

The Brief

September 2011

Ukraine - Monthly Legal Update

In this issue

BANKING & FINANCE	2
• Amendments to regulations regarding banking secrets.....	2
• Draft Law on Currency Regulation and Currency Control	2
• President vetoes law concerning the consumption of financial services	2
• Procedure of inspections to prevent money laundering comes into force	3
COMPETITION	3
• Amendments to law on protection of economic competition.....	3
TAX LAW	3
• President approved changes to Tax Legislation	3
• Higher Administrative Court clarifies periods of limitation in tax litigation.....	4
• Simplified customs clearance of goods related to EURO 2012.....	4
• The Ministry of Justice invalidates instructions by State Tax Administration..	4
REAL ESTATE	4
• Law of State Land cadastre	4

Algiers

Tel. +213 (0)21 23 94 94
gln.algiers@gide.com

Beijing

Tel. +86 10 6597 4511
gln.beijing@gide.com

Brussels

Tel. +32 (0)2 231 11 40
gln.brussels@gide.com

Bucharest

Tel. +40 21 223 03 10
gln.bucharest@gide.com

Budapest

Tel. +36 1 411 74 00
gln.budapest@gide.com

Casablanca

Tel. +212 (0)5 22 27 46 28
gln.casablanca@gide.com

Hanoi

Tel. +84 4 3946 2350
gln.hanoi@gide.com

Ho Chi Minh City

Tel. +84 8 3823 8599
gln.hcmc@gide.com

Hong Kong

Tel. +852 2536 9110
gln.hongkong@gide.com

Istanbul

Tel. +90 212 385 04 00
gln.istanbul@gide.com

Kyiv

Tel. +380 44 206 0980
gln.kyiv@gide.com

London

Tel. +44 (0)20 7382 5500
gln.london@gide.com

Moscow

Tel. +7 495 258 31 00
gln.moscow@gide.com

New York

Tel. +1 212 403 6700
gln.newyork@gide.com

Paris

Tel. +33 (0)1 40 75 60 00
info@gide.com

Saint Petersburg

Tel. +7 812 303 6900
gln.saintpetersburg@gide.com

Shanghai

Tel. +86 21 5306 8899
gln.shanghai@gide.com

Tunis

Tel. +216 71 891 993
gln.tunis@gide.com

Warsaw

Tel. +48 (0)22 344 00 00
gln.warsaw@gide.com



Gide Loyrette Nouel



BANKING & FINANCE

Amendments to regulations regarding banking secrets

Resolution No. 105 dated 13 April 2011 of the National Bank of Ukraine (NBU) that modifies the Regulation on Holding, Protection, Use and Disclosure of Banking Secrets has come into force. Resolution No. 105 is designed to bring the Regulation in line with the latest amendments to the Law "On Enforcement Proceeding" No. 606-XIV dated 21 April 1999. According to the new provisions of the Regulation, banks are obligated to provide information to the State Enforcement Agency about bank accounts of a particular individual or legal entity, including information about existence of the bank account, availability of monies on the bank account, attachment of the bank account, and halting of debit operations on the bank account.

Draft Law on Currency Regulation and Currency Control

The Ministry of Economic Development and Trade published the Draft Law "On Currency Regulation and Currency Control" (the "Draft"). If adopted, the Draft will replace the Decree "On the System of Currency Regulation and Currency Control" No. 15-93 dated 19.02.1993 and the Law "On Settlements in Foreign Currency" No. 185/94 dated 23.09.1994. The document incorporates major provisions of existing regulatory acts. In particular, provisions on compulsory completion of payments during 180 days after customs clearance of exported goods and during 180 days after the advance payment for imported goods and respective penalties will remain in place. The National Bank of Ukraine (NBU) also keeps the right to establish a maximum interest rate for loans extended to residents by non-residents.

Moreover, the NBU would receive the right to limit operations of non-residents (up to imposing a moratorium) with government securities. The proposed law also authorizes the National Bank of Ukraine to introduce a requirement of compulsory sale for residents of up to 50% of their revenues in foreign currency for up to six months.

President vetoes law concerning the consumption of financial services

The President vetoed Law No. 3672-VI "On Amending Certain Legislative Acts of Ukraine Concerning the Normalization of Relations between Creditors and Consumers of Financial Services" (the "Law") which was adopted by the Parliament of Ukraine on 8 July 2011. The Law purported to amend the Civil, Commercial Procedural, Criminal and Housing Codes of Ukraine, the laws "On Banks and Banking Activity", "On Mortgage", "Bankruptcy Law", "On Securing Creditors' Claims and Registration of Encumbrances". It also aimed to repeal the Law "On Moratorium on Compulsory Sale of State Property" which is currently a source of difficulties in execution proceedings with state-owned entities.

In particular, the President disagreed with provisions which would have imposed criminal liability on individuals younger than 16 years old for deliberate submission of false information to banks, credit unions and financial institutions. Moreover, the President disagreed with the proposed starting date for a moratorium on satisfaction of the creditors' claims, insisting this should begin from the moment of a court decision on commencement of the bankruptcy proceedings against the debtor.

However, the following major provisions of the Law have not been objected to by the President and may therefore be integrated into an alternative draft by the parliament:

1. Prohibition of issuance of consumer loans denominated in foreign currency;
2. Enforcement against the collateral upon the writ of a notary;
3. Introduction of criminal liability for the destruction of collateral;
4. Introduction of a floating interest rate;
5. Prohibition of the modification of the fixed interest rate during the entire effective period of the loan agreement except as provided for by the agreement of the parties;
6. Introduction of limits on the rights of lenders to accelerate repayment of the loan (repayment of the loan has to be delayed for at least one month or three months with respect to loans secured by mortgage and consumer loans for the acquisition of residential premises);
7. Prohibition of refusal to accept early repayment of a loan by the lender.



Procedure of inspections to prevent money laundering comes into force

Resolution No. 197 of the National Bank of Ukraine (NBU) "On Adoption of the Regulation on the Procedure for Organizing and Conducting Inspections with Respect to Prevention of and Counteraction against the Legalization (Laundering) of the Proceeds from Criminal Activity or Financing of Terrorism" (the "Regulation") has come into force. The Regulation establishes the rules on conducting regular and random bank inspections. According to the Regulation regular inspections are conducted by the NBU no less than once every two years on the basis of a schedule approved by the Chairman of the NBU. The Regulation also allows the NBU to conduct random inspections if it considers them necessary on the basis of (1) continuous supervision with respect to financial monitoring, (2) information provided by various departments of the NBU, state authorities, foreign supervisory authorities with regard to the violation of rules on financial monitoring, and (3) the results of inspections of certain banks of systemic importance.

COMPETITION

Amendments to law on protection of economic competition

The President of Ukraine signed Law No. 3567-VI "On Amendments to Certain Legislative Acts of Ukraine Regarding the Improvement of Legal Regulation Concerning the Protection of Economic Competition", on 22 July 2011. The law introduces changes to the Law of Ukraine "On the Antimonopoly Committee of Ukraine" and the Law of Ukraine "On Protection of Economic Competition".

In particular, in accordance with the new law, business entities may ask the Antimonopoly Committee of Ukraine (AMC) to issue its conclusions on their compliance with the provision on protection against unfair competition established in Article 15-1 of the Law of Ukraine "On the Protection Against Unfair Competition (disseminating misleading information). Note, that the law specifies that only the AMC and its administrative board can issue official recommendations/clarifications relating to the requirements of the competition regulations, thus taking this function away from the competence of the AMC's territorial branches and legal department.

The law has also introduced penalties for inducing or inciting violations of the Law on protection of economic competition or facilitating such violation. In addition, the maximum fine which may be imposed by the AMC's territorial branches, for breaches of competition law has also been increased from UAH 17,000 to UAH 68,000 (EUR 6,000). This enables territorial branches to exercise stricter control over economic entities.

Importantly for businesses located outside of Ukraine, they are now entitled to pay application fees in Euros and US Dollars.

To summarize, the new law demonstrates a centralization of decision-making functions, and strengthening of punitive functions of AMC's territorial branches.

TAX LAW

President approved changes to Tax Legislation

On 1 August 2011, the President of Ukraine signed the Law of Ukraine No. 3609-VI "On Amendments to the Tax Code of Ukraine and Some Other Legislative Acts of Ukraine Relating to Improvement of Certain Provisions of the Tax Code of Ukraine" (the "Law"). The Law introduced amendments into ten legislative acts of Ukraine relating to taxation, including the Tax Code, where 121 out of 340 articles, as well as Final and Transitional provisions are amended. Most of those amendments are coming into force together with the effective date of the Law, however, there are some amendments that come into effect on other dates - 1 April 2011, 1 August 2011, 1 October 2011, and 1 January 2012.

The law aims to resolve some of the most urgent problems which arose while applying the provisions of the Tax Code by amending ambiguous and contradictory provisions. It aims to clarify certain issues which arose while applying the provisions of the Tax Code by amending ambiguous and contradictory provisions, and in particular, provisions relating to the definition of "permanent establishment" and mandatory tax registration of the permanent establishment.

Other provisions relate to preparing and submitting tax reporting, information exchange with tax authorities, introducing of a new type of tax clarification the "summarized tax clarification". The law also removes provisions which would have provided for tax fines for misstatements of tax losses (CPT) and accumulated tax credits carried forward (VAT). As was the case under previous tax legislation only administrative liability for chief accountants and



directors will apply in such cases. In addition, the new law has widened the scope and periods during 2011 where the moratorium on tax fines introduced for the introduction period of the new tax code will continue to apply. The law also significantly modifies rules concerning the deductibility of non-monetary and in-kind benefits provided to employees, expanding these to benefits to those specifically provided for by a labour agreement. Previously such employee benefits were considered deductible only on the basis of their incorporation into labour and collective agreements. The additional reference to collective agreements made it impossible for companies that do not have trade unions to deduct such benefits.

Another major modification relates to the conditions the creation of additional grounds for voluntary VAT registration. Henceforth, voluntary registration as a VAT payer will be possible for businesses with a statutory capital exceeding UAH 300,000 to register as VAT payer thus entitling the company in question to accrue VAT credits, as soon as such registration is completed. Previously, the limited scope of criteria for voluntary VAT registration required companies to operate for a certain period of time before qualifying, therefore forcing them to forgo tax credits for their initial investments.

Higher Administrative Court clarifies periods of limitation in tax litigation

On 5 July 2011 the Higher Administrative Court of Ukraine issued the letter No. 945/11/13-11 to heads of appellate administrative courts and administrative courts with regard to application of periods of limitation in tax litigations. By this letter the Higher Administrative Court of Ukraine concluded that the periods of limitation do not change in case of subsequent changes in applicable legislation, i.e., the periods of limitation in tax litigations begin and end using the duration stipulated in law effective when such periods begin. Therefore the period of limitations for tax claims would be either, (1) 1,095 days for tax litigation which began before 30 July 2010, (2) 1 month for tax litigations began on or after 30 July 2010 and before 1 January 2011, (3) 1,095 days for tax litigations which began on and after 1 January 2011. The general period of limitations which has been reinstated is equal for both taxpayers and tax authorities.

Simplified customs clearance of goods related to EURO 2012

The resolution by the Cabinet of Ministers of Ukraine approved the "On approval of the special (simplified) form of the declaration for the customs clearance of goods intended for the preparation for and holding of the EURO 2012 football championship in Ukraine" entered into force on 27 August 2011. The resolution also approved the list of media, radio- and TV equipment intended for temporary import into Ukraine with conditional full exemption from taxation, as well as goods to be imported by the teams without obligation to take the same out of Ukraine.

The Ministry of Justice invalidates instructions by State Tax Administration

The Ministry of Justice declared invalid the letter of the State Tax Administration of Ukraine (STAU) No. 9497/7/16-1517 "On value added tax", which approved the official instructions for the issuance and receipt of tax invoices (the "instructions"). This was communicated by the Ministry in its letter as of 1 July 2011 No. 21186-10.1. In its letter, the Ministry of Justice pointed out that letters by public authorities have only a recommendatory and interpretative nature and may not be used to create new rules. The instructions had been criticised for setting strict formal standards for the format of tax invoices resulting in legitimate invoices not being taken into account by the STAU.

REAL ESTATE

Law of State Land cadastre

The Law of Ukraine "On State Land Cadastre" was adopted by the Ukrainian parliament on 7 July 2011 and will come into force on 1 January 2012. However, it should be noted that several articles of the Law will come into force from 1 January 2013. The Law calls for to creation of a new digital unified register of all land plots (transactions with land plots) in Ukraine and introduces the registration procedure for the land rights.

The Law introduced the following significant innovations:

1. Launch of the unified digital land database (the "Register");
2. Access for banks and notaries to the register of private ownership rights and encumbrances over land plots;
3. New procedure for State registration of ownership and lease rights over land plots on the basis of the land plot's technical documentation;
4. The Law introduces a new set of documents for the verification of ownership (usage) rights.



An extract from the Register will necessary for all kinds of legal transactions with land plots (except for wills). Such an extract can be issued by the registrar maintaining the Register or notaries. However the Cabinet of Ministers is yet to adopt a regulation with regard to issuance of extracts by notaries. Starting from 1 January 2012 (1 January 2013 - for State and municipal lands), State Acts of Ownership Rights over Land Plots will no longer be issued as confirmation of the ownership rights over the land plot. Instead such rights will be confirmed by an extract from the Register.

The Law is a very important step towards the contemplated launch of the land market in Ukraine, which is currently subject to a moratorium restricting the sale of certain types of land plots.



Gide Loyrette Nouel

4, Volodymyrska Street
Kyiv 01001 - Ukraine
Tel. +380 44 206 0980
Fax +380 44 206 0981
E-mail: gln.kyiv@gide.com

Contact

Bertrand Barrier
barrier@gide.com

For further information:

www.gide.com



Gide Loyrette Nouel

You can also find this Brief and our other newsletters on our website in the News/Publications section.

This Brief (the "Newsletter") is a free, periodical electronic publication edited by the law firm Gide Loyrette Nouel (the "Law Firm"), and published for Gide Loyrette Nouel's clients and business associates. The Newsletter is strictly limited to personal use by its addressees and is intended to provide non-exhaustive, general legal information. The Newsletter is not intended to be and should not be construed as providing legal advice. The addressee is solely liable for any use of the information contained herein and the Law Firm shall not be held responsible for any damages, direct, indirect or otherwise, arising from the use of the information by the addressee. In accordance with the French Data Protection Act, you may request access to, rectification of, or deletion of your personal data processed by our Communications Department (privacy@gide.com).