



#18-19 28 April 2015

**Tax news
(06-27 April 2015)**

Legislation in force

Order of the State Fiscal Service of Ukraine #247 "On approval of the Summarised consultation as to the including in tax relief of expenses incurred last year for payment of studies for the months of the fiscal year" of 06.04.2015

According to sub-cl. 166.3.3 Art. 166 of the TCU a taxpayer is entitled to include in tax relief for reduction of taxable income of the taxpayer based on the results of the fiscal year determined considering the provisions of cl. 164.6 Art. 164 of the TCU, the expenses actually made for the fiscal year as a sum of money paid by taxpayer in favour of educational institutions, to compensate for the cost of secondary vocational or higher education of the taxpayer and/or his family members in the first-degree relation who do not get salary. At that, such amount may not exceed the income specified in par. 1 sub-cl. 169.4.1 Art. 169 of the TCU per each individual student for each full or partial month of learning during the fiscal year.

Members of the family of the individual are considered first-degree relatives: parents, spouse, children, including adopted. Other family members of the individual are considered to have relations of the second degree (sub-cl. 14.1.263 Art. 14 of the TCU).

Clarification of the State Fiscal Service of Ukraine on the "Procedure for compiling a tax invoice when delivering own produced goods" of 08.04.2015

When production cost of own produced goods exceeds contractual value (contractual value is the basis for determining tax liabilities on the date of prepayment and, accordingly, a respective tax invoice prepared) of goods upon their posting to the balance sheet of the company/institution, on the date of posting the taxpayer should prepare another tax invoice based on the difference between production cost and contractual value of the goods. In the tax invoice prepared based on the difference between the production cost and the contractual value, the top left part of the document should be marked with "X" and the type of reason indicated: 17 - prepared for excess amount of cost of own produced goods/services over actual cost of delivery. This tax invoice is subject to the mandatory registration in the Unified Register of Tax Invoices.

If the first event in the delivery of own produced goods is the shipment of goods and its production cost exceeds contractual value, on the date of the shipment, a taxpayer should issue two tax invoices: one based on contractual cost of goods, and other - for difference between production cost and contractual value with the type of reason 17 - prepared for excess amount of cost of own produced goods/services over actual cost of delivery.

Letter of the State Fiscal Service #5996/7/99-99-20-07-03-17 "Problematic issues of the application of tax compromise"

The Coordination and Monitoring Department of the State Fiscal Service of Ukraine provides a list of Questions and Answers that were received in course of the implementation of the Law of Ukraine #63-VIII "On amending the Tax Code of Ukraine as to the peculiarities of clarifying corporate profit tax liabilities and value added tax in case tax compromise is applied" of 25.12.2014.

Letter of the State Fiscal Service #12518/7/99-99-17-03-01-17 "On providing clarifications as to the application of reducing coefficient" of 09.04.2015

Herewith the State Fiscal Service of Ukraine explains that in calculating all indexes for computing the reducing coefficient salary of disabled employees and their number is not taken into account.

Additionally it is worth noting that the reducing coefficient is not applied by single tax payers mentioned in par. 7 cl. 1 part 1 Art. 4 of Law #2464, i.e. military units and bodies paying cash security.

It should also be noted that the reducing coefficient is applied in the cases including salary (income) accrual to physical persons from sources not at the basic working place, i.e. salary accrued for a part-time worker is also included for the calculation of reducing coefficient.

NBU's Resolution #257 "On the fulfilment of the cash letter (collection order)"

Given the compliance with the conditions provided for in cl. 32 sub-sec. 10 section XX "Transitional provisions" of the TCU, banks accept and fulfil cash letters (collection orders), in order to collect tax debt that was formalized by the body of the State Fiscal Service on the ground of a decision of the head of the regulatory body. In the line "purpose of payment" of the cash letter (collection order) the collector specifies the name, date of issuance and number (if any) of the decision of the head of the regulatory body. The decision of the head of the regulatory body which was the basis for formalizing the cash letter (collection order) shall not be submitted to the bank.

On a temporary basis, until July 1, 2015, collecting of cash from taxpayer's accounts with banks is effected according to the decision of the head of the regulatory body in an out-of-court way, given the tax debt was resultant from the failure to pay for monetary liability that had been determined by the taxpayer on his own in the tax return or clarifying calculation submitted to the regulatory body within the established by the Tax Code of Ukraine terms.

For this purpose the following conditions must be met: tax debt is over 5 m UAH and the state bodies do not owe any tax amount mistakenly paid and/or overpaid by such taxpayer.

The resolution has taken effect since 18.04.2015 and will be effective until 01.07.2015.

NBU's letter #25-02002/24990 "Clarification on the implementation of the obligatory financial monitoring" of 15.04.2015

Herewith the NBU provided explanations that money remittance abroad under **foreign economic agreements in the amount from 150,000 UAH** is subject to the obligatory financial monitoring. An exception may be the remittances under the agreements specifying actual delivery of goods into the customs territory of Ukraine. For a relevant analysis for identification of the transactions subject to obligatory financial monitoring for over 150,000 UAH, actual delivery is considered the actions related to ensuring supply into the customs territory of Ukraine of goods considered movable things by the Customs Code of Ukraine.

Clarifications of the State Fiscal Service of 16.04.2015 "How to correct an error in annex 7 "Calculation (recalculation) of a part of usage of paid (accrued) tax on purchased (imported) goods/services, non-current assets between taxable and tax-exempt transactions (D7)" to the VAT return which had or had not impact on monetary measures of the VAT return?"

The State Fiscal Service explained that in case in the earlier submitted VAT return there have been made errors in the lines which imply annexes to be filed together with the refining calculation or a tax return including refining data, the relevant annexes with refining calculations are to be filed (cl. 3 Section IV Procedure #966).

Annex #7 "Calculation (recalculation) of a part of usage of goods/services, non-current assets in taxable transactions (D7)" may be filed as "refining".

Annex #7 is a part of the tax return and it must be submitted if line 15 is filled in and/or lines 16.4, 16.6 of the tax return.

In other words, since annex 7 is a part of the tax return, correction of errors arisen in course of filling in of annex 7 regardless of whether such error impacted or not the monetary measures of the tax return, is effected by filing a refining calculation with annex 7 annexed to it and marked as "refining" containing the updated data.

However, in case of change in annex 7 of the part of usage of paid (accrued) tax on purchased (imported) goods/services, non-current assets between taxable and tax-exempt transactions, which was determined based on the results of the previous year and used in the current year, the figures in line 15 of tax returns for reporting periods starting from the beginning of the year must be recalculated by filing of refining calculations for respective reporting periods.

Law of Ukraine #259 "On amending some legislative acts of Ukraine regarding improvement of certain mobilization issues and issues of social protection of the Ukrainians subject to the exemption from military service during a specific period or in case of demobilization announced"

According to the document the employees who were wounded (got other health damages) when performing active military service and are staying in the health care facilities or have been taken captive, or missing, shall reserve their working place (position) and average salary in the company, entity, organisations.

Besides, military servants who were mobilized for a specific period have additional guarantees of social protection for the annual vacation. In addition, there are guarantees of deferred recurring call-in during 6 months in case of partial mobilization.

The Law has taken effect since 15.04.2015.

Law of Ukraine #2381 "On amending Article 69 of the Tax Code of Ukraine as to the simplification of business conditions"

The Law of Ukraine allows to simplify the procedure of registration of taxpayer's accounts by the regulatory bodies, in connection with the principle of tacit consent in the tax field, which, in turn, will significantly simplify business for thousands of entrepreneurs and improve Ukraine's position in the rating Doing Business-2016 according to the criterion "registration of companies".

The Verkhovna Rada adopted the law on April 21, 2015.

Law of Ukraine of 23.04.2015 "On amending Article 287 of the Customs Code of Ukraine (for creating favourable conditions to ensure the fulfilment of state contracts on defence orders and agreements on supply of defence products)" under draft #1695 of 12.01.2015

Components (materials, units, devices, equipment and component parts) imported to the customs territory of Ukraine under import regime for use in the production of defence products as determined in the law, given the customer of such products is the state customer determined by the Cabinet of Ministers of Ukraine according to the UKT ZED shall be exempt from import duty.

The procedure for importing and special purpose use of the goods mentioned in this part is determined by the Cabinet of Ministers.

The above goods will be taxed with import duty if they are originated from the occupier country according to the law and/or aggressor country towards Ukraine under the applicable legislation or imported from the territory of the occupier (aggressor) country and/or occupied territory of Ukraine considered, as such, according to the law.

Clarifications of the State Fiscal Service of 20.04.2015 "Whether military tax is imposed on income of physical person from transactions with currency valuables?"

The State Fiscal Service responded that since income received by a taxpayer from transactions with currency valuables (except for securities) related to the transfer of ownership title to such currency valuables is not exempt from military duty which is charged in accordance with the usual procedure.

Duty rate is 1.5% of the taxable object specified in sub-cl. 1.2 cl. 16 note 1 sub-section 10 section XX of the Code.

Accruing, deducting and payment (transfer) of the duty to the budget shall be performed according to the procedure established in Art. 168 of the Code (sub-cl. 1.4 cl. 16 note 1 sub-section 10 section XX of the Code).

Tax agent that accrues (pays, provides) taxable income in favour of the taxpayer shall charge duty on income amount applying 1.5% rate and pay it at the expense of income amount (sub-cl. 168.1.1 cl. 168.1 Art. 168 of the Code).

Clarifications of the State Fiscal Service of 21.04.2015 "Which counterparty (supplier or buyer) must register in the Unified register of tax invoices the calculation of adjustment to tax invoice, providing the adjustment of quantitative and qualitative indexes, ultimately, will not change the amount of compensation for goods/service value (tax invoice was prepared with violations of the order of its filling in, classification of goods has been changed, etc.)?"

The State Fiscal Service responded that cl. 22 of the procedure #957 determines that calculation of adjustment to the tax invoice prepared by supplier/vendor of goods/services which was issued to the taxpayer shall be entered into the Register:

- by supplier/vendor of goods/services if the compensation for goods/service value is expected to be increased in favour of such supplier/vendor or if the adjustment of total quantitative and qualitative indexes does not change the compensation amount

- by recipient/buyer of goods/services if the compensation for goods/service value is expected to be decreased for which purpose the supplier/vendor provided the calculation of adjustment to the recipient/buyer. For this purpose, the supplier/vendor, pursuant to the general procedure, prepares calculation of adjustment, marks it with "X" in the upper left part and sends it to the recipient/buyer. Electronic signatures of supplier/vendor and recipient/buyer's officials shall be affixed on such calculation of adjustments in accordance with the law.

Calculation of adjustment prepared for a tax invoice issued before February 1, 2015, as well as calculation of adjustments to tax invoices that are not issued to the recipient/buyer, a taxpayer (given legal grounds for drawing up such calculations of adjustment) are subject to be registered in the Unified Register of tax invoices by supplier/vendor.

Calculation of adjustment to tax invoice that was prepared by recipient/buyer of services from a non-resident, which place of service supply is located on the customs territory of Ukraine shall be registered in the Unified register of tax invoices by recipient/buyer of those services.

Draft modifications to legislative instruments

Draft Law "On amending the Tax Code of Ukraine as to the change of some tax and duty rates" of 03.04.2015

This draft law provides for annual review of tax rates in absolute values, taking into account consumer price indexes, price indexes of industrial producers, in respect of such taxes and duties as: excise tax, ecological tax and rental which will allow to ensure the compliance of the mentioned tax rates and duties with inflation processes in the economy and will enable to get inflow to the consolidated budget of Ukraine.

Draft Order "On approval of the procedure for consideration of the cases related to the violation of the legislation regulating activities in the sphere of counteraction of the legalisation (laundry) of proceeds received in a criminal way, terrorism financing and spread of mass destruction arms, and application of sanctions" of 06.04.2015

Draft order suggests approving the procedure for consideration of cases on violation of the legislation regulating activities in the sphere of counteraction of the legalisation (laundry) of proceeds received in a criminal way, terrorism financing and

spread of mass destruction arms, and application of sanctions.

The procedure establishes the order of consideration by the Ministry of Justice/ Department of Justice of the cases related to the violation of the legislation regulating the law on monitoring and application of sanctions.

The procedure applies to the primary reporting entities that are supervised by the Ministry of Justice, in particular, notaries, attorneys, law bureau, firms of attorneys, and business entities providing legal services (except for persons providing services within labour relations).

The procedure specifies formalizing of facts of violation by Entities of the legal requirements of financial monitoring detected in course of checks by the Ministry of Justice/Department of Justice of the procedure of notifying an Entity about consideration of the case related to their violation of the legal requirements of financial monitoring, grounds for closure of proceedings, order and amount of sanctions for violation of the legal requirements of financial monitoring.

Draft Law of Ukraine #2593 "On Amending the Tax Code of Ukraine as to the clarification of the procedure for application of tax compromise" of 07.04.2015

2 months after the new tax legislation has come into force, it becomes clear that tax compromise mechanism has not justified the expectations placed on it. At present, the implementation of the tax compromise is at a dead end for several reasons:

- Firstly, businesses are afraid to use it. Entrepreneurs are afraid to be brought criminally liable under other articles or accrue bigger debt amount. And their fears are founded. According to the official statistics there have been initiated over 700 cases for January only.
- Secondly, the procedure for achieving tax compromise is not explicitly stated, which is characteristic of corruption factor. An entrepreneur pays 5% and his application is kept by a government official and depending on his will the application for tax compromise will be accepted or won't, at that the duration of tax compromise mechanism is limited – until April 17.
- Thirdly, businesses do not have the possibility to pay the agreed 5% of debts by instalments. At present many companies are experiencing financial difficulties. Hence, if the compromise amounts to a few hundred thousands or even a million, it may be a problem to pay in lump sum.

The purpose and tasks of the draft law: a) to extend the duration of tax compromise mechanism until June 1 2015; b) to simplify the procedure to the maximum extend by eliminating corruption factors.

Draft Law of Ukraine #1861 "On Amending the Tax Code of Ukraine as to the transfer pricing" of 27.01.2015 (adopted in the first reading on 23.04.2015)

The Verkhovna Rada has taken as a basis Draft Law #1861 which suggests to elaborate certain provisions on regulating transfer pricing in Ukraine by introducing amendments to the TCU, in particular:

- **deleting** the provisions which apply transfer pricing rules in charging VAT;
- increasing from 5 mUAH **to 20 mUAH** the scope of controlled procedures with one counterparty, when reaching that level taxpayers shall file reports on controlled transactions to the central body of executive power implementing state tax and customs policy, until May 1, following the reporting year;
- specifying the definition of "related parties", namely, when determining the "relatedness" of parties to increase from 20% **to 50%** the share in corporate rights per each party in the next legal entity in the chain;
- enshrining in law the necessity to list the exchange-traded products according to the Cabinet of Ministers of Ukraine;
- specifying the liaison protocol between territorial bodies and central body of executive power responsible for forming and implementing state tax and customs policy, in case such body detected the fact of conducting controlled transactions by a taxpayer without a relevant report on the transactions;
- **reducing penalty** for non-declaring of controlled transactions from 5% **to 1%** from the amount of undeclared in the report controlled transactions;
- technical corrigendum as to the determining of level of profitability of controlled transactions in the context of transfer pricing, determining regular prices, etc.

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

We recommend applying for professional advice in each individual case.



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