Kyiv Tax Newsletter 2021 - Key Tax Amendments

January 14, 2021

Here below we have summarized the key tax changes that took effect on January 1, 2021:

1.**Principal Purpose Test**. The provisions on “Business purpose of a transaction” remain in force and the adjustment of the pre-tax profit for transactions that have no business purpose has been clarified. If the tax authority proves the absence of a business purpose in these transactions, the pre-tax profit of the corporation taxpayer shall be increased by the full amount of the cost of such acquired goods (works, services).

2.**New tax form**. The Ministry of Finance has approved a new form for the unified tax calculation of the incomes paid to individuals and the amounts withheld: personal income tax, the unified social contribution and military tax. Tax agents shall file reports on the new form starting from the first quarter of 2021.

3.**Single tax account**. The provisions of the Tax Code of Ukraine (the “TCU”) governing the operation and use of a single tax account, which can be used by a taxpayer to pay monetary obligations and/or tax liabilities for taxes and fees as provided by the TCU, the unified contribution and other payments have entered into force. Control over payment of such fees and taxes is vested in the tax authorities, except for payment of tax liabilities for (i) the value added tax ("VAT"), (ii) excise tax on the sale of fuel and ethyl alcohol, (iii) the payment of a share of the net profit (income) by state and municipal unitary enterprises and their associations.

4.**Taxation of sale of real estate companies**. There is a new procedure for evaluating a long-term lease of immovable property as an asset for the purposes of taxation of income derived from the sale of shares or participatory interest in Ukrainian companies, 50% or more of the value of which is derived from their own and/or leased immovable property.

5.**Property lease from individual entrepreneurs**. The legislator has allowed individual entrepreneurs who are payers of the unified tax to lease out residential premises, the total area of which does not exceed 400 square meters, and non-residential premises with an area of up to 900 square meters.

6.**Master file as part of transfer pricing documentation.** The provisions on the preparation and submission of global transfer pricing documentation (master file) by taxpayers that form part of an international group of companies (if the total consolidated income of the international group of companies is equal to or exceeds the equivalent of €50 million) have entered into force. The State Tax Service of Ukraine may request submission of global documentation (master file) no earlier than 12 months and no later than 36 months from the financial year-end date set by the international group of companies, and in the absence of information on the financial year set by the international group of companies, no earlier than 12 and no later than 36 months from the end of the respective reporting year. The master file shall be submitted by a taxpayer within 90 calendar days from the date of receipt of the request.

7.**New tax assessment notice**. A new procedure for drawing up and sending tax assessment notices providing for the assessment of additional tax liabilities, financial sanctions and bringing responsible persons to financial liability has entered into force. It provides for functioning of the Unified Register of Tax Assessment Notices.

8.**The grounds for conducting factual unscheduled audits have been expanded**. Starting from January 1, 2021, the tax authorities may conduct factual audits only if they have received information that may indicate a violation by a taxpayer of the laws in the field of production and circulation of alcohol, alcoholic beverages, tobacco products, liquids used in electronic cigarettes and fuel.

9.**New tax objection procedures**. In case the taxpayer disagrees with the conclusions of the audit or the facts and data set out in the audit report (certificate) that is prepared as a result of scheduled, in-house, unscheduled or factual audit, such taxpayer has the right to submit their objections and additional documents and explanations to the tax authority that conducted the audit, within 10 business days from the day following the day of receipt of the audit report (certificate). Starting from January 1, 2021, all objections to the audit report (certificate) shall be considered exclusively by the commission for consideration of objections, which is a permanent collegial body of the relevant tax authority.

10.**New statutory periods for tax liabilities**. New rules on the application of statutes of limitations and the procedure for holding individuals and legal entities liable for committing tax offenses (for unlawful, wrongful acts) and violations of tax laws and other legislation, the control over which observance is vested in the tax authorities, have entered into legal force and effect on January, 1, 2021.

11.**Differentiated financial sanctions**. The amount of financial sanctions in case of assessment by the tax authority of the amount of tax liability and/or any other obligation, the control over which payment is vested in the tax authorities, the reduction of the budgetary refund or establishment of the facts of use of tax benefits for purposes other than intended, have been differentiated:

- A penalty equal to 10% of the amount of the determined obligation and/or the overstated amount of the budgetary refund;
- A penalty equal to 25% of the amount of the determined obligation and/or the overstated amount of the budgetary refund for acts *committed wilfully*;
- A penalty equal to 50% of the amount of the determined obligation and/or the overstated amount of the budgetary refund for acts *committed repeatedly during 1095 days*;

New rules for the application of financial sanctions for violation of the rules of assessment, deduction and payment of taxes in connection with the payment of income at source in favour of non-residents have entered into force, and the rules for assessment and payment of penalty have been changed.

12.**Compensation of damage caused by tax authorities**. The provisions on compensation for damage to taxpayers in connection with tax offenses committed by tax authorities have entered into force.

13.**New thin capitalization rules**. Starting from January 1, 2021, an enterprise with an amount of debt obligations under transactions with all non-residents exceeding the amount of its equity more than 3.5 times shall increase the pre-tax financial result by the amount that exceeds the accrued interest on debt obligations by more than 30% of the amount of the taxable profit increased by the amount of financial expenses and the amount of depreciation. If the calculated index is negative, the pre-tax financial result shall be increased by the full amount of interest assessed on transactions with non-residents in the reporting period. A portion of the depreciation charges attributable to the amount of interest expenses capitalized as part of the value of a non-current asset before its commissioning shall be added to the amount of such interest expenses assessed on transactions with non-residents during the reporting (tax) period.

No adjustment shall be made for:

- The amount of interest recognized as inconsistent with the arm's length principle;
- The amount of interest accrued in favour of international financial organizations, the enforcement of which is secured by state or local guarantees;
- The amounts of interest assessed in favour of foreign banks.

14.**VAT rate has been reduced to 7%** for transactions on supply of services for holding theatrical, opera, ballet, musical, concert, choreographic, puppet, circus, sound, light and other performances, cinematic premieres, cultural and artistic events, excursions to museums, zoos, and provision of services for temporary accommodation (residence).

15.**Taxation of Controlled Foreign Corporations (CFC) is postponed**. The rules providing for the reporting and taxation of foreign companies and organizations without legal personality that are directly or indirectly owned or controlled by residents of Ukraine have been postponed until January 1, 2022.

16.**Tax exemption of CFC's liquidation incomes** . For the purposes of exemption from taxation of income derived/to be derived by individuals resident in Ukraine in 2021 from the liquidation of foreign companies (CFC) owned or controlled by such individuals, an additional requirement has been set. Such requirement stipulates that a foreign legal entity or a foreign organization without legal personality shall be established (registered) no later than May 23, 2020, and two possible scenarios for obtaining/receiving income from the liquidation of the CFC have been identified:

- Directly by a shareholder (participant, partner, paid holder, founder, controlling person); or
- Indirectly by the ultimate beneficial owner (controller) from the nominee holder (nominee owner).

Concerning the CFC rules, please ask a question to our chatbot at the link: **https://t.me/DentonsTaxBot**

Your Key Contacts

Valeria Tarasenko
Tax Consultant, Kyiv
D +380444944774
valeria.tarasenko@dentons.com