

# Some tax aspects of the business activity in Ukraine

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### Registration as VAT-payer Attention in taxation cases

The Tax Code of Ukraine stipulates 2 possibilities for the registration as a VAT-payer:

1. Compulsory registration
2. Non-binding registration

A tax payer is to be registered as a VAT-payer in case the total amount of transactions over the period of 12 calendar months exceeds 300 TUAH.

A non-binding registration is possible under the following conditions:

- 1) Not less than 50% of transactions (selling of goods and services) for the last 12 calendar months were invoiced to a VAT-payer;
- 2) The equity capital or the book value of assets of a tax payer exceeds 300 TUAH regardless of the volume of taxable transactions and selling of goods and services for other tax payers.

Registration as a VAT-payer is important for the business activity in Ukraine because not registered as VAT-payers companies do not have right for the input VAT-refund. Not deductible VAT decreases taxable profit.

To import goods to Ukraine the importer has to pay VAT in the amount of 20% during customs clearance. The VAT is deductible, when the importer is registered as a VAT-payer.

Unfortunately in practice tax authorities try to reject or delay the registration as a VAT-payer. That is why the process of registration can take a longtime. It is to be noticed that not registered as a VAT-payer company becomes responsible for the VAT payment from the first day of the following month, when the 300TUAH turnover has been exceeded. Also in this case the tax payer has no right for the input VAT-refund until he is registered as a VAT-payer.

### Objections to decisions of the tax authorities How tax payers assert their rights

Companies must regularly assert their rights because of the tax authorities' fiscal approach. Illegal decisions of the tax authorities are to be constantly objected. The decisions are to be objected at the administrative level or in the court. The administrative objection is not compulsory; a tax payer can immediately go to the court. All legal appeals and claims are to be provided in a written form.

Administrative procedure consists of the following steps:

1. To assert tax payer's rights the revision act of the tax authority is to be always with the following addition, for example: "We do not approve the decision specified in the revision act. The decisions of the revision act are to be legally objected".
2. A tax payer has to provide his appeal towards controlling authority in the period of 5 days (after the receipt of the revision act). It is to be noticed that representatives of the tax payer and a tax advisor are to be involved in the objection procedure. Arguments of the tax payer are seldom appealed at this level.
3. Within 10 days after delivery the tax payer has a right to object the decision of the tax authority to the authority of the higher level. The objection at this level can be satisfied in certain cases.
4. The objection procedure by the local authorities can last from 20 to till 60 days. In case the objection is not appealed by the local authorities, a tax payer has the right



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to provide the objection to the state tax authorities of Ukraine in the period of 10 calendar days.

A total administrative procedure of objection can last about 10 months. A tax payer can go to the court in case there are no positive results. The court procedure consists of 3 court instances; an average duration of the whole court procedure is about 2 years and consists of the following steps:

1. Over the period of 10 days after delivering of the decision from the state tax authorities the administrative claim is to be provided in the court of the first instance. In case the decision of the tax authority was not appealed at the administrative level, the administrative claim is to be provided within 3 year period after receipt of the decision of the tax authority;
2. The decision of the first instance can be appealed over the period of 10 days from the adjudication in the court of the second instance by each party;
3. The decision of the Court of Appeal can be claimed by each party in the period of 20 days in the supreme Administrative Court of Ukraine that issues a final decision.

Important: During administrative or court objection a tax payer is not obliged to pay taxes required by the tax authority. Otherwise these amounts will be never repaid, even in case the objection is satisfied lately.

In case the decision of the tax authority has been allowed at the administrative level or in the court authorized persons can be prosecuted with penalties in case of additional arguments because of the tax evasion.

## Double Taxation Treaty Ukraine/Cyprus Why the Ukrainian oligarchs invest through Cyprus and Ukraine

The relations between Ukraine and Cyprus are regulated by the Double Taxation Treaty as of 29.10.1982 between the former USSR and the Republic of Cyprus. Most dividends, interests and royalties paid from Ukraine to Cyprus are fully free from the withholding tax in Ukraine. The tax burden of such income in Cyprus is very low.

Cyprus is one of the biggest foreign investors in Ukraine, there are assumptions that the invested capital origins from Ukraine mostly. For many foreign investors it is a sensitive issue to found a Cypriote holding company for business activities in Ukraine.

Important: tax exemptions or the application of the reduced tax rates in line with the DTTs are granted in Ukraine only when a resident certificate is available. The resident certificate is issued by the authorized non-resident bodies and shall be translated and endorsed with an Apostille yearly.

The regulations of the Double Taxation Treaties between Ukraine/Cyprus summarized:



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Kinds of income	Income under the Double Taxation Treaty	Notes
Income from the permanent rep office	Taxable in Ukraine	Income from the business activity of the permanent rep office, except for the administrative, managerial and other business related expenses.
Income from the international transportations	Not taxable in Ukraine	International transportation of freights and passengers by <u>any kinds of carriers</u> between Ukraine and Cyprus.
Royalties and licences	Not taxable in Ukraine	
Dividends	Not taxable in Ukraine	
Interests	Not taxable in Ukraine	

Immovable property and income from its purchase or use	Taxable in Ukraine only	The immovable property that belongs to the Cypriot resident and is placed in Ukraine.
Movable property from its purchase or use	Not taxable in Ukraine	The property that belongs to the Cypriot resident and is placed in Ukraine.
Salaries and other respective payments	Not taxable in Ukraine	Provided that: <ul style="list-style-type: none"> <li>– The Cypriot resident conducts the activity in Ukraine, stays in Ukraine for not more than 183 days within a calendar year, the technical specialist</li> <li>– 365 days within 2 consequent oncoming years;</li> <li>– The salary (other respective payments) is paid by a non-resident or on its behalf.</li> </ul>
Salaries and other respective payments	Taxable in Ukraine	Provided that: <ul style="list-style-type: none"> <li>– The Cypriot resident stays in Ukraine for 184 days and longer;</li> <li>– The salary (other respective payments) is paid by the Ukrainian resident</li> </ul>
Pension fund, financial aid and respective payments	Not taxable in Ukraine	
Other income	Not taxable in Ukraine	

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