



Tax

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When investing in Ukraine, foreign investors should consider carefully the different possible forms of investment structure and the resultant taxation burden attributable to each. The taxation of legal entities depends on their tax residence status. Those incorporated, registered and operating under Ukrainian law are regarded as Ukrainian tax residents and therefore subject to corporate income tax (CIT) on their worldwide income. Ukrainian non-residents are subject to Ukrainian CIT only on their Ukrainian-sourced income. Tax legislation does not define 'investment income' and therefore the income obtained through any form of foreign investment may be regarded as such.

Note: The current rate of CIT is 25% but it is planned that the rate will be reduced to 20% before 2010.

A legal entity under Ukrainian law

A Ukrainian company may be established either by solely foreign entities and/or natural persons or by foreign and domestic entities and/or natural persons (joint-venture). The most suitable corporative forms to accommodate foreign investments are limited liability companies and joint-stock companies. These are regarded as Ukrainian residents and therefore are subject to Ukrainian CIT. Distribution of the subsidiary's profit in favour of a parent company (in the form of dividends or other forms) is subject to 15% withholding tax if a relevant double taxation treaty does not stipulate otherwise. Direct investments in the form of contributions to the nominal capital of Ukrainian legal entities by foreign entities are not subjected to CIT.

Establishment of a branch

Branches of foreign legal entities are considered to constitute a permanent establishment, defined as a permanent place of business through which a non-resident partially or entirely carries out business in Ukraine.

Branches are taxed as residents of Ukraine and pay 25% CIT from the profit gained on the Ukrainian territory. Payments or contributions made in favour of the branch by its founder are generally considered as the branch's gross revenues and, as a result, are also subject to CIT. However, any reverse payments are regarded generally as the founder's income and are subject to withholding tax of 15% withheld by the branch.

Joint venture

Ukrainian law provides for joint activity by means of a written agreement, without the creation of a legal entity. One of the essential characteristics of a joint venture is that the assets remain in the ownership of the respective parties. The parties are assessed separately but the actual tax accounting has to be done by a legal entity registered as a CIT payer in Ukraine. The

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empowered taxpayer must pay the CIT of 25% before or at the moment of payment of the income resulting from the joint activity. When the income is transferred to non-residents, income tax of 15% shall be withheld (unless a double taxation treaty applies). The obligation to pay CIT arises regardless of whether the income was actually distributed between the participants in the joint activity or not.

Joint venture funds

Joint venture funds may be created in the form of a joint-stock company or as asset contributions managed by an asset management company, the participants in which may include foreign investors (i.e. the venture fund does not constitute a legal entity but is managed by a legal entity). The income of the asset management company obtained through its management services is taxable at 25%. However, any capital assets attracted from investors, income from investment operations of the venture fund and money obtained by owners of fund certificates are not included into the gross revenue of the joint venture fund and therefore not subject to taxation.

Property taxation

Property transfer tax

The disposal of real estate in Ukraine gives rise to a state duty of 1% of the contract amount. This can be paid by the seller or the buyer, as agreed by the parties. The buyer is also liable for a pension fund levy of 1%. This levy is not payable on the sale of land. No transfer tax is payable on the disposal of shares in a property-owning company.

Land tax

Land tax is levied annually according to the monetary value of the land plot, excluding buildings. The urban land tax rate is 1%. Where there is no valuation of the land, the tax rate is stipulated in UAH per sq m of the land area. This rate depends on the size of population, with a special coefficient for large cities.

VAT

VAT at 20% is payable on the contract value from the letting of any real estate, including land (except the state or municipal land when the related lease payments are fully accounted to the state budget).

Generally, the landlord registered as a VAT payer can claim (in the form of a VAT credit) compensation of the input VAT paid on improvements to the property (reconstruction, repairs and modifications, etc). The disposal of real estate, except for land on its own and residential premises (except for their first supply), is also subject to VAT at a rate of 20%.