

newsletter

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BANKING AND FINANCE

NBU eases currency controls

On 3 September 2015 the NBU adopted Resolution No. 581 “On Regulation of Capital and Foreign Exchange Market of Ukraine”, whereby previously imposed limitations on capital flow and forex transactions were extended for the next three (3) months, until 4 December 2015. Although most of the restrictions still remain in effect, the Resolution relaxes some and establishes a number of exemptions, notably:¹

- mandatory sale of currency will not apply to foreign currency returned onto the resident’s account by the foreign bank within two (2) days after the transfer was made (in case, for example, the payment was made by mistake);
- residents are allowed to offset claims denominated in soft currency² under export contracts provided that the amount of such claims does not exceed the equivalent of USD 500,000 under one export contract. Offsetting the claims denominated in a freely convertible currency (e.g. USD, Euro, Pound Sterling and Swiss Francs) and Rubles remains to be prohibited;

¹ To see the currency limitations initially imposed by the NBU please refer to NBU Resolution No. 354 “On Regulation of Foreign and Exchange Market of Ukraine” dated 3 June 2015 (as amended)

² The list of soft and non-convertible currencies falling into the 2nd and 3rd groups of the NBU Classifier accordingly is given in the NBU Resolution No. 34 “On Approval of the Classifier of Foreign Currencies” dated 4 February 1998 (as amended)

- non-convertible currencies (those falling into the 3rd group of NBU Classifier) deposited on the accounts of residents will not be taken into account by the regulator to determine the amount of hard currency allowed to be purchased by residents on the interbank market. In other words, residents having non-convertible currency on their accounts will be able to buy more hard currency on the interbank market;
- resident-importers are no longer required to provide a tax arrears certificate of the State Fiscal Agency in order to purchase foreign currency on the interbank market. Still, the appraisal certificate will be needed for all payments under service contracts where the amount of the payment exceeds the equivalent of EUR 50,000;
- the ban on overseas transfers under individual licenses is abolished for payments not exceeding the equivalent of USD 50,000 per month on the basis of one (1) individual licence granted by the NBU;
- the transfer of debt under cross-border loans from the initial borrower to the new one by way of succession as a result of a merger and/or winding up is lifted from recently introduced prohibition on the transfer of loans. Also, please note that all loans extended by international finance institutions (IFC, EIB, EBRD and others) are allowed to be freely transferred, assigned and novated to third parties; and
- the limit for cash withdrawals of foreign currency and precious metals from current or deposit accounts is raised from the equivalent of UAH 15,000 to the equivalent UAH 20,000 per day per one person.

In attempt to tackle capital flight, the NBU has barred the importers from buying foreign currency on the interbank market to pay for goods imported (cleared at a customs agency) before 1 January 2014. All such payments should be made by the residents from their own proceeds in foreign currency (neither purchased nor borrowed). We, however, draw your attention that the above restriction does not apply to the import of vital and essential goods³.

Foreign e-money issuers are allowed to operate in Ukraine

On 24 July 2015, the NBU amended Resolution No. 481 "On Electronic Money in Ukraine" dated 4 November 2010 (the "E-Money Resolution") to allow foreign electronic money issuers to legally operate in Ukraine once they are added to the Register of Payment Systems, Settlement Systems, Participants of Such Systems and Payment System Operators (the "**Register of Payment Systems**"). The foreign electronic money issuer must comply with prudential and anti-money laundering requirements set out in the E-Money Resolution in order to be included into the Register of Payment Systems.

The E-Money Resolution recognises e-money issued by foreign issuers as a means of payment by a person to a non-resident for goods and services through an international online payment system. However, merchants are only entitled to accept electronic money issued by the foreign issuer where the international online payment system technically secures the transfer and simultaneous redemption of e-money by way of transferring cash to the merchant's account held at the Ukrainian bank.

³ Goods which are regarded as vital and essential import are listed in Article 5 of the Law of Ukraine *On Measures Aimed at Stabilisation of Balance of Payments of Ukraine in Accordance with Article XII of the General Agreement on Tariffs and Trade 1994*

TAX

Amended rules on transfer pricing

On 15 July 2015 the Ukrainian Parliament approved important changes to the transfer pricing rules. The new law took effect on 13 August 2015. The changes will apply retrospectively to controlled transactions performed throughout the current fiscal year. The most important of the approved amendments are described below.

Domestic transactions

The previous wording of para. 39.2.1.5 Tax Code (a transaction between related parties that involves a unrelated intermediary) was ambiguous and could have been interpreted as applicable both to external and domestic transactions. The amended law now expressly sets forth that transfer pricing (TP) rules do not apply to transactions between Ukrainian residents.

VAT

Some provisions of the Tax Code of Ukraine were ambiguous and were creating grounds for applying TP rules to the value added tax. According to amended law, the TP rules only apply to the corporate income tax.

Thresholds

The changes in the thresholds for controlled transactions before and after the amendments are outlined in the table below.

Criteria	Before	After
Taxpayer's annual income	Over UAH 20 million	Over UAH 50 million
Value of transactions with one counterparty	Over UAH 1 million or 3 percent of taxable income	Over UAH 5 million

Penalties

The changes in the penalties for violation of the TP rules before and after the amendments are outlined in the table below.

Ground	Before	After
Failure to file a report on controlled transactions	100 minimum wages	300 minimum wages
Failure to declare a controlled transaction	5 per cent of the transaction's value	1 per cent of the value of undeclared transactions, capped at 300 minimum wages for all undeclared transactions
Failure to submit TP documentation	3 per cent of the value of transactions, but not more than 200 minimum wages	3 per cent of the volume of transactions, capped at 200 minimum wages

Reporting

Tax payers are required to file annual reports on controlled transactions by 1 May of the following year. The requirement to submit information about controlled transactions simultaneously with submission of a corporate income tax return (to be filed within 60 days upon year-end) was abolished.

Responding to tax authorities' queries

A query of tax authorities should be answered within 30 days (before - within 10 days). In practice, 10 days is reasonably not enough for a detailed reply.

Criteria for selection of low-tax jurisdictions

According to the amended law countries which do not disclose and make publicly accessible information about ultimate beneficial owners of legal entities will not be added to the list of low-tax jurisdictions to be approved by the government. This change may result in a revision of the list of the low-tax jurisdictions approved by the government earlier this year.

Special TP rules for export/import of commodities

Special TP rules for export/import of commodities will apply to transactions with any foreign counterparty (not only those registered in the low-tax jurisdictions), if the thresholds are met.

VAT administration

Important changes to the VAT administration rules were approved by the Ukrainian Parliament on 16 July 2015 and came into effect on 29 July 2015. Below please find the most important amendments introduced by the new law.

Enforcement against funds on VAT accounts

VAT accounts cannot be subject to enforcement proceedings. All claims / arrests with regard to the funds available on VAT accounts are not valid.

Threshold for issuance of VAT invoices

The threshold for issuance of a VAT invoice was recalculated by fiscal authorities on 3 of August 2015. On this date, credit balances of VAT accounts calculated as of 1 July 2015 were zeroed. Assets and liabilities credited to the VAT accounts for goods sold, purchased or imported in July 2015 remained unchanged.

Under the Transitional Provisions of the Tax Code the net balance of the VAT accounts were increased by:

- monthly average tax amount for the last 12 months (which will be updated on a quarterly basis);
- funds available on the VAT account, excl. VAT liabilities or VAT refund for June 2015;
- VAT amount paid in error and/or in excess of VAT liabilities;
- VAT credit accumulated for periods up to 30 June 2015.

For increase of the VAT credit without legal ground the tax payer may be penalized for 10% of such VAT credit amount.

VAT invoice

VAT invoices can be registered and used for formation of VAT credit within 365 days (instead of 60 days). The list of the mandatory details of a VAT invoice is shortened. The tax address of the seller and the type of the agreement do not have to be indicated in the VAT invoice.

Consolidated VAT invoices can be executed at the end of the reporting period for the following transactions:

- Continuous and regular transactions (rather than 10 days after the transaction), for example, for electricity providers;
- Adjustment of VAT credit related to goods, services or fixed assets used in non-VAT taxable or VAT-exempt transactions.

Agricultural VAT

The Law introduced “transit” VAT accounts of agricultural companies for the accumulation of VAT funds. Accumulated VAT funds will go to the current accounts of the agricultural companies through such “transit” VAT accounts.

CORPORATE

Lower quorum requirements in LLC is proposed

On 14 July 2015 the Parliament approved in the first reading Draft Law no 2757 dated 29.04.2015, according to which the general participants' meeting of LLCs will have quorum if participants who in the aggregate hold more than 50% (currently, 60%) of the votes are present. It is worth reminding that the same quorum requirement was introduced for general shareholders' meeting of joint stock companies at the beginning of this year.

REAL ESTATE

Free access to the Real Estate Register

The Ukrainian Parliament made new positive moves towards transparency of the real estate register. According to the Law of Ukraine On Amendments to Certain Laws of Ukraine on Strengthening Transparency in the field of Property with a view to Preventing Corruption (the “Law”) any interested person (either an individual or a legal entity) may have a search in the State Register of Real Rights to Immovable Property using either information about the real asset or its owner. Previously, the law was liberalised by allowing making searches in the register by using only details of an immovable property. Although the Law aims at disclosing information about real estate, land or other property of civil servants, technically it will be possible to receive information in respect of any individual even if such an individual is not a civil servant. At the same time, the State Register of Real Rights to Immovable Property is only partly filled in with the relevant information, therefore, a lot of information about real estate will be unavailable until has been entered into the register.

The Law also provides access to information about land owners which will be available through the Public Cadastral Map, an online information resource which reflects the latest information from the State Land Cadastre.

Identification by way of digital signature or other identification tools (not specified in the Law) is required for making any search in the State Register of Real Rights to Immovable Property or in the Public Cadastral Map.

PROJECT FINANCE

Regulation on state investment projects of Ukraine introduced

On 22 July 2015, the Cabinet of Ministers of Ukraine adopted Regulation on Certain Issues of State Investment Project Management No. 571 (the "Regulation").

The Regulation details how to initiate a study and select state investment projects eligible to receive long-term (3 years) budget financing in Ukraine (the "Projects").

From a practical viewpoint, the importance of the Projects is explained by peculiarities of the Ukrainian budget legislation. More specifically, the principle of annuality of budget expenditures complicates procurements contracted for longer than 1 year, which is the maximum budget period in Ukraine. At the same time, the Budget Code of Ukraine provides that, as an exception, the Projects are included into long-term (3 years) budget plans to enable their proper financing during three consecutive budget periods.

The Projects are selected by a special Inter-governmental Project Commission (the "Commission") composed of representatives of principle decision-makers, including the Ministry of Finance and the Budget Committee of the Ukrainian Parliament. The Project's proposals are submitted to the Commission by chief administrators of public funds responsible for distribution of state funds in the area relevant to the Project (the "Administrators").

The selection procedure includes verification of each Project in accordance with a set of criteria, including economic, social and environmental effect. In any case, the Projects must correspond to one or several aims of the Ukraine's development, which strategic importance is recognized by the government.

The Projects, which receive a simple majority of votes of the Commission's members, are deemed to be approved.

In terms of persons entitled to initiate the Project, the Regulation refers to a definition provided in the *Law of Ukraine on Investment Activities*. To this end, similar to PPPs, the Projects may, in principle, be initiated by private companies.

At the same, after initiation and prior to submitting the Project's proposal to the Commission, a number of important steps must be undertaken to prove the Project's feasibility, including:

- Drafting by the person, initiating the Project, of a preliminary feasibility study with estimation of the project's costs;
- Taking by the Administrator of a decision on the Project's preliminary feasibility;
- Appointment by the Administrator of a contracting authority responsible for the Project;
- Preparing by the contracting authority of a full feasibility study with analysis of benefits of the Project;
- Conducting an official state expert examination of the Project's feasibility.

The Regulation took effect on 12 August 2015, when it was published. ■

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