



Legislation in force

Letter #16986/10/26-15-15-03-11 of the Central Administration of the State Fiscal Service (SFS) of Ukraine dated 06 November 2015 as to the free of charge transfer of tangible assets (fixed assets) to the entity from a non-resident supplier

Pursuant to the mentioned letter the taxmen have come to the following conclusions:

- when importing, to the customs territory of Ukraine, of goods for future use in business activities, VAT amounts shall be allocated to tax credit, given there is available a customs declaration formalised in compliance with the legislation and certifying that tax had been paid;
- in case of free of charge delivery of goods/services, VAT base shall be determined at the level not lower than purchase price of goods/services (for self-manufactured goods/services – not lower than their cost);
- original cost of fixed assets received free of charge, which includes transportation costs, import duties, costs on insurance against delivery risks of fixed assets, other costs directly related to bringing fixed assets to the condition suitable for intended use, shall be depreciated.

Besides, the taxmen note that for accrual of corporate income tax for transactions with non-residents it is necessary to take into account the requirements of Article 39 of the Tax Code of Ukraine (TCU).

Letter #25655/10/28-10-06-11 of the SFS of Ukraine dated 18 November 2015 as to the liquidation of fixed assets by the self-decision of a taxpayer

This letter states that:

- liquidation of fixed assets for tax purposes is not considered as supply, in the event where the liquidation is carried out without taxpayer's consent (liquidation in connection with destruction or damage resultant from force majeure, in case of theft);
 - taxpayer shall confirm the mentioned circumstances either by documents as prescribed by the law (certificate from the Ukrainian Chamber of Commerce and Industry, acts issued by government, law enforcement or judicial authorities, etc.) or by submitting to the regulators of the relevant documents regarding destruction, disassembly or conversion of fixed assets;
 - documents are submitted together with VAT return for the reporting period in which such circumstances arose and liquidation of fixed assets is carried out;
- if fixed assets are liquidated by self-decision of a taxpayer, liquidation is regarded, for tax purposes, as supply of assets.

NBU Resolution #822 "On Amendments to the Regulation on the procedure and terms of foreign exchange trading", dd 26 November 2015

The National Bank of Ukraine made even more stringent rules for purchase of foreign exchange under foreign economic agreements that require entities and entrepreneurs to buy or exchange foreign currency under foreign economic agreements through one bank and establish the procedure for redirecting bank service contract to another bank.

Letter #25227/10/28-10-06-11 of the SFS of Ukraine "Regarding VAT", dd 11 November 2015

The taxman provided clarifications that in case goods or non-current assets are transferred free of charge and tax credit is recorded upon purchase of those, a taxpayer should represent tax liability twice, namely: "to reverse" tax credit and to record tax liabilities of free transfer.

Letter #26114/10/28-10-06-11 of the SFS of Ukraine dated 27 November 2015 as to the taxation of non-current tangible assets

In this letter the SFS reports that:

- expenses incurred to maintain the facility in good working condition (to perform inspection, supervision, maintenance, repairs, etc.) and to calculate the amount of initially determined future economic benefits from its use, shall be included in expenses;
- expenses on improvement of fixed assets to restore future economic benefits expected from their use, shall be recognised as capital investments, given book value of an asset does not exceed its recoverable value;
- depreciation is accrued during useful life (operation) of an item, that is set by an entity (in the executive order) upon recognition of the item being an asset (upon crediting to the balance sheet), and suspended for a period of reconstruction, modernization, further construction, retrofit and preservation;
- following items are not depreciated and purchased at the expense of respective funding sources: cost of goodwill; expenses on purchase/ self-production and repairs, as well as reconstruction, modernization or other improvements of non-productive assets.

Letter #26492/10/28-10-06-11 of the SFS of Ukraine "On the order of registration in the Unified Register of Tax Invoices of calculations of adjustments to tax invoices drawn up by 01 February 2015", dd 04 December 2015

In this letter the taxmen clarify the following: calculations of adjustments to tax invoices (which are not issued to the recipient) prepared up by a taxpayer by 01 February 2015, and prepared during receipt of services from a non-resident, which place of supply is determined as customs territory of Ukraine, are subject to the registration in the Unified Register of Tax Invoices (URTI).

Therefore, calculation of adjustment, which implies reducing compensation of goods/services value to their supplier, made since 01 July 2015 to the tax invoice prepared until 01 July 2015 (including until 01 February 2015) for the taxpayer buyer, shall be registered in the URTI by the recipient (buyer) of the goods/services.

Order #897 of the Ministry of Finance "On approval of the form of corporate income tax return", dd 20 October 2015

Since 2015 income taxpayers determine CIT base under new rules. The base shall be a financial result according to the accounting plus/minus differences. In this regard, a new form of return was adopted in accordance with the above Order #897 of the Ministry of Finance. This form was published in the "Official Bulletin of Ukraine" (issue #39) on 01 December 2015.

Resolution #863 of the NBU Board "On settlement of the situation in the money and foreign exchange markets of Ukraine", dd 04 December 2015

This resolution has kept effective such requirements as mandatory sale of foreign exchange earnings/inflows in Ukraine received in favour of legal entities in the amount of 75%, settlements within 90 days under transactions of exportation and importation of goods, ban to early repay foreign currency credits/loans by residents under contracts with non-residents and others.

Letter #26598/10/28-10-06-11 of the SFS of Ukraine dated 07 December 2015 as to the payment of personal income tax due to the change of legal address

This letter states that in the case of change of location associated with the change of administrative district, business entity shall pay personal income tax and submit tax calculation of form 1DF at its previous location by the end of the current budget-year.

Law of Ukraine #815-VIII "On Amending the Law of Ukraine "On State Registration of Legal Entities and Individual Entrepreneurs" as to the impossibility to amend the Unified State Register of Legal Entities and Individual Entrepreneurs on the basis of counterfeit documents", dd 24 November 2015

For state registration of changes to the founding documents a legal entity shall, in particular, present a certified copy of the decision to amend the founding documents.

In particular, a certified by a notary copy will be required in case of change:

- head or persons who elected (appointed) to the governing body of the legal person, or persons who have the right to bring actions on behalf of legal entity without a warrant;
- name of legal entity;
- founders (shareholders) of legal entities.

The law came into force on 13 December 2015.

Letter #26508/10/28-10-06-11 of the Central Administration of the Interregional Directorate of SFS of Ukraine dated 04 December 2015 as to the revaluation of fixed assets for tax purposes

In particular, the letter states that the depreciation of re-valued fixed assets, according to Article 138 of the TCU, does not contain requirements as to the additional adjustments that will lead to review and reduction of accrued depreciation due to the fact that value of fixed assets was re-valued.

Resolution #1028 of the Cabinet of Ministers "On amending the order for confirmation of employment history in order to award a pension in case of absence of employment record book or respective records therein" of 09 December 2015

In case of loss of the employment record book by an employee or in case of missing records as to the period of employment, the employment history may be confirmed by the following documents: certificates/reference statements, extracts from orders, personal accounts and payroll slips, identity documents, characteristics, written employment contracts and agreements with notes on their fulfilment and other documents. Apart from these documents, data from the Register of insured persons maintained by the Pension Fund of Ukraine will be taken into account henceforth.

Besides, the Cabinet of Ministers has made a ruling: workers of organizations, institutions and enterprises located on the temporarily occupied territory of Ukraine or in ATO area, in case the employment record book is absent or it contains incorrect entries), pension insurance record will be confirmed on the basis of data from the mentioned Register of insured persons.

Law of Ukraine #816-VIII dd 24 December 2015 which amended the Law of Ukraine "On Business Partnerships" #1576-XII dd 19 September 1991

From now on, a general meeting is considered quorate, if it is attended by participants (proxies of participants) who own in aggregate more than 50% of votes.

Constituent documents of a company without a government take in its authorized capital may establish other percentage of votes (proxies of participants), whose presence is mandatory to consider a general meeting to be quorate.

At the same time it was established: charters of LLCs before they are brought in conformity with Law #816 shall be valid to the extent they do not contradict the mentioned Law.

The Law came into force on 13 December 2015.

The SFS of Ukraine in its Letter #24856/6/99-99-19-02-02-17 dd 23 November 2015 noted that an entity should enter expenses on purchase of fuel and lubricants when determining financial result before tax in line with the accounting rules, given the expenses are confirmed by duly executed source documents.

The list of obligatory requisites in source documents is determined in the Law on Accounting:

- title of the document (form);
- date and place of preparation;
- name of the entity on which behalf the document is issued;
- content and volume of business operation, measuring unit of the business operation;
- positions of the persons responsible for a business operation and correct recording of the operation;

personal signature or other data that enables to establish the identity of the person involved in the implementation of the operation.

Resolution #1033 of the Cabinet of Ministers of Ukraine "On Amendments to the Property Valuation Methods" dd 25 November 2015

The Regulation has significantly updated the property valuation rules approved by Resolution #1891 of the Cabinet of Ministers of Ukraine dd 10 December 2003.

In particular, the new valuation method establishes:

- procedure for evaluation of privatization objects that belong to different groups for different methods of privatization taking into account the specificity of sale of the objects;
- order of evaluation of privatization objects for the purpose of privatization through innovative ways of selling (open bidding similar to the auction, method of price cutting without declaring prices);
- organizational and methodological principles of evaluation of construction-in-progress objects, including for the purpose of privatization by selling for disassembly;
- specifics of evaluation of objects privatized under the Law of Ukraine "On peculiarities of property privatization in agro-industrial complex";
- order and algorithm of calculating the amount of increase in value of equity through additional capital and profits to increase authorised capital.

Letter #26024/10/28-10-06-11 of the SFS of Ukraine dd 25 November 2015 as to the monetary value of land plots

The taxmen reminded that to determine the land tax and rental rates a standard monetary value of land plots is used.

If a decision of the local authorities as to standard monetary value of land located within settlements, is officially adopted and promulgated by relevant local authorities by July 15 of a current year, the requirements specified in the decision shall be applicable from January 1 of the next budget year.

In the case the decision is promulgated after July 15, the requirements specified in the decision shall be applicable from January 1 of the budget period following the schedule period.

Landlords and land users can receive information about the amount of standard monetary value of land plots from subordinate bodies of the Derzhzemahenstva that maintain state land cadastre and ensure that information about all land plots is complete and accurate.

In addition, the taxmen underlined that the Tax Code does not provide for mandatory submission by the land tax payer of annual statement as to amount of standard monetary value of his land. This statement is mandatory submitted only in certain cases: upon the first presentation of the declaration (upon the actual commencement of activities in the capacity of the land tax payer), and thereafter - in case a new approval of the standard monetary value.

Letter #40-02010/100132 of the National Bank of Ukraine dd 16 December 2015 as to the procedure of sale of foreign receipts

The National Bank provided clarifications as to the procedure of sale of currency receipts in the period of finishing the fiscal year. For instance, revenues in foreign currency credited on 30 December 2015 are subject to mandatory sale on 5 January 2016, and revenues credited on 31 December 2015 and 1 - 5 January 2016 – subject to mandatory sale on 6 January 2016.

Earlier, the regulator in its Letter #53-03006/98145 dd 10 December 2015 notified about working hours of the bank system in the period of the reporting year finishing.

Resolution #1035 of the Cabinet of Ministers of Ukraine dd 16 December 2015 "On Restriction of supply of certain goods (works, services) from the temporarily occupied territory to another territory of Ukraine and/or from the other territory in Ukraine to the temporarily occupied territory"

This Resolution of the CabMin introduced a ban, for the period of temporary occupation, on supply of goods (works, services) under all customs regimes from the temporarily occupied territory to another territory of Ukraine and/or from other territory of Ukraine to the temporarily occupied territory, except for:

- personal belongings determined in cl. 1 Article 370 of the Customs Code of Ukraine (except for the goods specified in cl. 24 part 1 of this article) transported in a carry-on baggage and/or accompanied baggage;
- socially important food products carried by persons, which total value does not exceed the equivalent of 10 kUAH and total weight does not exceed 50 kg per a person according to the list in the annex.

Additionally, it is noted that the Resolution does not apply to:

- supply of electricity from the temporarily occupied territory to another territory of Ukraine and/or from other territory in Ukraine to the temporarily occupied territory, which is carried out in accordance with the decision of the National Security and Defence Council of Ukraine;
- supply of goods of strategic importance for industries and state security from the temporary occupied territory to another territory of Ukraine under approval of the Ministry of Economic Development and Trade.

Please contact us on:

Iryna Igumnova,
Managing Partner
igumnova@kagaudit.com

Tetiana Kyrylenko,
Partner
kirilenko@kagaudit.com

This Alert issue should not be regarded as a consultation. Its single purpose is to provide update on changes to the legislation.

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