor activity is resubmitted in case of correction of records in case of detection of an incorrect or inaccurate record of periods of work for periods of insurance experience after July 1, 2000 or creation of an incorrect or inaccurate electronic record in the electronic account of the insured person on the web portal of electronic services of the Pension Fund of Ukraine. Attention! When re-submitting data on the labor activity, the title page and pages with amendments are submitted.
- **the possibility of submitting data on the labor activity to the Pension Fund of Ukraine by the employees in person.** Including, but not limited to, data on the labor activity can be submitted to the territorial body of the Pension Fund of Ukraine by an employee in person or through the web portal of electronic services of the Pension Fund of Ukraine by an employee or an insured person.
- **the procedure for submitting data in the absence of information in the register of insured persons.** Including, but not limited to, in the absence of data on employment, transfer from one structural unit to another or transfer to another permanent position or job, dismissal, reinstatement, suspension/renewal of the employment contract, as well as assignment, change or deprivation of rank, class, category, oath taking, internship, training are submitted by the insured person by creating a corresponding electronic record in the electronic account of the insured person.

# LEGAL CONSULTING



## COUNTERPARTY ASSOCIATED WITH THE AGGRESSOR STATE: LEGAL CONSIDERATIONS

*If before February 24, doing business with residents of the Russian Federation was mainly an ethical issue, then after the start of a full-scale war, it was transferred to a clearly restrictive plane. This information is for those who want to finish what they started with the least consequences for their own business.*

The main documents regarding the settlement of relations with the participation of persons related to the aggressor state are the Resolution of the Cabinet of Ministers of Ukraine No. 187 dated March 03, 2022 "On Ensuring the Protection of National Interests in Future Lawsuits of the State of Ukraine in Connection with the Military Aggression of the Russian Federation" ([Resolution No. 187](#)) and the [Resolution of the National Bank of Ukraine No. 18 dated February 24, 2022 "On the Operation of the Banking System During the Introduction of Martial Law"](#).

Therefore, today **it is prohibited**:

1) performance, including, but not limited to, in a compulsory manner, of monetary and other obligations by creditors (collectors), behind which the Russian Federation stands, or such persons are:

- citizens of the Russian Federation, except for those who live in the territory of Ukraine on legal grounds;
- legal entities created and registered in accordance with the legislation of the Russian Federation;
- legal entities created and registered in accordance with the legislation of Ukraine, the ultimate beneficial owner, member or participant (shareholder) of which, having a share in the authorized capital of 10 percent or more, is the Russian Federation, a citizen of the Russian Federation, in addition to residing in the territory of Ukraine on legal grounds, or a legal entity created and registered in accordance with the legislation of the Russian Federation;

2) alienation, pledge, any other actions that entail or may entail the alienation of real estate, securities, corporate rights, vehicles, aircrafts and ships, inland navigation vessels by the Russian Federation or persons associated with the aggressor state, except for gratuitous alienation in favor of the state of Ukraine;

3) alienation, pledge, any other actions that entail or may entail the alienation of real estate, securities, corporate rights, vehicles, aircrafts and ships, inland navigation vessels in favor of persons associated with the aggressor state, or in favor of the Russian Federation.

In addition to the prohibitions listed above, **there are prohibitions in the banking system** in Ukraine. Under [Paragraph 15 of Resolution No. 18](#), the execution of debit transactions by servicing banks on the accounts of residents of the Russian Federation / the Republic of Belarus, on the accounts of legal entities (except for banks), the ultimate beneficial owners of which are residents of the Russian Federation / the Republic of Belarus, was stopped. Exceptions are provided for by the same norm. Under [Paragraph 15<sup>1</sup> of Resolution No. 18](#), it is **prohibited**:

1) to credit funds to the accounts of individual clients for transfers initiated using electronic payment instruments issued by participants in international payment systems operating in the territory of the Russian Federation / the Republic of Belarus;

2) to accept in Ukraine electronic payment means (including transfers, settlements and cash withdrawals) issued by participants in international payment systems operating in the territory of the Russian Federation / the Republic of Belarus.

Also, it is **prohibited** to carry out any foreign currency transactions:

- 1) using russian and belarusian rubles;
- 2) the participant of which is a legal entity or an individual located (registered/permanently residing) in the russian federation / the republic of belarus;
- 3) to fulfill obligations to legal entities or individuals located (registered / permanently residing) in the russian federation and/or the republic of belarus (Paragraph 17 of Resolution No. 18).

Exceptions that are not covered by the prohibitions of Paragraph 17 are defined in Paragraph 17<sup>2</sup> of Resolution No. 18.

Also, unfinished notarial actions **are subject to suspension** which are performed at the request of a person associated with the aggressor state, defined by Resolution No. 187. In the case of such a person's application to perform a notarial act, the notary refuses to perform it. These restrictions apply until the entry into force of the law on the settlement of relations with the participation of persons associated with the aggressor state, and do not apply to notarial actions to certify the authenticity of the signature on the application for renunciation of russian citizenship and to certify the will of a prisoner of war, as well as to appeals by legal entities, defined in paragraph 5 – 8 of Subparagraph 1 of Paragraph 1 of Resolution No. 164.

If a situation has arisen when dealing with a counterparty acquires collaborative features, three options are legally provided for exiting:

- debt forgiveness under Article 605 of the Civil Code of Ukraine;
- termination of the obligation by the transfer of compensation under Article 600 of the Civil Code of Ukraine;
- replacement of the debtor in the obligation under Article 520 of the Civil Code of Ukraine.

If there is no agreement between the parties, it will be necessary to refer to the norm of Part 1 of Article 617 of the Civil Code of Ukraine, which defines that:

the person who violated the obligation is released from liability for the violation of the obligation if such person proves that this violation occurred as a result of an accident or force majeure.

Liability – Resolution No. 187 stipulates that all transactions (including powers of attorney) concluded in violation of the moratorium specified in Paragraph 1 of this resolution, including if they provide for the relevant alienation in the future, are null and void. Therefore, those that do not require a separate court decision to recognize their invalidity (Part 2 of Article 215 of the Civil Code of Ukraine).

In addition, one should not forget about **the liability for collaborative** activities under Article 111<sup>1</sup> of the Criminal Code of Ukraine.

# THE NEW LAW “ON JOINT-STOCK COMPANIES”

The Law “On Joint-Stock Companies” No. 2465-IX of July 27, 2022 (Law No. 2465) was officially published in the Holos Ukrayiny Gazette on August 20, 2022.

This Law introduces many amendments to the registration and organization of activities of the JSC, which come into force mainly from January 1, 2023.

The Law is aimed at improving and further harmonizing the legislation on joint-stock companies by:

- introduction of a mechanism for conducting general meetings using electronic voting;
- bringing a number of its norms into compliance with EU legislation;
- providing the opportunity to introduce a single-level structure of the company management in joint-stock companies;
- settlement of the issue of liability of officials of the joint-stock company.

The law also amends a number of legal acts, including, but not limited, the Civil Code, the Commercial Code, the Criminal Procedure Code, the Laws “On Limited and Additional Liability Companies”, “On Securities and the Stock Market”, “On the Depository System of Ukraine”.

Under Section XIX of the Law “Final and Transitional Provisions”, Law No. 2465 shall enter into force on January 1, 2023, except for:

- the provisions of Articles 36 - 55 of the Law on conducting electronic general meetings and operation of the authorized electronic system, which will enter into force on January 1, 2024;
- Subparagraph 20 of Paragraph 3 of Section XIX, which shall enter into force on January 1, 2024.

There are the following changes:

- improving the issue of holding general meetings of the joint-stock company by introducing a mechanism for conducting general meetings using electronic voting;
- implementation of the activities of the corporate rights advisor regarding the dissemination of research, the provision of consultations and any other recommendations regarding corporate rights;
- the possibility for the joint-stock company to choose a one-level management structure of the company by creating a board of directors of the joint-stock company;
- settlement of the issue of introducing the position of corporate secretary in joint-stock companies, determining the competence and powers of the corporate secretary, as well as the procedure for electing and recalling the corporate secretary;
- removal from the Law of Ukraine “On Joint-Stock Companies” of norms requiring the existence of an audit commission (auditor) in joint-stock companies;
- settlement of the issue of liability of officials of the joint-stock company;
- introduction of a mechanism for accounting for the shares of limited and additional liability companies in the accounting system of the Central Securities Depository;
- settlement of issues of consolidation, merger, spin-off and split-up of joint-stock companies in accordance with the provisions of Directive (EU) 2017/1132 dated June 14, 2017 regarding certain aspects of company law.

## **Accounting of shares of members of LLC/ALC**

According to the example of JSC shares, the amendments introduced by Law No. 2465 to the Law "On Limited and Additional Liability Companies" (new Article 15-1), provide for that company members can at any time decide to record the shares of such members in the accounting system maintained by the Central Depository of Securities under the relevant agreement with the company, in accordance with the procedure established by the commission.

At the same time, the date of the start and end of the registration of shares of the company in the share accounting system is the date of entering the relevant information into the Unified State Register (most likely, we are talking about the accounting of the members' shares for the current authorized capital or in case of introduction of amendments into the Unified State Register regarding the amount of the authorized capital with a change in the ratio of the members' shares). Such a decision belongs to the exclusive competence of the general meeting of LLC/ALC. Corresponding amendments to the Law "On the Depository System" shall enter into force on January 1, 2024.

## **Electronic general meeting**

We would like to remind you that with the beginning of the pandemic, amendments were made to the current Law "On Joint-Stock Companies" in March 2020, which provided for the possibility of holding general meetings of shareholders remotely in the order and within terms determined by the temporary procedure for holding general meetings remotely, approved by the National Commission on Securities and the Stock Market (Subparagraph 10 of Paragraph 5 of the Transitional Provisions of the Law "On Joint-Stock Companies").

Instead, new Law No. 2465, in addition to face-to-face and remote meetings, Article 38 provides for the holding of electronic general meetings without the joint presence of shareholders (their representatives) exclusively through electronic absentee voting of shareholders using an authorized electronic system in the manner established by this Law and legal regulations of the National Commission on Securities and the Stock Market.

So, we are not talking about meetings online via the Internet or using special programs for conducting video conferences, but about electronic absentee voting with the mandatory electronic authorization.

The norm regarding the holding of electronic general meetings shall enter into force on January 1, 2024.

Speaking about general meetings, it should also be mentioned that Law No. 2465 provides for a shortened procedure for notification of holding extraordinary general meetings, which will be carried out not later than 15 days before the date of their holding, provided that the interests of the joint-stock company require it (Article 45).

As before, decisions are made by a simple majority of votes, except (Part 6 of Article 53 of Law No. 2465) when:

- 1)** 3/4 of votes are required to make such decisions, such as, including, but not limited to, on introducing amendments to the articles of association of a joint-stock company, on changing the type of a joint-stock company; on changing the management structure; on the issue of shares, cancellation of purchased shares; on changing the size of the authorized capital, making a decision on the redemption by the company of the shares placed by it and on the termination of the JSC;
- 2)** voting refers to the adoption of a decision on non-use by shareholders of the preemptive right to purchase shares of the additional issue, which requires more than 95% of the votes of shareholders.

## Pay attention!

*At the same time, the Law expressly prohibits to establish voting of more than 3/4 of the votes when voting for a decision on the following issues:*

- the early termination of the powers of officials of the bodies of the joint-stock company;*
- filing a lawsuit against the officials of the bodies of the joint-stock company for compensation of losses caused to the company;*
- filing a lawsuit in case of non-compliance with the requirements of this Law when committing a significant transaction.*

## Authorized capital and disposal of shares

The Law reduces the size of the authorized capital from 1,250.00 current minimum salaries to 200 minimum salaries on the date of registration for newly established joint-stock companies (Part 1 of Article 16 of Law No. 2465).

In addition, along with LLC/ALC, new Law No. 2465 re-introduced control over net assets — Part 2 of Article 16 of Law. Thus, if the net assets of the joint-stock company according to the latest annual financial statements are less than 50% of the registered authorized capital or have decreased by more than 50% compared to the same figure as of the end of the previous year, the supervisory board or the board of directors of the company within three months from the date of approval of such financial statements is obliged to take all actions to improve the financial position of the company, to reduce the authorized capital or to liquidate it, etc.

As for LLC/ALC, it is worth reminding about the actions of members who have more or less than 50% of the authorized capital. It is provided for that a member of the company, whose share in the authorized capital is less than 50 percent, can leave the company at any time without the consent of other members. But a member, whose share in the authorized capital is 50 percent or more, can leave the company with the consent of other members (Part 1, 2 of Article 24 of the Law "On Limited Liability and Additional Liability Companies").

Law No. 2465 supplements these rules with the following: *"The articles of association of the company may establish that a member of the company, whose share in the authorized capital of the company is 50 percent or more, may leave the company without the consent of other members. The relevant provision is included in the company's articles of association or excluded from it by a unanimous decision of the general meeting of members, which was attended by all the company's members."*

## Management structure of the joint-stock company

With the adoption of Law No. 2465, the management structure of the joint-stock company can be one-level or two-level.

One-level	Two-level
<p>Governing bodies</p> <p>1) general meeting;</p> <p>2) board of directors (mandatory requirement for establishment).</p> <p>The functions of control and management of activities of the joint-stock companies are assigned to the board of directors.</p>	<p>Governing bodies</p> <p>3) general meeting;</p> <p>4) supervisory board;</p> <p>5) executive body (board of directors or sole manager).</p> <p>The functions of control over current activities are assigned to the executive body.</p> <p>The functions of control over the work of the executive body and other managers are assigned to the supervisory board.</p>

The board of directors is subordinate to the general meeting and makes decisions on all issues of activities of the joint-stock company, except for those that belong to the competence of the general meeting.

At the same time, private joint-stock companies with the number of shareholders up to 10 people (Part 2 of Article 4 of Law No. 2465) can create a one-person executive body (with the powers of the board of directors) instead of the board of directors.

At the same time, in private joint-stock companies, as well as in companies, in which the share of the state (directly or indirectly) in the authorized capital exceeds 50%, the establishment by the board of directors of the remuneration committees of the supervisory board and the audit committee of the supervisory board (audit committee) is mandatory (Part 2 of Article 68 of Law No. 2465).

The decision to change a one-level management structure to a two-level management structure and vice versa is made by a general meeting of shareholders with at least three-fourths of votes.

### **Independent and non-executive members of the body of the Limited Liability Company**

Under new Article 39-1 of the Law "On Limited Liability and Additional Liability Companies", in the case of formation of the supervisory board, independent members may be elected to its composition.

An independent member of a company body is an individual who meets the requirements established by Article 73 of the Law of Ukraine "On Joint-Stock Companies", which is not influenced by other persons in the decision-making process during the performance of their duties.

Again, if we are talking about private joint-stock companies, then at least 1/3 of the composition of the supervisory board must be independent directors. At the same time, the number of independent directors cannot be less than two.

The number of independent directors in the supervisory board of the joint-stock company, in the authorized capital of which the share of the state directly or indirectly is 50 percent or more, must be the majority of the members of the supervisory board (Part 4 of Article 72 of Law No. 2465).

In case of the formation of a collegial executive body, executive or non-executive directors may be elected to its composition.

A non-executive member of the collegial executive body - the board of directors (hereinafter referred to as the non-executive director) is an individual who is elected as a member of the company's board of directors and performs the functions of supervision, risk management and control over the activities of the company and executive directors.

The non-executive director has no right to interfere in the current activities of the company in a way other than participating in the decision-making by the board of directors. A non-executive director may be an independent member of such an executive body.

Management of current activities of the joint-stock company is carried out by executive directors, and non-executive directors perform functions of risk management and control over the activities of executive directors.

### **Other Amendments**

#### **Mandatory introduction of the position of corporate secretary**

Such a position must be introduced in banks, insurers, non-state pension funds, other joint-stock companies that are of public interest under the Law "On Accounting", in joint-stock companies with a number of shareholders — owners of ordinary shares of 100 or more people (Part 1 of Article 85 of Law No. 2465).

## **Some provisions regarding Limited Liability Companies / Additional Liability Companies and Joint-Stock Companies in the Civil Code of Ukraine were partially renewed**

Including, but not limited to, the rules regarding the rights of members (founders and shareholders) of legal entities (corporate rights), corporate rights and certain organizational issues of companies.

### **The rights of minority shareholders are protected**

Including, but not limited to, the rights of minority shareholders of the joint-stock company (shareholders who own at least 5% of shares) and members of the limited liability company / additional liability company (members of at least 5% of the authorized capital) who have the right to propose issues for the agenda of the general meeting (Part 7 of Article 32 of the Law "On Limited Liability and Additional Liability Companies") and the right to apply to the court with claims for compensation for damages caused to a legal entity by its official at the company's expense were expanded.

### **Corporate Agreement**

An agreement under which the company's shareholders undertake to exercise their rights and powers in a certain way or refrain from exercising them is a corporate agreement and is executed in writing. Under the current Law "On Joint-Stock Companies", such an agreement is concluded exclusively between the company's shareholders (Article 26-1). From now on, the joint-stock company itself and third parties can also be additional parties to the corporate agreement (Article 29 of Law No. 2465). And the agreement can be for a fee or free of charge.

A corporate agreement, to which the state, territorial community, state or communal company or legal entity, in the authorized capital of which 25 percent or more of the shares directly or indirectly belong to the state or territorial community, is a party, shall be made public within 10 days from the date of conclusion of the agreement by publishing it on the official website of the relevant state authority, local self-government body, as well as on the website of the joint-stock company.

### **The detailed liability of officials of the joint-stock company is as follows, including:**

- joint liability of officials is introduced if the damage is caused by several persons, (Part 1 of Article 90 of Law No. 2465);
- transaction regarding the elimination or limitation of the liability of company officials for committing dishonest actions are null and void (Part 3 of Article 90 of Law No. 2465);
- transactions regarding the elimination or limitation of the liability of company officials for committing dishonest and unreasonable actions in the private joint-stock company / joint-stock company, 50 percent or more shares of which are directly or indirectly owned by the state, are null and void (Part 4 of Article 90 of Law No. 2465);
- a person interested in the transaction made in violation of the procedure for obtaining consent for its completion is liable to the joint-stock company in the full amount of the damages caused (Part 3 of Article 108 of Law No. 2465);
- a person interested in making a transaction with an interest, in the event of such a transaction being made on worse than market conditions, is obliged to return funds to the company in the amount of the profit received by such a person directly or indirectly as a result of the execution of such a transaction (Part 4 of Article 108 of Law No. 2465).

### **The institute of the auditor (audit commission) was abolished**

The audit of the financial and economic activities of the joint-stock company based on the results of the financial year is carried out by the auditing entity, unless otherwise provided for by the articles of association of the joint-stock company, and not by audit commissions or auditors, as provided for in Article 73, 74 of the current Law "On Joint-Stock Companies".

## UPDATING INFORMATION ON BENEFICIARIES DURING THE WAR

Legal entities submit information about the ultimate beneficial owner to the state registrar in the scope determined by the Law of Ukraine "On Preventing and Counteracting to Legalization (Laundering) of the Proceeds of Crime, Terrorism Financing, and Financing Proliferation of Weapons of Mass Destruction", as well as information about the ownership structure.

The regulation on the form and content of the ownership structure was approved by the Order of the Ministry of Finance of Ukraine No. 163 dated March 19, 2021, registered in the Ministry of Justice of Ukraine on June 8, 2021 under No. 768/36390 and entered into force on July 11, 2021.

Taking into account the above, the countdown to the deadline for updating information about final beneficiaries in the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Organizations (hereinafter referred to as the Unified State Register) in accordance with Paragraph 4 of Section X "Final and Transitional Provisions" of Law No. 361-IX began on July 11, 2021 and was supposed to end on July 11, 2022.

At the same time, in connection with the military aggression of the Russian Federation against Ukraine, on March 03, 2022, the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On the Protection of the Interests of the Reporting Entities and Other Documents During Martial Law or War" No. 2115-IX (hereinafter referred to as Law No. 2115), Subparagraph 1 of Paragraph 1 of which stipulates that individuals, individual entrepreneurs, and legal entities submit accounting, financial, settlement and audit reports and any other documents, the submission of which is required in accordance with the norms of the current legislation in documentary and/or in electronic form, within three months after the termination or cancellation of martial law or the state of war for the entire period of failure to submit reports or non-fulfillment of the obligation to submit documents.

Subparagraph 2 of Paragraph 1 of Law No. 2115 stipulates that during the period of martial law or a state of war, as well as within three months after its termination, administrative and/or criminal liability shall not apply to individuals, individual entrepreneurs and legal entities for failure to submit or late submission of reports and/or documents specified in Subparagraph 1 of this Paragraph.

Persons who do not have the physical ability within the period specified by this Law to submit reports or documents specified in Subparagraph 1 of this Paragraph, in connection with the direct consequences of their participation in hostilities, shall be released from the administrative and/or criminal liability and submit reports or documents within one month from the end of the consequences that made their submission impossible (Subparagraph 3 of Paragraph 1 of Law No. 2115).

In view of the abovementioned legal norms, it can be concluded that the obligations established by Law No. 361 to update the information about the ultimate beneficial owner are subject to the provisions of Law No. 2115, which has the effect of postponing the deadline for such an update and, accordingly, updating such information without paying an administrative fee within the postponed period.

At the same time, legal entities wishing to update the information about final beneficiaries for the purpose of Paragraph 4 of Section X "Final and Transitional Provisions" of Law No. 361-IX have the legal right and the technical possibility to do so by contacting the relevant entity of state registration.

Thus, the deadline for updating information about the ultimate beneficiaries of legal entities has been postponed. The Ministry of Justice of Ukraine announced this in letter [No. 60780/8.4.3/32-22](#) dated July 26, 2022.

This can be done within 3 months after the end of the war. And during this period, such information will be updated without paying an administrative fee.

If they want, business entities can update the information about the ultimate beneficial owners at this time. They have the legal right and the technical possibility to do so by contacting the relevant entity of state registration.

And those who have such an opportunity should do so without waiting for the end of the war.

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## CONTROLLED FOREIGN COMPANIES: DRAFT REPORTS AND AMENDMENTS TO THE INCOME DECLARATION WERE DEVELOPED

The State Tax Service of Ukraine published the draft forms of the Report on Controlled Foreign Companies, the shortened Report on Controlled Foreign Companies, as well as the corresponding amendments to the income tax declaration.

We would like to remind that under Law No. 466 of the Tax Code of Ukraine, Article 39-2 "Controlled Foreign Companies" was supplemented. Including, but not limited to, Subparagraph 39-2.5.2 of the Tax Code of Ukraine provides for that controlling persons shall submit a report on controlled foreign companies to the controlling body simultaneously with the submission of the annual declaration on property status and income or the declaration on corporate income tax for the relevant calendar year by means of electronic communication in electronic form with compliance with the requirements of the law regarding the electronic document flow and qualified electronic signature.

In addition, the Report on Controlled Foreign Companies provides for the indication of the calculation of the adjusted income of a controlled foreign company in accordance with the requirements of Article 39-2 of the Tax Code of Ukraine, the amount of such income included in the total taxable income of the controlling person.

In view of this, the State Tax Service developed and published a draft order of the Ministry of Finance of Ukraine, which offers:

1) To approve:

- the form of the Report on Controlled Foreign Companies with Annexes K, TTS, TSP;
- the form of the shortened Report on Controlled Foreign Companies;
- the Procedure for Filling Out the Report on Controlled Foreign Companies, the shortened form of the Report on Controlled Foreign Companies and submission of it to the supervisory body. This Procedure applies to legal entities, which are residents of Ukraine, and individuals, who are residents of Ukraine, who are direct or indirect owners (controllers) of a controlled foreign company.

2) To introduce amendments to the corporate income tax declaration:

- a new wording of Annex KIK to line 06.1 KIK of the Declaration on Corporate Income Tax;
- Annexes KIK-K to line 02 KIK-K of Annex KIK to line 06.1 KIK of the Declaration on Corporate Income Tax, KIK-TTS of Annex KIK to line 06.1 KIK of the Declaration on Corporate Income Tax, KIK-TSP to line 1.2 KIK- TSP of Annex 1.3 KIK-TSP to line 02.1 KIK-K of the Declaration on Corporate Income Tax were excluded.

If approved, this order will enter into force on the day of its official publication.

## PROCEDURES FOR COMPLIANCE OF THE CONDITIONS OF CONTROLLED TRANSACTIONS WITH THE ARM'S LENGTH PRINCIPLE WERE APPROVED

From January 1, 2023, the procedures for establishing compliance of the conditions of controlled transactions with regard to raw materials with the arm's length principle will come into force.

The Ministry of Finance of Ukraine by order No. 19 dated January 18, 2022 (registered at the Ministry of Justice of Ukraine on June 16, 2022 under No. 662/37998) approved:

- the Procedure for Establishing the Compliance of the Conditions of the Controlled Transaction with Regard to Raw Materials with the Arm's Length Principle (General);
- the Procedure for Establishing the Compliance of the Conditions of the Controlled Transaction for the Export of Grain, Oil Crops and Their Processing Products with the Arm's Length Principle;
- the Procedure for Establishing the Compliance of the Conditions of the Controlled Transaction for the Export of Iron Ore Raw Materials with the Arm's Length Principle;
- the Procedure for Establishing the Compliance of the Conditions of the Controlled Transaction for the Import of Energy and Coking Coal with the Arm's Length Principle;
- the Procedure for Establishing the Compliance of the Conditions of the Controlled Transaction for the Import of Petroleum Products and Liquefied Hydrocarbon Gases with the Arm's Length Principle;
- the Procedure for Establishing the Compliance of the Conditions of the Controlled Transaction for the Export of Pig Iron, Ferrous Metal Scrap and Metal Products from Ferrous Metals with the Arm's Length Principle;
- the Procedure for Establishing the Compliance of the Conditions of the Controlled Transaction for the Export and Import of Ferroalloys with the Arm's Length Principle.

The Procedures define the following:

- the priority of the comparative uncontrolled price method;
- peculiarities of carrying out adjustments of comparability of transactions with raw goods;
- peculiarities of the application of other methods of transfer pricing (approaches to functional analysis, definition of business models, selection of the researched party, use of external information sources);
- peculiarities of the application of quoted prices and adjustments in terms of groups of raw materials (grains, oilseeds, petroleum products, ferroalloys, metal products, etc.).

**This order will enter into force on January 1, 2023, but not earlier than the day of its official publication.**

# THANK YOU FOR YOUR ATTENTION

**This issue has been prepared for publication  
by expert practitioners in  
Financial Management  
and Accounting Outsourcing**

If you have any questions about the materials  
provided, please send your comments or  
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We will be grateful for the feedback!