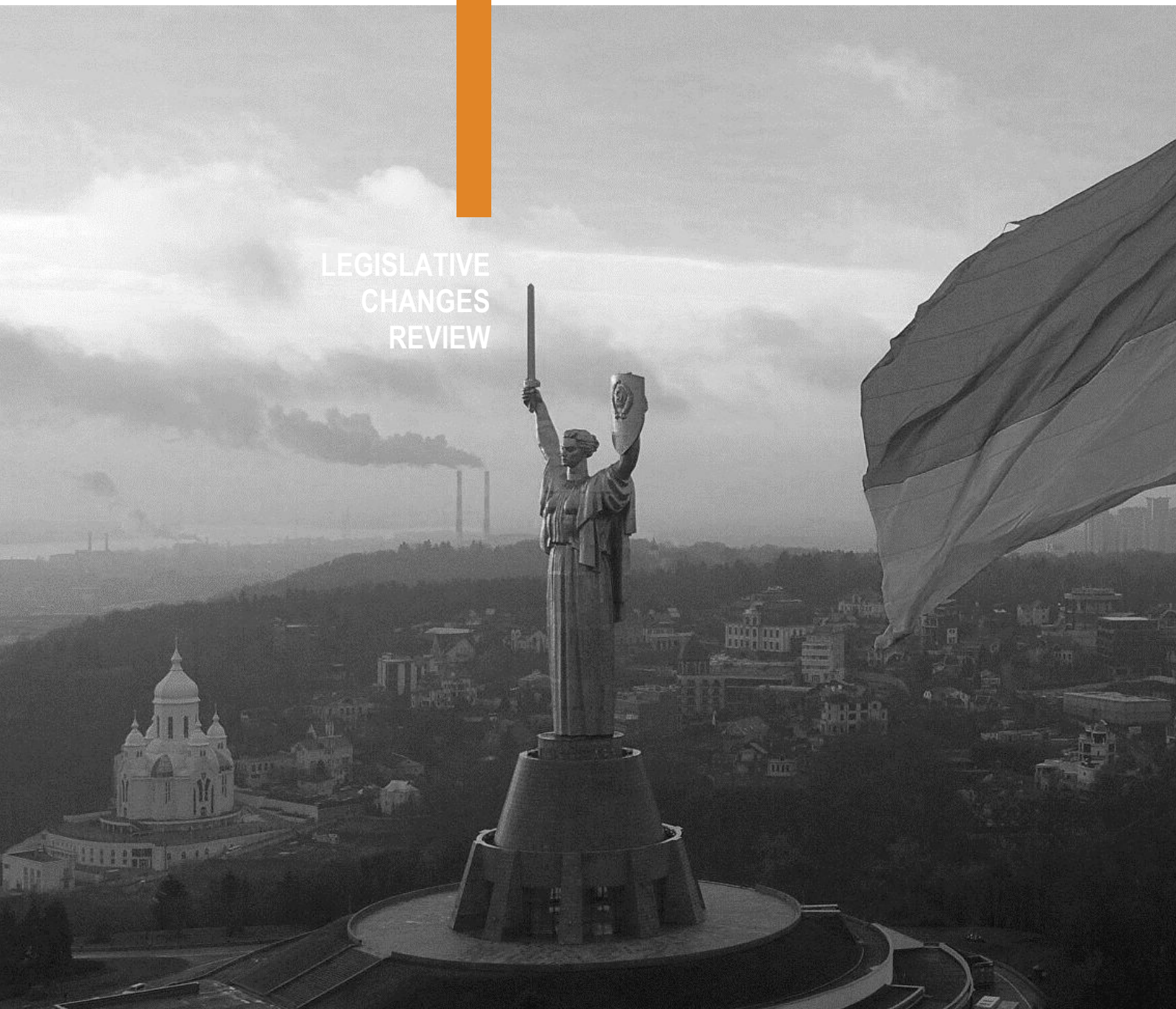
EBS QUARTERLY REVIEW Q1 2023



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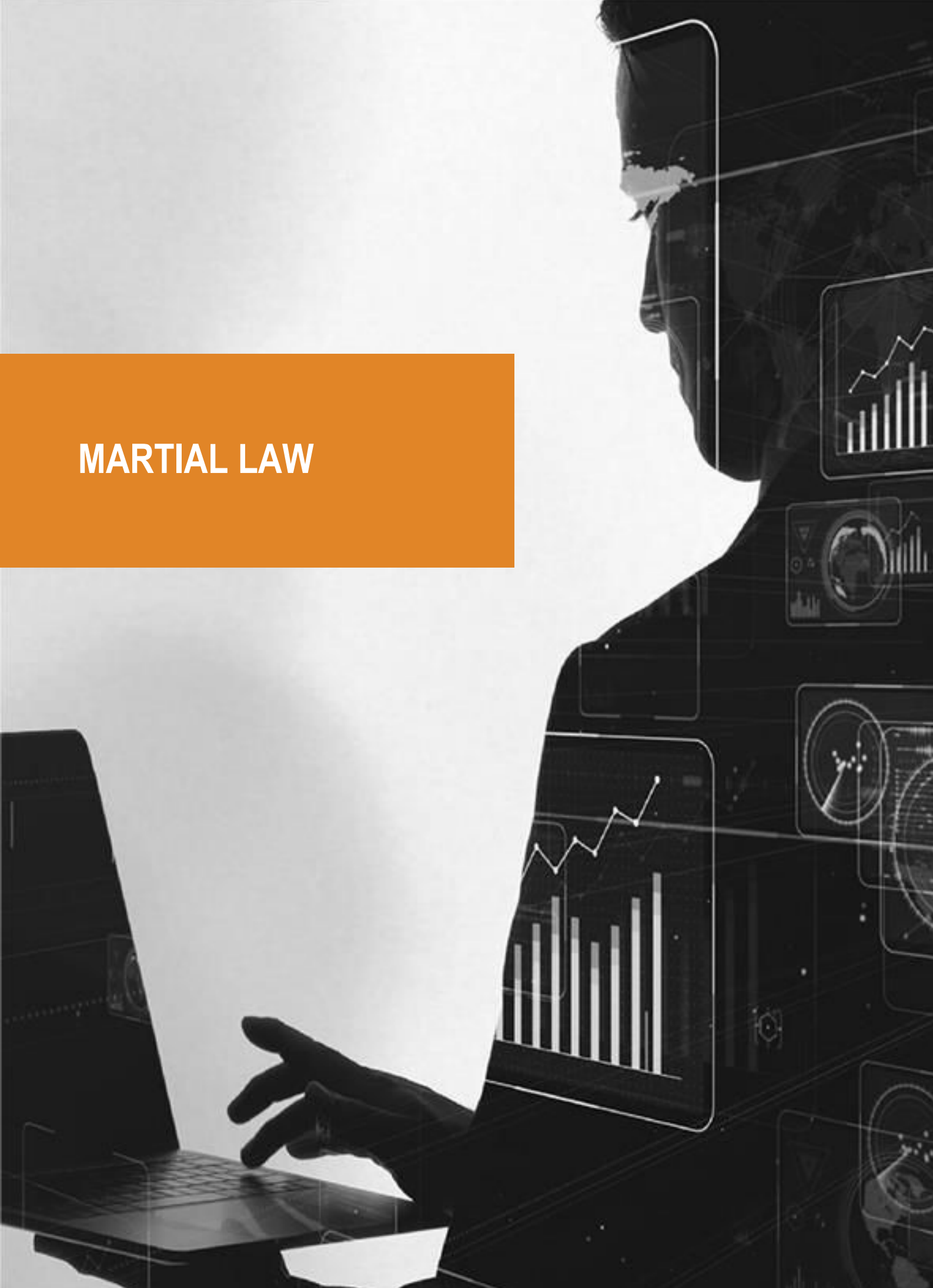
MARTIAL LAW



LABOUR RELATIONS IN CONDITIONS OF LIMITED POWER SUPPLY: WHAT TO PAY ATTENTION TO?

A power outage can be classified as force majeure, which causes an employee to have to stop working. Moreover, the loss of power cannot be attributed to the employee's fault in the circumstances in which our country is currently living.
The military aggression of the Russian Federation and missile strikes on critical infrastructure facilities cause emergency or stabilisation power outages that affect the work of both organisations and enterprises and employees, who, unfortunately, cannot always perform the amount of work they are supposed to.

Can the lack of electricity be qualified as force majeure that causes employees' downtime, and will this affect their salary?

Yes, indeed, power outage can be classified as force majeure, which causes an employee to have to stop working. Moreover, power outage cannot be attributed to the employee's fault in the circumstances in which our country is currently living.

As for remuneration in such circumstances, the Labour Code obliges the employer to pay the employee for downtime, if it was not caused by the employee, at a rate of no lower than two-thirds of the employee's pay rate (salary).

Can an employer avoid paying for downtime?

In fact, as prescribed by the law, due to power outage, the employer must bear all related losses and pay salary for the downtime or provide the employee with an alternative source of energy, such as batteries, laptops with a battery that can work without a network connection for a long time, a generator, etc.

Is remote work possible in the event of a power outage?

It is possible to organise the workflow in a remote work format, but you need to take into account whether the employee will be able to perform their duties during a long-term power outage.

Is it possible to change the working hours of employees in the event of a power outage?

Yes, it is possible. In case of alternating power outage schedules, in order to ensure that the employee performs their duties, the start time can be changed so that the working day starts/ends before or after such outages. You can also reschedule your lunch break to coincide with the period of the outage. This is not a violation of the employee's rights, and it is an option for the employer to avoid unnecessary costs.

Will the salary be reduced if the employee's working hours are changed?

Remuneration for part-time or part-week work will be paid in proportion to the time worked or based on output. And if the employer applies such an option as suspension of the employment contract, the employee will not receive any salary at all during the period of suspension of the employment contract.

What should employees know or pay attention to in this situation?

Please note that remuneration is guaranteed by the Constitution, and martial law is not an exception. The employer must take all possible measures to ensure that employees' right to receive their salary on time is exercised.

However, you need to know and remember:

- If an employee does not have a written contract with a non-fixed working time, but simply does not have their salary accrued and paid during the power outage, it is illegal.
- If the employer does not pay for the downtime, the employer must provide the employee with the means to work remotely without electricity – generators, batteries, laptops with batteries, etc.
- The loss of electricity due to enemy shelling causes a failure to perform work that is not the employee's fault, so the salary should be maintained.

RESERVATION OF EMPLOYEES DURING THE WAR. CRITERIA FOR IDENTIFYING CRITICAL BUSINESSES FOR EMPLOYEE RESERVATION

On December 4, 2022, the Law of Ukraine "**On Amendments to the Law of Ukraine "On Mobilisation Preparation and Mobilisation"** (Law No. 2732) regarding the reservation of persons liable for military service for the period of mobilisation and during the war came into force.
Pursuant to Law No. 2732, the Cabinet of Ministers of Ukraine approved Resolution No. 76 of January 27, 2023, which established:

- the procedure for reserving persons liable for military service under the list of persons liable for military service during martial law;
- the procedure and criteria for identifying enterprises, institutions and organisations that are critical to the functioning of the economy and the livelihoods of the population during a special period.

Who is covered by the reservation procedure?

The procedure defines the mechanism for reserving persons liable for military service during martial law who work:

- in the government authorities, other public bodies, local self-government bodies, if it is necessary to ensure the functioning of those bodies;
- at enterprises, institutions and organisations that have been assigned mobilisation tasks (orders), if it is necessary to fulfil the assigned mobilisation tasks (orders);
- at enterprises, institutions and organisations engaged in the production of goods, performance of works and provision of services necessary to meet the needs of the Armed Forces and other military formations;
- at enterprises, institutions and organisations that are **critical** to the functioning of the economy and the livelihoods of the population during a special period.

By Order No. 952 of February 17, 2023, the Ministry of Economy approved the **Criteria** for identifying enterprises, institutions and organisations **that are important** for the national economy sectors.

According to these criteria, companies can reserve employees **if they meet one of the following eight criteria***:*

1. support and accompany investment projects pursuant to the resolution of the CMU or the Ministry of Economy;
2. implement the government policy pursuant to laws, which is the responsibility of the Ministry of Economy;
3. receive financial state support in the form of grants in 2022-2023;
4. perform work and provide services for the Ministry of Economy based on the contracts (agreements, memoranda, contracts) concluded for a period of at least six months;
5. are managed by the Ministry of Economy and execute government orders;
6. the average salary of employees of an enterprise, institution or organisation operating in the area whose policy is developed and/or implemented by the Ministry of Economy is no lower than the average salary in the country multiplied by a coefficient of 1.5;

7. operate in three or more regions of Ukraine in the area whose policy is developed and/or implemented by the Ministry of Economy;
8. are engaged in production or provide services to meet the needs of other enterprises, institutions, organisations in material and technical resources, feedstock and materials, and components the absence of which will lead to a complete cessation of production or provision of services, in the area whose policy is developed and/or implemented by the Ministry of Economy.

HOW AN ENTERPRISE CAN ASSESS WAR DAMAGE: MASTERING THE METHODOLOGY

Against the backdrop of significant destruction caused by the war, businesses are facing the issue of assessing the war damage.

Today, there are already legal acts specialising in determining the damage and losses caused to Ukraine as a result of the armed aggression of the Russian Federation, as well as in eliminating the consequences of such aggression:

- Procedure for Determining the Damage and Losses Caused to Ukraine as a Result of the Armed Aggression of the Russian Federation, approved by Resolution of the Cabinet of Ministers No. 326 of March 20, 2022 (Procedure No. 326);

- Procedure for Performing Urgent Work to Eliminate the Consequences of the Armed Aggression of the Russian Federation Related to Damage to Buildings and Structures, approved by Resolution of the Cabinet of Ministers of Ukraine No. 473 of April 19, 2022 (Procedure No. 473).

A special legal act has been issued to determine the **damage** and **amount of losses incurred by enterprises**, institutions and organisations of **all forms of ownership** as a result of the destruction of and damage to their property in connection with the armed aggression of the Russian Federation, **as well as lost profits** from the impossibility of or obstacles to conducting business:

- Methodology for Determining the Damage and Amount of Losses Caused to Enterprises, Institutions and Organisations of All Forms of Ownership as a Result of the Destruction of and Damage to Their Property in Connection with the Armed Aggression of the Russian Federation, as well as Lost Profit from the Impossibility of or Obstacles to Conducting Business, approved by Order of the Ministry of Economy and the State Property Fund No. 3904/1223 of October 18, 2022 (Methodology No. 3904/1223).

Methodology No. 3904/1223 provides for special valuation algorithms for determining the amount of actual losses due to loss of, damage to, and/or destruction of:

- real estate (Clause 3, Section III of the Methodology);
- movable property (machinery and equipment) (Clause 4, Section III of the Methodology);
- vehicles (Clause 5, Section III of the Methodology);
- inventory and biological assets (Clause 6, Section III of the Methodology);
- integral property complexes (Clause 7, Section III of the Methodology);
- cultural values (Clause 8, Section III of the Methodology).

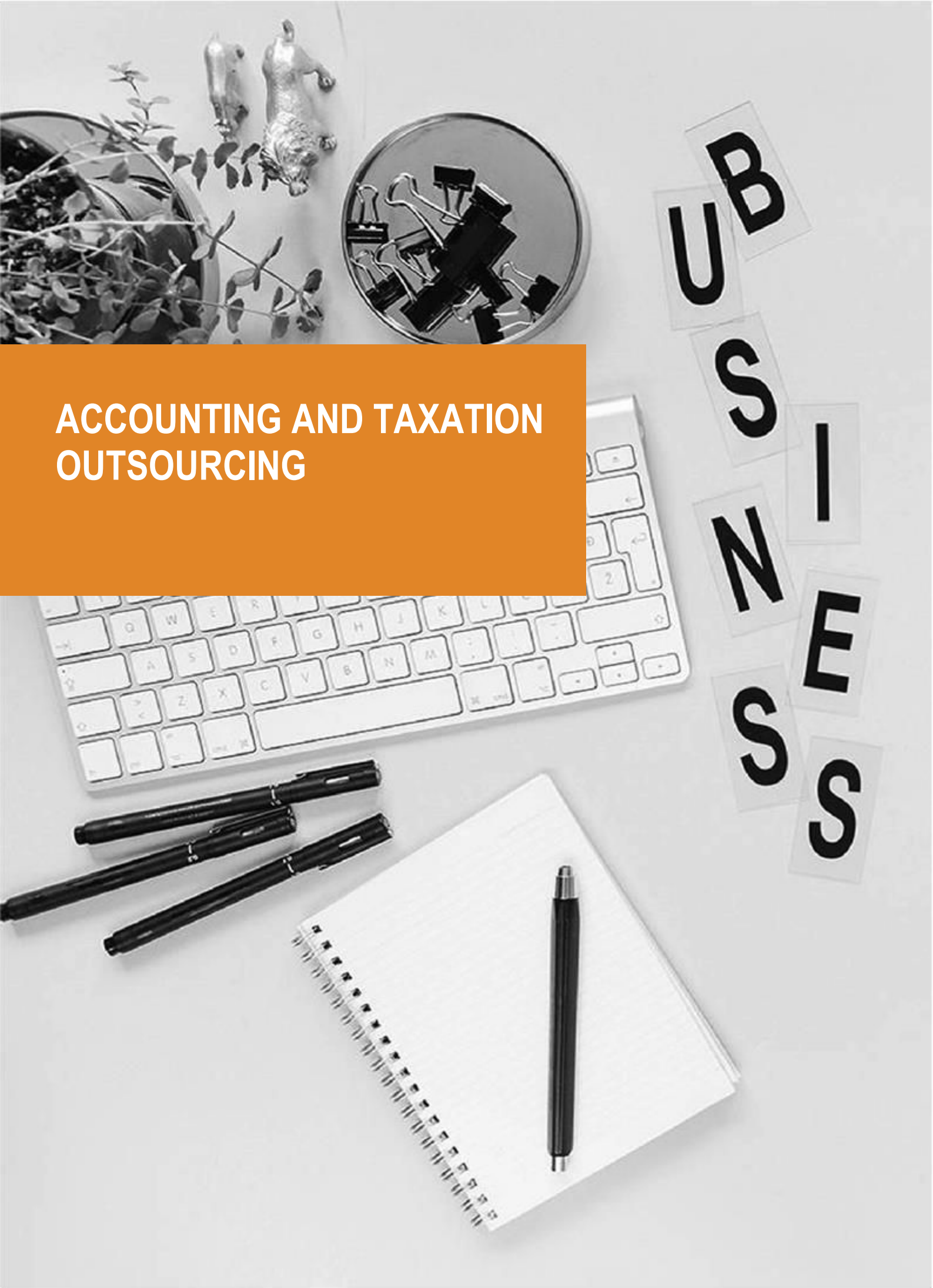
STARTING FEBRUARY 24, 2023, THERE ARE BENEFITS FOR IMPORTING DRONES, THERMAL IMAGERS, COLLIMATORS, WALKIE-TALKIES

Starting February 24, 2023**, the import of drones, thermal imagers, collimators, walkie-talkies and night vision devices into Ukraine will be exempt from VAT and customs duties** (for the period of martial law, but no longer than until January 1, 2024).

Law of Ukraine No. 2906-IX of February 6, 2023 "On Amendments to the Tax Code of Ukraine on Facilitating the Import of Unmanned Aerial Vehicles and Some Other Goods into the Customs Territory of Ukraine" (**Law No. 2906**) and Law of Ukraine No. 2907-IX of February 6, 2023 "On Amendments to Section XXI "Final and Transitional Provisions" of the Customs Code of Ukraine on Facilitating the Import of Unmanned Aerial Vehicles and Some Other Goods into the Customs Territory of Ukraine" (**Law No. 2907**) **came into force on February 24, 2023** (published in the *Holos Ukrainy* newspaper on February 23, 2023).

The exemption also applies to import operations involving the movement (shipment) of international postal and express mail.

ACCOUNTING AND TAXATION OUTSOURCING



NEW RULES FOR DOCUMENTING BUSINESS TRIP EXPENSES FROM APRIL 1, 2023

On April 1, 2023, Law of Ukraine No. 2888-IX of January 12, 2023 "On Amendments to the Tax Code of Ukraine and Other Legislative Acts of Ukraine on Payment Services" (Law No. 2888) will come into force.

Pursuant to Law No. 2888, revised Clause 170.9 of the TCU sets out the procedure for taxation of the amount of excessively spent funds/electronic money received by a taxpayer for a business trip or for reporting purposes, which has not been returned in due time.

Major changes:

1) the actual number of days of the business trip shall be determined according to the business trip order and in the presence of one or more documentary evidence of the person's business trip (border crossing stamps, travel documents, accommodation bills **and/or any other documents confirming the person's actual business trip**).

Supporting documents shall include:

- transport tickets or transport invoices and baggage receipts (including electronic tickets);
- documents received from persons providing accommodation services to an individual, insurance policies;
- documents (statements and/or account statements) containing information required by law on payment transactions performed on the account payment instruments are issued to;
- documents confirming the execution of a transaction using payment instruments;
- other documents certifying the cost of expenses.

2) Deadlines for documenting **non-cash** business trip expenses or certain civil actions – **by the end of the month following the month** in which the taxpayer:

- completes such a business trip;
- completes a separate civil action on behalf and at the expense of the person who issued funds/electronic money under the report.

As for **cash, the TCU effective from April 1, 2023 does not specify the reporting period**. Thus, the **Regulation** on Conducting Cash Transactions in the National Currency in Ukraine (approved by NBU Resolution No. 148 of December 29, 2017) is in force: **cash under the report shall be given for a period not exceeding two business days**, including the day of receipt. The reporting period can be extended **until the end of the business trip if cash is issued for both** business trip and household needs at the same time.

3) If there is no taxable income of an individual, the Funds Spending Report shall not be prepared:

If during a business trip or certain civil actions, a taxpayer used payment instruments, including corporate (business) payment instruments or personal payment instruments, or their details, to make non-cash payments and/or receive cash within the amount of daily expenses and in the absence of taxable income, a report on spending funds/electronic money issued for a business trip or under the report shall not be prepared and submitted.

4) Starting April 1, 2023, it will be possible to use electronic money for business trips and for household needs.

NEW TAX INVOICE FORMS AND VAT RETURNS EFFECTIVE FROM APRIL 1, 2023

Order No. 463 of December 28, 2022 "On Amendments to Certain Regulatory Acts of the Ministry of Finance of Ukraine**"** was published on February 2, 2023 **and will come into force on April 1, 2023**.

Starting April 1, 2023:

- new tax invoice and adjustment calculation forms (including those drawn up before April 1, 2023 and not registered in the Unified Register of Tax Invoices (URTI)).

The reason for these changes is to bring the forms in line with the current legislation. No new columns were introduced in the TI and AC, and the outdated column on subsidised TI for agricultural producers was removed from the forms.

- **a new reason for** preparing a TI for VAT payers is **21 "Prepared for the supply of services to a non-resident recipient (buyer), the place of supply of which is located in the customs territory of Ukraine"** (described in Clause 8 of the Procedure).

- **separate rules for preparing such a TI**. In the case of drawing up a tax invoice for the supply of services to a non-resident recipient (buyer), the place of supply of which is located in the customs territory of Ukraine, a name (full name) of the non-resident and the country of their registration separated by a comma shall be indicated in the column "Recipient (Buyer)", a conditional ITN "500000000000" shall be entered in the line "Individual tax number of the recipient (buyer)", and the line "Taxpayer's tax number or passport series (if any) and number" shall be left empty (as described in Clause 12 of Procedure No. 1307).

- **new form of VAT return** – changes relate to correction of self-detected errors. First reporting will be in May 2023 **for the reporting period April** 2023.

WHAT ACTIVITIES ARE EXCLUSIVE FOR DIIA CITY RESIDENTS?

The list of activities that are stimulated by the creation of the Diia City legal regime is set out in Part 4, Article 5 of Law of Ukraine No. 1667-IX of July 15, 2021 "On Stimulating the Development of the Digital Economy in Ukraine". These include, in particular:

- computer programming, consulting on informatisation, computer equipment management;
- release of computer games and other software;
- online software products, including computer games, providing web services for the delivery of software applications, including the distribution of software copies in electronic form, including computer games, its elements, updates, add-ons and extensions of functionality;
- educational activities in the field of information technology, including the provision of higher, professional pre-higher, and vocational education majoring in computer science, information systems and technologies, computer engineering, cybersecurity, data science, as well as the provision of other types of education, namely: computer literacy (digital literacy) training, including services for teaching digital literacy, development, modification, testing and technical support of software, including computer games, business analysis training (for software development, modification, testing and technical support), building graphical interfaces, organising quality control processes, system administration, project management, documentation development;
- data processing and related activities, except for the provision of data processing and hosting infrastructure and hosting services, and the operation of web portals;
- research and experimental developments in the field of natural and technical sciences in relation to information, as well as information and communication technologies;
- conducting marketing campaigns and providing advertising services using software developed with the participation of a Diia City resident on the Internet and/or on users' devices;
- activities of organisers of esports competitions, esports teams, specialised computer centres and/or clubs intended for holding esports competitions, as well as esports competition broadcast studios;
- activities of a service provider related to the circulation of virtual assets;
- ensuring cybersecurity of information and communication systems, software products and information processed therein; development and implementation of organisational measures, software and hardware products designed to prevent cyber incidents, detect and protect against cyberattacks, eliminate their consequences, restore the stability of communication and technological systems (networks); processing and analysis of data on the circumstances of a cyber incident and its consequences, establishing the preconditions that led to it, providing relevant recommendations; planning and designing integrated computer systems that combine hardware, software and communication technologies intended for secure information (data) processing; providing advice on cybersecurity (cyber defence) of communication systems and software (products) that ensure the functioning of the client's IT systems; providing services for the operation and maintenance of communication equipment and software designed to ensure cybersecurity of communication and process systems (networks); conducting research and experimental development in the field of cybersecurity;
- activities related to the design (construction), research, testing of robotics technologies, devices and systems using computerised control systems;
- other activities determined by the Cabinet of Ministers of Ukraine according to the procedure established by Law of Ukraine No. 1160-IV of September 11, 2003 "On the Principles of State Regulatory Policy in the Field of Economic Activity", etc.

AVERAGE STAFF SIZE AND AVERAGE MONTHLY SALARY OF DIIA CITY RESIDENTS

A resident of Diia City can be a legal entity that meets the criteria set out in Law of Ukraine No. 1667-IX of July 15, 2021 "On Stimulating the Development of the Digital Economy in Ukraine" (Law No. 1667).
These requirements include, in particular, the following:

- **average number of employees and gig specialists** of a legal entity (if engaged) at the end of each calendar month, starting from the calendar month following the month in which the legal entity acquired the status of a Diia City resident, shall be at least nine people (Clause 3, Part 1, Article 5 of Law No. 1667);
- **amount of the average monthly remuneration for engaged employees and gig specialists**, starting from the calendar month following the calendar month in which the Diia City resident status was acquired, shall be no less than the equivalent of EUR 1,200 at the official exchange rate of UAH against EUR set by the National Bank of Ukraine as of the first day of the relevant calendar month (Clause 2, Part 1, Article 5), for each calendar month. Thus, the amount of the average monthly remuneration to employees and gig specialists is the amount calculated by dividing the **sum of all payments in the form of remuneration** (salary) (before taxes, charges and other mandatory payments) made by a legal entity to employees and gig specialists in the corresponding calendar month by the total number of employees and gig specialists to whom such payments were made (Clause 12, Part 1, Article 1 of Law No. 1667).

Despite the supposedly clear wording of such criteria, at first glance, their actual application still invokes questions. The Ministry of Digital Transformation of Ukraine in its letter dated February 20, 2023 No. 1/11-5-У-385-23-258-2023 provided the following clarifications:

Average listed number of employees and gig specialists of Diia City residents

The Ministry believes that this indicator should be calculated according to the Instruction on the Staff Size Statistics, approved by Order of the State Statistics Committee of Ukraine of September 28, 2005 No. 286 (Instruction No. 286).

The **average listed number of employees** and gig specialists is calculated based on the results of each calendar month with due regard to:

- employees at their main place of work;
- employees on an external part-time basis;
- gig specialists.

The question whether to take into account persons working under civil law contracts (as they are also mentioned in Clause 3.1 of Instruction No. 286) remained without a direct answer. However, it is quite logical that it is safer for a Diia City resident not to take such persons into account when calculating the average number of employees and gig specialists.

Average monthly remuneration of employees and gig specialists engaged by a Diia City resident

Clause 12, Part 1 of Article 1 of Law No. 1667 gives a definition to this criterion. Since it refers to the **amounts of remuneration payments**, the question is whether we are talking about directly paid amounts, i.e. not accrued amounts, but rather amounts paid without taking into account personal income tax and military tax?

It is the remuneration accrued (including personal income tax and military tax), and not the remuneration actually paid (minus personal income tax and military tax), that is compared to the equivalent of EUR 1,200 at the official exchange rate of UAH against EUR set by the NBU as of the first day of the relevant calendar month (Clause 2, Part 1, Article 5 of Law No. 1667).

FREE LUNCHES FROM THE EMPLOYER: HOW TO ARRANGE AND TAX THEM

Many employers provide their employees with free meals: either on a mandatory basis, in compliance with labour law (Article 166 of the Labour Code), or on their own initiative (in particular, by providing free lunches).

Let's consider how to properly arrange the provision of free lunches to employees and what tax consequences to expect.

Organising free meals

The tax consequences of providing free meals to employees will depend on how such meals are organised and documented.
The employer should first determine the method of providing employees with free lunches and the procedure for recording their receipt of such meals.
For example, employees can receive free lunches:
1) **from a third-party restaurant** with which the company has concluded a relevant service agreement. Furthermore, employees can eat either directly in the restaurant or by ordering lunches to the office.
In this case, employees receiving free lunches can be recorded:
— either by using lunch cards of a certain cost, coupons, registers, information, etc;
— or by collecting payment documents confirming the catering expenses incurred by employees, with their subsequent reimbursement by the employer;
2) **from own canteen / buffet / cafeteria**. In this case, employees can receive meals:
— either by using cards, coupons, registers, information, etc.;
— or through the buffet service.
Having decided on the procedure for organising and accounting for free meals for employees, the employer should record it in the relevant documents.

Drawing up documents

The procedure for providing meals to employees at the expense of the company is usually drawn up in the form of an appendix to an employment or collective agreement (in the "Remuneration" or the "Social Security" section).
You can also draw up a Regulation on Employee Meals or issue a separate order (instruction) from the company's manager.
The document should specify:
a) which employees will be provided with meals at the company's expense (all employees or only those engaged in certain work);
b) the procedure for organising free meals:
— determine the place where employees will receive free lunches (third-party restaurant, own canteen, workplace);
— the procedure for ordering free lunches (who will compile the list of employees who will be provided with meals at the company's expense; by what time it must be compiled; who will order free lunches);
— the procedure for accounting for free lunches received by employees (using vouchers, cards, statements, buffet service or according to payment documents confirming the food expenses incurred by employees);
c) the procedure for calculating the amount of funds required to pay for employee meals:
— as a fixed amount for a certain period (for all employees or per employee);
— depending on the needs of employees in a particular period;

d) the procedure for paying for meals by employees:
— whether the lunches received will be free or partially paid for;
— the procedure for paying for meals received by an employee in excess of the established maximum amounts (in cash, non-cash, through payroll deduction);
— the procedure for reimbursing the cost of meals (if the employee provides the employer with settlement documents confirming the expenses incurred by the employee, and the employer reimburses them);
e) the procedure for making settlements with suppliers of free lunches (frequency of settlements and reconciliation of the number of free lunches);
f) the procedure for executing and approving documents related to the provision of free lunches to employees, etc.

Please note! The tax consequences of the transaction will depend on the catering arrangement chosen by the employer. And the main factor here is the possibility of personalisation.
Whether employees will have income will depend on whether such income can be personalised. That is, whether the employer can:
— identify specific recipients of such income (i.e., which employees received free lunches);
— express such income received by each employee taking meals in a specific amount.

When personalisation is not possible

The employer is not able to personalise free lunches when it cannot objectively control the amount of food consumed by each employee and its cost.
This occurs when meals are organised, in particular, using the buffet system, self-service buffet or standing buffet. In this case, the employee's income in the form of a free lunch:
— is not included in their taxable income. Accordingly, personal income tax and military tax are not withheld;
— is not included in the accrual base for the unified social tax.
Food purchased at the employer's expense and intended for consumption by any employee cannot be considered as an object of personal income tax since in this case, it is impossible to identify a specific income recipient.
Unfortunately, we do not exclude that we will have to defend this point of view in court.

When personalisation is possible. If the employer can control the amount of food consumed by each employee and its cost, then the cost of free meals will be **taxable income** for each such employee.

This happens, in particular, when:
— employees receive free lunches based on a list, coupons, cards;
— the employer reimburses the cost of lunches according to the settlement documents provided by the employees, confirming the meal expenses incurred by each of them.

Taxation of free lunches

Personal income tax and military tax. Before proceeding with taxing employee income in the form of free lunches, it must be properly classified. And there are several options here.
Option 1. Salary. The cost of lunches for employees paid by the employer is classified as **salary** if the possibility of providing such meals is set out in the collective agreement (employment contract concluded with the employee) in the "Remuneration" section**.**
As a reminder, salary includes basic and additional salary, other incentive and compensation payments paid (provided) to a taxpayer in connection with employment relations (Subclause 14.1.48 of the TCU).
To determine the list of payments included in the salary, we use the Instruction on Salary Statistics approved by Order of the State Committee of Statistics of Ukraine No. 5 of January 13, 2004 (hereinafter — Instruction No. 5).
Pursuant to Subclause 2.3.4 of Instruction No. 5, other incentive and compensation payments include, in particular, payment or subsidies for employee meals, including in canteens, cafeterias, health centres.
Therefore, if the "Remuneration" section of a collective agreement or employment contract provides for the possibility of paying for employees' meals (monetary reimbursement of employee expenses for meals), there is every reason to consider such payment to be a salary**.**
Accordingly, the accrued cost of meals included in the salary is taxed according to the general rules — personal income tax is withheld at the rate of 18% and military tax at the rate of 1.5%.
Since the income was provided in kind, it should be included in the personal income tax base increased by the **'natural' coefficient** (1.219512).
We withhold the military tax directly from the value of the non-monetary payment (without increasing it by the 'natural' coefficient).
We apply the tax social benefit to the accrued cost of lunches included in the salary in the general procedure, if the employee is entitled to it.
In Annex 4DF of the Unified Reporting, the cost of lunches is recorded with the income attribute **"101"**.
Option 2. Additional benefit. The cost of free lunches for employees is recognised as income in the form of **an additional benefit** if their provision:
— is not stipulated by a collective agreement (an employment contract concluded with an employee). For example, a separate order (instruction) issued by the company's manager;
— is provided for in other sections of such agreements (for example, "Social Security").
In this case, we must withhold personal income tax at the rate of 18% and military tax at the rate of 1.5% from the accrued cost of meals. Since the income was provided in kind, we apply a 'natural' coefficient to the personal income tax base.
In Annex 4DF of the Unified Reporting, the cost of lunches is recorded with the income attribute **"126"**.
Option 3. Other income. This is how the State Tax Service of Ukraine proposes to classify income received by employees in the form of free lunches.
Accordingly, such income is subject to personal income tax at the rate of 18% and military tax at the rate of 1.5% on a general basis. And since the employee receives non-monetary income, the personal income tax base should be determined using the 'non-monetary' coefficient (1.219512).
In Annex 4DF of the Unified Reporting, the cost of lunches is recorded with the income attribute **"127"**.

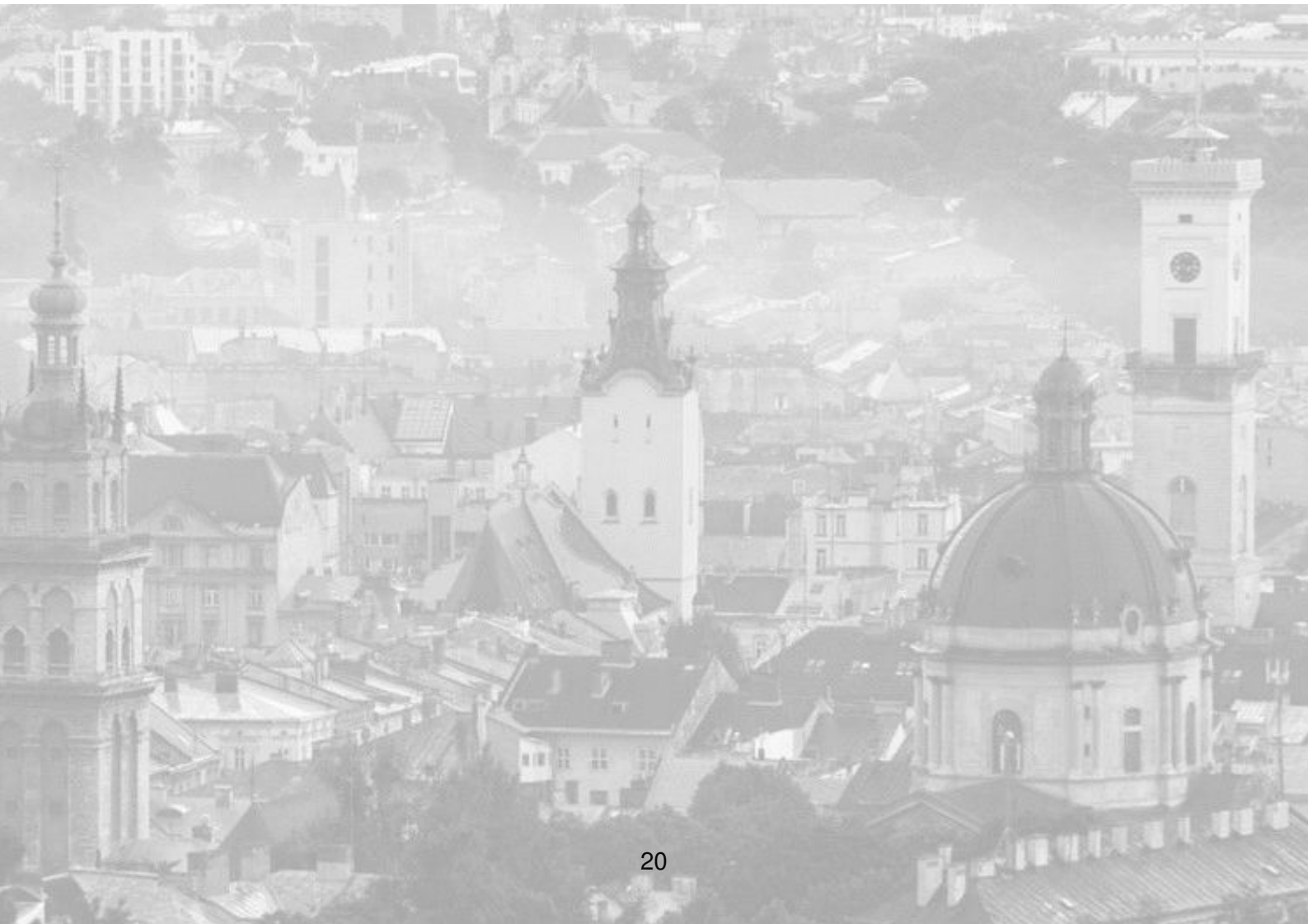
Unified social tax

Pursuant to Para. 1, Clause 1, Part 1, Article 7 of Law of Ukraine "On Collection and Accounting of the a Single Contribution for Compulsory State Social Insurance" No. 2464-VI of July 8, 2010, the UST accrual base includes, in particular, the amount of accrued salary by type of payment, which includes basic and additional salary, **other incentive and compensation payments**, including in-kind payments, determined pursuant to Law of Ukraine "On Remuneration of Labour" No. 108/95-BP of March 24, 1995.

And other incentive and compensation payments included in the salary fund include, in particular, payment or subsidies for employee meals, including in canteens, cafeterias, health centres (Subclause 2.3.4 of Instruction No. 5).

If it is possible to personalise income, regardless of how you classify this payment for personal income tax and military tax purposes, it will still be a salary for the purpose of calculating UST, and will be included in the UST base.

If income in the form of a free lunch cannot be personalised (specific recipients of such income can be identified, and such income can be determined in a specific amount), neither personal income tax nor military tax will be withheld from such income, and no UST shall be charged on it.



PAYROLL OUTSOURCING

VERIFICATION OF SICK LEAVE CERTIFICATES

Sick leave certificates shall be verified by persons authorised by the PFU Board to verify the validity of the issuance and extension of sick leave certificates.
The verification procedure was approved by the Resolution of the Cabinet of Ministers of Ukraine No. 185 of March 3, 2023 (Procedure 185), and entered into force on March 4, 2023 (published in the *Uriadovyi Kurier* newspaper on March 4, 2023).
The purpose of verification of sick leave certificates is to control the validity of formation (issuance) of sick leave certificates and medical opinions:

- sick leave certificates are verified by authorised officials of the PFU's territorial body and/or authorised doctors;
- medical opinions are verified by authorised hospitals only.

The list of authorised doctors is formed annually and approved by the Board of the Pension Fund of Ukraine in consultation with the National Health Service of Ukraine. An authorised physician cannot verify sick leave certificates and medical opinions from the same region in which he/she operates (Clause 2 of Procedure No. 185).
Information about authorised doctors is published in the form of open data pursuant to Article 10-1 of the Law of Ukraine "On Access to Public Information" (Clause 12 of Procedure 185).
The information is monitored automatically through the electronic healthcare system based on the information on entries in the Register of Medical Records, referral records and prescriptions based on which the relevant medical opinions were formed, within the scope of temporary disability being subject to monitoring.
The decision to verify sick leave certificates is formalised in an order (indicating the grounds for the verification; numbers of medical opinions to be verified; an authorised official of the PFU's territorial body). The verification period may not exceed 10 calendar days.
The notification of the verification will be sent within one business day by the PFU's territorial body through the electronic healthcare system.
Based on the results of the medical opinion verification, the authorised physician draws up a conclusion on the verification results.
The PFU indicates the verification results of the sick leave certificate in the verification certificate.

SICK LEAVE PAYS: WHAT DOCUMENT TO USE

Starting January 1, 2023, the functions of the Social Insurance Fund (SIF) were transferred to the Pension Fund (PFU).

Law of Ukraine "On Compulsory State Social Insurance" No. 1105-XIV of September 23, 1999 (hereinafter — Law No. 1105) was revised.

Among the progressive changes, the legislator has abolished the mandatory social insurance commission (commissioner).

Pursuant to the new revision of Law No. 1105, the decision to award an insurance payment or to refuse to award or terminate insurance payments (in full or in part) shall be made by the insured or their authorised persons.

The decision made must be **properly documented**.

What kind of an administrative document should be drawn up?

The Pension Fund of Ukraine, with their letter **No. 9562-11050/У-03/8-2800/23 of March 16, 2023**, provided an answer regarding the execution of the decision, namely:

the insured **shall have the right to independently determine** which document they or their authorised persons will use to document their decision to assign (refuse to assign) a sick leave pay. This can be an order, instruction, protocol, or decision.

CHANGES TO THE PROCEDURE FOR IMPOSING LABOUR FINES

The CMU Resolution No. 226 of March 14, 2023 amended the Procedure for Imposing Fines for Violation of Labour and Employment Legislation (effective from March 17, 2023).
The reference to Part Two of Article 53 of the Law "On Employment of the Population", which referred to the imposition of fines for failure of an employer to meet the quota for the employment of certain categories of citizens during the year, has been removed.
On October 29, 2022, the employment quota for certain categories of unemployed persons was cancelled – Law of Ukraine No. 2622-IX "On Amendments to Certain Legislative Acts of Ukraine on Reforming the Employment Service" (Law No. 2622-IX) cancelled the employment quota mechanism.

According to the amendments, Article 196 of the Labour Code was deleted and Article 14 of the Law on Employment of the Population was amended.

Thus, starting March 17, 2023, fines for non-compliance with quotas for certain categories of persons have been cancelled.

THERE IS NO 10-POI REPORT, BUT THE STANDARD REMAINS!

In 2023, business entities will no longer have to report on how many people with disabilities they have employed. Also, there is no need to calculate the amount of the fine for failure to comply with the standard.

But both the standard and the fine remain!

According to Article 17 of Law of Ukraine "On the Fundamentals of Social Protection of Persons with Disabilities in Ukraine" No. 875-IX of March 21, 1991 (Law No. 875), businesses must create special workplaces to employ persons with disabilities.
For this purpose, it is necessary to adapt the main and additional equipment, technical equipment and facilities with regard to limited capabilities of persons with disabilities.
The number of such places must comply with the established standard — 4% of the average number of full-time employees on the payroll for the year, and for companies with the staff size of 8 to 25 people — one employee (Article 19 of Law No. 875).
Starting from 2023, the difference is that the fine is no longer calculated by the employer.
Every year, by March 10, the Social Protection Fund for Persons with Disabilities makes calculations based on information received from the Pension Fund and identifies business entities (BEs) that did not meet the previous year's job standard. Such BEs are sent the Calculation of the Amounts of Administrative and Economic Sanctions.
The Calculation is sent in the form of an electronic document through the Pension Fund of Ukraine's electronic services web portal. The Calculation must specify the payment details to pay the fine.
The amount of the fine depends on the total number of employees and the number of unemployed persons with disabilities:

- if you have 8 to 25 employees and do not employ one person with a disability, the fine will be half the average annual salary of your employees;

- if you have more employees, then for each person with a disability who is not employed according to the standard, there will be a fine of the entire average annual salary of your employees.

Fines are not imposed on enterprises, institutions and organisations that are fully funded by the state or local budgets.
Law No. 875 does not provide for any benefits during martial law or quarantine.
For violation of the terms of payment of the fine, a penalty shall be charged at the rate of 120 percent per annum of the NBU discount rate.

HR CONSULTING

REGISTRATION OF EMPLOYMENT RELATIONS WHEN HIRING EMPLOYEES: WHAT ARE THE NUANCES?

Every employer, when hiring employees, faces the procedure for formalising employment relations. The main requirements for hiring an employee are set by labour legislation.
In the case of violation of labour legislation, the employer shall be subject to administrative (Article 41 of the Code of Administrative Offences), criminal (Article 172 of the Criminal Code) and financial liability (Article 265 of the Labour Code).

1. Submission of necessary documents by the employee

Pursuant to Article 24 of the Labour Code, when entering into an employment contract, a citizen must submit a passport or other ID, employment record book (if available) or information on employment from the Register of Insured Persons of the State Register of Compulsory State Social Insurance, and in the cases provided for by law, also a document on education (speciality, qualification), health status, relevant military registration document and other documents.
When entering into an employment contract, a newly hired employee shall have the right to request an employment record book.

An employee's willingness to enter into employment relations will be evidenced by an application prepared by them and submitted to the employer.

2. Conclusion of an employment contract and issuance of an order

An employment contract is an agreement between an employee and an employer (an individual employer) under which the employee undertakes to perform work specified in this agreement, and the employer (an individual employer) undertakes to pay the employee salary and provide the working conditions necessary for the performance of work as provided for by the labour legislation, collective agreement, and as agreed by the parties. An employment contract may establish conditions for performing work that requires professional and/or partial professional qualifications, as well as conditions for performing work that does not require a person to have professional or partial professional qualifications (Article 21 of the Labour Code).
An employee may not be admitted to work without entering into an employment contract formalised in an order or instruction of the employer and notifying the central executive body responsible for ensuring the formation and implementation of the government policy on the administration of the unified social tax on compulsory state social insurance of the employee's employment according to the procedure established by the Cabinet of Ministers of Ukraine.

A person invited to work as a result of a transfer from another enterprise, institution or organisation by agreement between the managers of enterprises, institutions or organisations may not be refused to conclude an employment contract.

An employment contract is usually concluded in writing. A written form shall be mandatory:

1) in organised recruitment of employees;

2) when concluding an employment contract for work in areas with special natural geographical and geological conditions and in the conditions of an increased health risk;

3) when entering into a contract;

4) in cases where the employee insists on entering into an employment contract in writing;

5) when entering into an employment contract with a minor (Article 187 of this Code);

6) when entering into an employment contract with an individual;

6-1) when entering into an employment contract for remote work or home-based work;

6-2) when entering into an employment contract with non-fixed working hours;

7) in other cases, as stipulated by the legislation of Ukraine.

An order (instruction) on hiring usually contains the name of the profession (position), qualifications, work commencement date, and remuneration terms (the standard form of such an order is approved by Order of the State Committee of Statistics of Ukraine No. 489 dated December 5, 2008). A probationary period may also be stipulated in an employment order (instruction) (Article 26 of the Labour Code). As a rule, an employee gets acquainted with the employment order against their personal signature. After issuing an employment order, the employer, at the employee's request, shall make an entry in the employment record book.

3. Informing the employee about important aspects of the work

Before starting work, the employer is obliged to inform the employee in a manner agreed with the employee about:

1) the place of work (information about the employer, including their location), the labour function to be performed by the employee (position and list of job duties), work commencement date;

2) a certain workplace and provision of the necessary tools for work;

3) rights and obligations, working conditions;

4) the presence of hazardous and harmful production factors in the workplace that have not yet been eliminated and the possible consequences of their impact on health, as well as the right to benefits and compensation for working in such conditions pursuant to the law and the collective agreement – against signature;

5) internal labour regulations or conditions for establishing working hours and rest periods, as well as the provisions of a collective agreement (if concluded);

6) training in occupational health and safety, labour hygiene and fire protection;

7) organisation of professional training of employees (if provided);

8) duration of annual leave, conditions and amount of remuneration;

9) the procedure and terms of giving a notice of termination of the employment contract established by this Code, which must be observed by the employee and the employer.

4. Checking the suitability of employees of certain categories to perform work for health reasons

It is prohibited to enter into an employment contract with a citizen who, according to a medical report, is not fit for the job offered for health reasons (Article 24 of the Labour Code).
The cases when an employer is obliged to organise a preliminary (pre-employment) medical examination at their own expense are defined, in particular, in Article 169 (The employer shall be obliged to organise a preliminary (pre-employment) and periodic (during employment) medical examination of employees engaged in heavy work, work with harmful or dangerous working conditions or where there is a need for professional selection, as well as an annual mandatory medical examination of persons under the age of 21. The list of professions whose employees are subject to medical examination, the term and procedure for its conduct are established by the central executive body responsible for the formation of the government policy in the field of healthcare, in coordination with the central executive body responsible for the formation of the government policy in the field of labour protection, and Article 191 of the Labour Code (All persons under the age of eighteen shall be hired only after a preliminary medical examination and then, until they reach the age of 21, they shall be subject to mandatory annual medical examination). The list of professions, industries and organisations whose employees are subject to mandatory preventive medical examinations and the Procedure for Conducting Mandatory Preventive Medical Examinations and Issuing Personal Medical Books were approved by CMU Resolution No. 559 of May 23, 2001, and the Procedure for Conducting Medical Examinations of Employees of Certain Categories was approved by MoH Order No. 246 of May 21, 2007.

5. Notification of the State Tax Service bodies of hiring an employee

Pursuant to Article 24 of the Labour Code, an employee may not be admitted to work without entering into an employment contract formalised in an order or instruction of the employer and notifying the central executive body responsible for ensuring the formation and implementation of the government policy on the administration of the unified contribution on compulsory state social insurance of the employee's employment according to the procedure established by the Cabinet of Ministers of Ukraine. The procedure for notifying the State Tax Service and its territorial bodies of hiring an employee/conclusion of a gig contract is set out in CMU Resolution No. 413 of June 17, 2015 (as amended).
Please note! The date of submission of the notice may not be earlier than the date of issuance of the employment order, but must precede the start date of the employee's actual work.

The official formalisation of labour relations secures the rights and guarantees of both employers and employees. For any employer, formalising labour relations means a positive image and reputation as a reliable business partner.

THE EMPLOYER REFUSES TO DISMISS CHIEF ACCOUNTANT, HOW TO DISMISS PROPERLY

If the director does not accept the application

The reasons why an employer prevents an employee from being dismissed may vary: to force them to do some work before dismissal (submit reports, balance sheets, etc.); to delay in order to find a replacement, etc.

However, an employee shall have the right to terminate an employment contract concluded for an indefinite period by giving the employer two weeks' written notice, referring to Article 38 of the Labour Code.

Moreover, if an employee has a valid reason for dismissal, the employer shall be obliged to dismiss them within the period requested by such an employee.

The list of valid reasons is set out in Part 1, Article 38 of the Labour Code

These include moving to a new place of residence; transfer of a husband or wife to work in another area; enrolment in an educational institution; inability to live in this area, confirmed by a medical certificate; pregnancy; caring for a child under the age of 14 or a child with a disability; caring for a sick family member according to a medical certificate or a person with a Group I disability; retirement; employment by competition; other valid reasons (where the validity of such reasons shall be determined by the employer) indicating the inability to continue to work under the employment contract.

Chief Accountant has a valid reason

If a valid reason for dismissal is among those listed in Part 1, Article 38 of the Labour Code, Chief Accountant shall submit an application to the employer stating the date of dismissal. The employer shall have the right to require the employee to document the existence of a valid reason. Therefore, it is advisable to immediately attach the relevant documents to the application. After that, the employer shall be obliged to dismiss such an employee within the period requested by them.

The employer shall not have the right to demand time off or to change the date of dismissal on their own.

Chief Accountant has no valid reason

Chief Accountant may be dismissed on their own initiative without giving any reason, by giving a mandatory two-week written notice of their decision to the employer (Article 38 of the Labour Code).

Please note. This provision refers to a warning, not to working days within two weeks. In other words, an employee may submit a letter of dismissal both during the period of work and during the period of absence from work (e.g. temporary disability, annual leave, etc.).

Pursuant to Law of Ukraine No. 2136-IX of March 15, 2022 "On the Organisation of Labour Relations under Martial Law", an employee may terminate an employment contract at their own initiative (without a two-week notice period) within the period specified in their application **due to the hostilities** in the areas where the enterprise, institution or organisation is located and the existence of a threat to their life and health.

A written letter of dismissal must be given, and the employee must write and submit a letter of dismissal, which must contain the grounds for terminating the employment contract in order to comply with the requirements of Article 38 of the Labour Code and sign it.

Submitting a letter of dismissal

Article 241-1 of the Labour Code defines which day shall be considered the date of the employer's notice:

— **the date of registration of the letter** of dismissal by a responsible employee of the company, for example, an employee of the HR Department or a secretary, **if the letter of dismissal was submitted by the employee personally**;

— **the day of receipt** by the employee of the **registered letter** at the post office against signature **if the letter** of dismissal **is sent by post**.

The absence of the date of dismissal, as well as the date of its writing, shall not invalidate the letter (Judgement of the Supreme Court of Ukraine No. 6-14270св08 dated November 19, 2008; Resolution of the Supreme Court of Ukraine dated August 16, 2018 in Case No. 554/6423/17), since the two-week period for determining the date of dismissal starts from the day following the day of the actual notification of the employer about the voluntary dismissal.

If an employee has a valid reason for terminating an employment contract or if they terminate an indefinite employment contract on their own initiative with two weeks' notice, the employer's consent is not required.

The employer shall be obliged to strictly comply with the requirements of Article 47 of the Labour Code: issue a dismissal order, make final settlements with the employee on the day of dismissal (Article 116 of the Labour Code) and give the employee their employment record book (if kept by the employer) and a copy of the dismissal order.

Algorithm of actions:

Record the fact that the letter has been submitted. You need to submit the letter and its copy to the HR Department, the secretary or the company's records office and register it (indicating the date of registration and the signature of the responsible person on the original letter and on the copy).

If acceptance of the letter delivered personally is refused. Send the letter by registered mail with return receipt requested and a list of enclosures to the legal address of the company. Do not set a specific date of dismissal. In this case, the date of receipt by the responsible employee of the company of the registered letter at the post office against their signature will be the date of notifying the employer of the dismissal.

After two weeks, the employer must make final settlements and comply with other requirements set out in Article 47 of the Labour Code.

If the dismissal is not carried out based on the submitted letters. Chief Accountant may file a complaint against the employer's actions that violate labour law with the territorial body of the State Labour Service at the employer's location.

You can go straight to court with a statement of claim, observing the deadlines set out in Articles 225 and 233 of the Labour Code.

Due to the fact that Chief Accountant is the person who ensures the maintenance of accounting records, prepares financial and tax reports and has many other responsibilities, in particular those set out in Part 7, Article 8 of the Law on Accounting, several steps must be taken in the event of a change of Chief Accountant:

- Submit to the tax authorities a notice of hiring a new Chief Accountant before the start of their work.

- Submit an application using Form No. 1-PDV or No. 1-OPP. The deadline for submitting such a form is 10 days from the date of the change in the credentials.

- Notify the bank of a change of signature in banking documents.

- Cancel the qualified electronic signature of the dismissing Chief Accountant.

Also, it is worth drawing up an act of acceptance and transfer of files, which describes all accepted documents, tax returns prepared/(non) submitted, and other important aspects.

LEGAL CONSULTING

SINCE JANUARY 28, THE PROCEDURE FOR OBTAINING A WORK PERMIT FOR FOREIGNERS HAS BEEN IN EFFECT

On January 28, CMU Resolution No. 68 of January 24, 2023 "On Approval of the Technical Description, Sample Form, Application Forms for Obtaining, Amending and Extending the Validity of a Work Permit for Foreigners and Stateless Persons in Ukraine" (published in the *Uriadovyi Kurier* newspaper on January 28, 2023) came into force.

By Resolution No. 68 of January 24, 2023, the CMU approved:

- technical description of the form of the permit for employment of foreigners and stateless persons in Ukraine;
- sample form of a work permit for foreigners and stateless persons in Ukraine;
- application form for an employer to obtain a permit to employ foreigners and stateless persons in Ukraine;
- application form for amending a work permit for foreigners and stateless persons in Ukraine;
- application form for extending the validity of a work permit for foreigners and stateless persons in Ukraine.

The Resolution also stipulates that:

- during martial law, Diia.City residents may receive work (services) performed (provided) by gig specialists from among foreigners and stateless persons under gig contracts without obtaining a work permit for foreigners and stateless persons in Ukraine;
- forms of work permits for foreigners and stateless persons in Ukraine issued before the entry into force of this resolution shall be valid for the period for which they were issued;
- forms of work permits for foreigners and stateless persons in Ukraine not used by interregional and regional employment centres of the State Employment Service, which were printed before this resolution came into force, shall be valid.

LEGALISATION OF DOMESTIC DOCUMENTS

How to legalise a document issued by an official body in Ukraine, for example, at the request (demand) of a non-resident counterparty.
The legalisation of official Ukrainian documents is very similar to the legalisation of foreign documents. It also provides for a simplified variant, as well as the use of an apostille and consular legalisation.

On December 23, 2022, Law of Ukraine No. 2783-IX of December 1, 2022 "On Suspension of and Withdrawal from the Convention on Legal Aid and Legal Relations in Civil, Family and Criminal Cases and the Protocol to the Convention on Legal Aid and Legal Relations in Civil, Family and Criminal Cases of January 22, 1993" came into force.
This means that starting from December 27, 2022, documents issued in the Russian Federation and the Republic of Belarus must bear an apostille when presented in Ukraine.

In relations with Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan and Uzbekistan, the Convention continues to be in force until the date of Ukraine's withdrawal from it.

That is, starting May 19, 2023, the date of Ukraine's withdrawal from the Convention, the requirement to apostille foreign official documents submitted in Ukraine will apply to documents issued in Armenia, Azerbaijan, Kazakhstan, Kyrgyzstan, Tajikistan. Bilateral international agreements shall be in place with Moldova, Uzbekistan, Georgia, under which foreign official documents can be accepted in Ukraine without additional legalisation.

Legalisation via apostille

The authority to affix the apostille provided for by the Convention abolishing the requirement for the legalisation of foreign official documents is provided for by CMU Resolution No. 61 of January 18, 2003.
At the same time, effective from January 1, 2023, Resolution No. 61 was amended by CMU Resolution No. 631 of May 27, 2022.
Therefore**,** starting from January 1, 2023, the authority to affix an apostille shall be granted to:

1. The **Ministry of Internal Affairs** – on documents issued by the Ministry of Internal Affairs and its territorial service bodies, except for documents related to education and science;
2. The **State Migration Service** – on documents issued by the State Migration Service, its territorial bodies and territorial subdivisions related to migration (immigration and emigration), including countering illegal migration, citizenship, refugees and other categories of migrants defined by the law;
3. The **State Tax Service of Ukraine** – on documents issued by the State Tax Service and its territorial bodies.

In its clarification, the Ministry of Foreign Affairs emphasised that the Ministry of Foreign Affairs will no longer affix an apostille to the above types of official documents and will return without review all documents to be apostilled by another agency.

The procedure for affixing an apostille to official documents issued in Ukraine and intended for use in other countries is regulated by the Rules approved by Order of the Ministry of Foreign Affairs, Ministry of Education and Science, Ministry of Justice No. 237/803/151/5 of December 5, 2003 (hereinafter – the Rules).

Pursuant to these Rules, **an apostille shall be affixed to** (Clause 2 of the Rules):

- documents issued by the judicial authorities of Ukraine;
- documents issued by the Prosecutor's Office of Ukraine and the bodies of justice;
- administrative documents;
- documents on education and academic titles;
- documents issued by public and private notaries;
- official certificates executed on documents signed by persons in their private capacity, such as official certificates of registration of a document or fact existing on a certain date, and official and notarial certifications of signatures.

An apostille shall not be affixed to:

- original passports, military record cards, employment record books, weapons permits, vehicle registration certificates (technical passports), identity cards;

Please note! These documents can be accepted for apostille in the form of copies (photocopies) certified by a notary.

- originals, copies (photocopies) of regulatory legal acts, explanations and legal opinions on their application, correspondence documents.

Please note! Originals of official documents issued by institutions of the former Soviet Union republics cannot be accepted in Ukraine for apostille. However, an apostille may be affixed to copies of these documents certified according to the established procedure on the territory of Ukraine.

An apostille shall be affixed at the request of the person who signed the document or any bearer of the document. To affix an apostille, **you must submit** (Clause 6 of the Rules):

- an original document the apostille is affixed to, or a copy thereof certified according to the established procedure;
- a document confirming payment for the apostille service or a document confirming the right to the exemption from payment, or a copy thereof certified according to the established procedure;
- application from the person submitting such documents.

Consular legalisation

The Department of Consular Service of the Ministry of Foreign Affairs of Ukraine and the Representative Office of the Ministry of Foreign Affairs of Ukraine accept for legalisation documents issued and certified in Ukraine by the government and local self-government authorities or with their participation, and intended for use abroad (Clause 4.1 of Instruction No. 113).
Commercial documents, namely:

- company registration certificates,
- certificates of quality of products (goods),
- other documents certified by an authorised official of the Ukrainian Chamber of Commerce and Industry.

These documents may be legalised by the Department of Consular Service of the Ministry of Foreign Affairs of Ukraine in copies after certification by the Ministry of Justice of Ukraine.

TRANSFER PRICING

HOW TO REPORT ON THE CONTROLLED FOREIGN COMPANIES

Pursuant to Law of Ukraine No. 466 of January 16, 2020 "On Amendments to the Tax Code of Ukraine on Improving Tax Administration, Eliminating Technical and Logical Inconsistencies in Tax Legislation", as amended, 2022 is the first reporting period for the Reports on Controlled Foreign Companies.

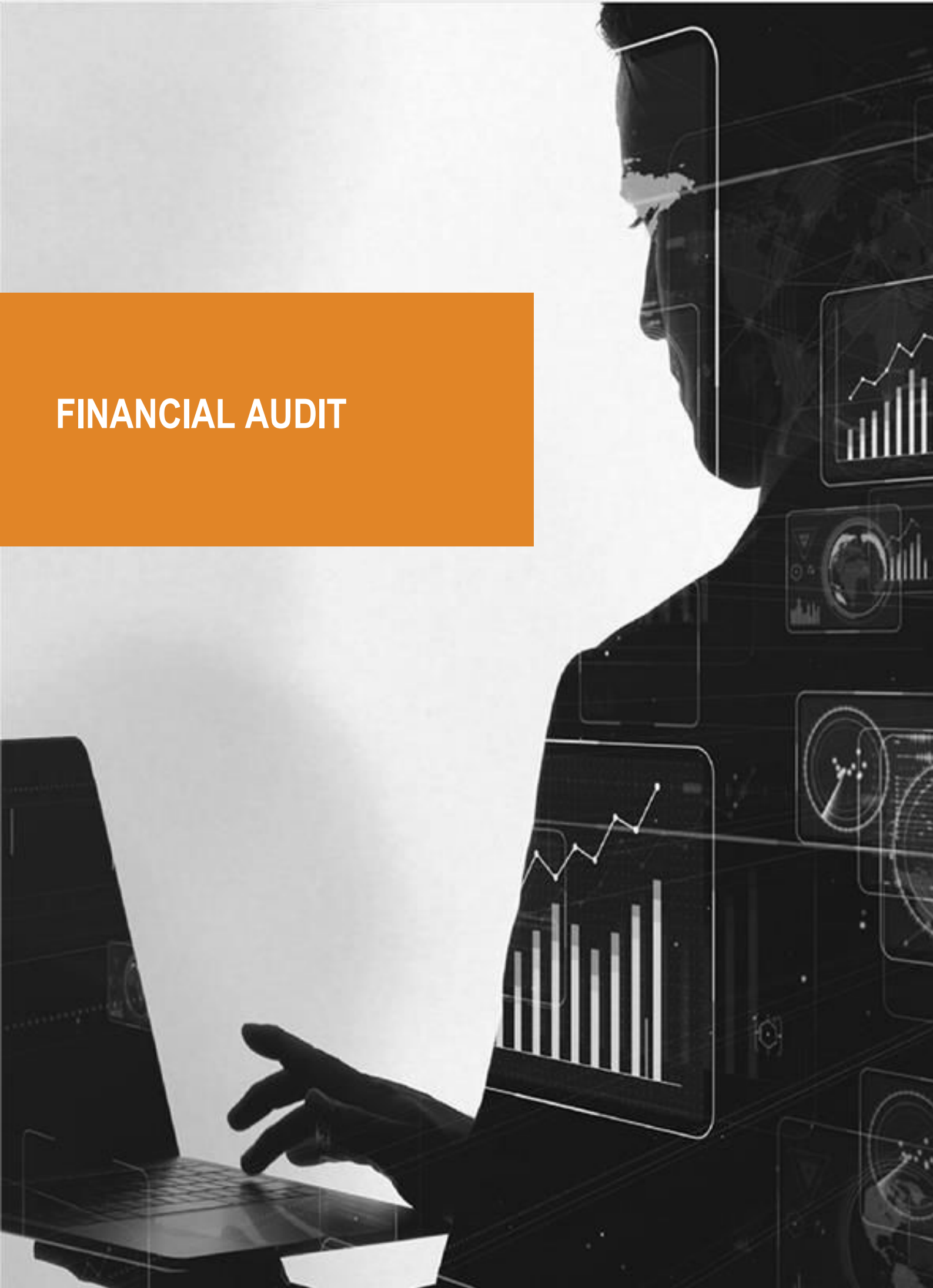
Starting from 2022, the concept of taxation of profits of controlled foreign companies (hereinafter – the CFCs) at the level of the controlling person, an individual or a legal entity, that is the controlling person of such a company, was introduced.

The reporting (tax) period for a CFC shall be a calendar year or another reporting period ending within a calendar year.

At the same time, the CFC Report shall be submitted by the controlling person simultaneously with the submission of the annual property and income declaration or corporate income tax return for the relevant calendar year by electronic means in electronic form.

For the first time, CFC Reports will be submitted for 2022 together with the tax returns for 2023. At the same time, no penalties or fines will be applied to the CFC Reports for 2022 and 2023.

FINANCIAL AUDIT



ACCOUNTING FOR LEASES HAS BEEN UPDATED: NEW REVISION OF THE NATIONAL ACCOUNTING REGULATION (STANDARD) (NAR(S)) 14

By Orders of the Ministry of Finance No. 468 of December 28, 2022 and No. 30 of January 19, 2023 "On Amendments to Certain Regulatory Legal Acts of the Ministry of Finance of Ukraine on Accounting", the Ministry of Finance has adjusted the procedure for accounting for lease-related business transactions.

The Orders did not introduce any global innovations in lease accounting, but there are several significant nuances.

1) The criteria for recognising financial leases have been reformatted**:** ownership of the financial lease object may be either transferred or not at the end of the lease term.

But, as before, non-financial leases are operational leases**.**

2) In accounting for an operational lease, the lessor should capitalise the costs of entering into the relevant contract**.**

According to Clause 9, Section III of the updated NAR(S) 14: The Lessor shall increase the carrying amount of a leased asset by the amount of initial direct costs incurred by it that are directly related to the conclusion of an operational lease contract (costs related to negotiations, legal services, etc.) and recognise them as expenses over the lease term on the same basis as lease income (previously, such costs were recognised in the period in which they were incurred).

The **Lessee's** accounting for operational leases **has not changed**.

3) there are changes in **financial lease** accounting for the **Lessee**: the costs of entering into a financial lease **contract** must be **capitalised**.

Pursuant to Clause 1, Section II of the updated NAR(S) 14: The Lessee's initial direct costs directly related to the conclusion of the lease contract (costs related to negotiations, legal services, etc.) shall increase the value of the recognised asset.

Thus, **the Lessee shall calculate the present value** of the minimum lease payments at the start date using the assumed lease interest rate specified in the lease contract. If the rate is not specified in the lease contract, the lessee shall apply the interest rate for possible borrowings by the lessee.

The **difference** between the amount of minimum lease payments and the value of the financial lease object at which it was recorded in the lessee's accounting records at the beginning of the financial lease term shall be the **lessee's financial expenses** and shall be recognised in the accounting and financial statements **only in the amount** attributable to the **reporting period**.

4) the Lessor shall include the costs of entering into a financial lease contract **in the net investment in the lease.**

According to Clause 1, Section III of the updated NAR(S) 14: The **Lessor** shall account for a leased asset as a receivable from a lessee at the amount of the net investment in the lease and recognise income and expenses related to the sale of the asset.

The net investment in a lease shall be the Lessor's gross investment in the lease discounted at the lease's assumed lease interest rate specified in the contract.

Changes in the accounting for lease transactions shall be **changes in the accounting policy**. One of the grounds for reviewing an enterprise's accounting policy shall be changes in the **accounting** and **financial reporting** (Clause 9 of NAR(S) 6). This requires the enterprise to **review retrospectively** lease-related business transactions.

IT CONSULTING

CHANGES TO THE TAX CODE OF UKRAINE REGARDING E-IDENTIFICATION AND E-TRUST SERVICES

Law of Ukraine No. 2918-IX of February 7, 2023 "On Amendments to the Tax Code of Ukraine on Electronic Identification and Electronic Trust Services" was published in the *Holos Ukrainy* newspaper on March 4, 2023. The use of tokens is optional.

The use of enhanced electronic signatures and seals in the cases provided for by the law significantly reduces the cost of purchasing a private key medium for users of electronic trust services.

The Law provides:

- application of the new conceptual framework introduced in connection with the adoption of the Law of Ukraine "On Electronic Trust Services";
- simplification of the procedure for obtaining electronic trust services;
- enabling the use of enhanced electronic signatures based on qualified public key certificates and electronic identification tools with a similar level of trust.

The peculiarity of using an enhanced electronic signature or seal is to ensure that the user of electronic trust services can use a regular file medium as a private electronic signature key medium for electronic interaction, electronic identification and authentication (e.g. USB-Flash, CD, DVD), unlike a qualified electronic signature or seal, the private key of which must be stored in a qualified electronic signature or seal instrument that has built-in hardware and software protecting the data recorded on them from unauthorised access, direct familiarisation with the value of the parameters of private keys and their copying (secure private key medium or token). Appropriate changes will be made to the TCU.
The Law will come into force on December 31, 2023.

THANK YOU FOR YOUR ATTENTION

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

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

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We would appreciate your feedback!