Thinking Beyond Borders: Management of Extended Business Travelers - Ukraine

July 2023

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Key message

1 Key message

Individuals are subject to Ukrainian income tax as either tax residents or tax non-residents. Residents are taxable in Ukraine on their worldwide income, whereas non-residents are taxable on their Ukrainian-sourced income, which, inter alia, includes remuneration for the work performed in Ukraine, whether paid by a resident or by a non-resident company. Nevertheless, both residents and non-residents are taxable at the same tax rates.

However, if double tax treaties concluded by Ukraine provide for other taxation rules than those provided in the domestic legislation, provisions of the treaties prevail.

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Income tax

2 Income Tax

2.1 Liability for income tax

An individual's tax liability in Ukraine depends on whether the individual is viewed as a Ukrainian tax resident or a non-resident. While Ukrainian tax residents are taxable in Ukraine on their worldwide income, tax non-residents are taxable on their Ukrainian-sourced income which, inter alia, includes remuneration for the work performed in Ukraine, whether paid by a resident or by a non-resident company.

The concept of tax residency incorporated in Ukrainian law is similar to that of most international double taxation agreements.

According to the Ukrainian law, an individual can choose Ukraine as the country/jurisdiction of their tax residency if they determine that their main permanent place of residence (either owned or leased) is on the territory of Ukraine.

2.2 Tax trigger points

Under domestic law, there is no threshold/minimum number of days that exempts the individual from the requirements to pay tax in Ukraine. However, if a relevant double tax treaty provides for different taxation rules, the provisions of the treaty will prevail.

2.3 Types of taxable income

In general, taxable income includes any income received in-cash, in-kind and in the form of a material benefit. For extended business travelers, the types of income, which are generally taxed, are employment income and any Ukrainian-sourced income.

2.4 Tax rates

Most type of the income is taxed at 18 percent personal income tax rate.

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Military tax

3 Military tax

3.1 Liability for military tax

Since July 2014 the Ukrainian parliament introduced the 1.5 percent military tax for the needs of the Ukrainian army.

The base for taxation is the same as for personal income tax. The payers of the military tax are both - residents and non-residents of Ukraine.

04

Social security

4 Social security

4.1 Liability for social security

According to the provisions of the Ukrainian legislation, an individual becomes enrolled in the Ukrainian state social security system upon signing an employment agreement with his/her Ukrainian employer. Starting the date of the signing of the employment agreement, the employer is responsible for accrual and payment of social security contributions (SSC) at its own expense to the state budget. Payment of the SSC is ceased when the employment is terminated.

The taxable base for the SSC is capped at 15 statutory minimum wages, which is 100,500 Ukrainian hryvnia (UAH) in 2023 (approximately 2,500 Euros (EUR) at the current exchange rate per month).

Foreign individuals working in the representative office of a non-resident company are not usually a subject to the SSC.

Also, the remuneration paid by a non-resident company to an individual working in Ukraine is not a subject to the SSC.

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Compliance obligations

5 Compliance obligations

5.1 Employee compliance obligations

A reporting year in Ukraine is a calendar year.

Income paid by a Ukrainian entity is taxed at the source of payment. Such income is not usually a subject to additional reporting in Ukraine.

Income received from a non-Ukrainian entity is a subject to tax based on the annual tax return, which is due on 30 April of the year following the reporting. The tax is due on 31 July of the year following the reporting year.

5.2 Employer reporting and withholding requirements

A tax withholding and reporting requirements with respect to the employment remuneration payable to individuals in Ukraine arise only for employers (Ukrainian entities and the representative offices of foreign companies in Ukraine).

Non-resident entities, which pay the employment remuneration to individuals working in Ukraine, are not a subject to tax withholding and reporting requirements in Ukraine.

06

Other issues

6 Other issues

6.1 Double taxation treaties

According to the Ukrainian legislation, if an international double tax treaty concluded by Ukraine provides for other taxation rules than those provided in the domestic legislation, provisions of the double tax treaty would prevail. Currently Ukraine has double tax treaties with about 72 countries/jurisdictions.

Double taxation treaties between Ukraine and the Russian Federation and the Republic of Belarus have been denounced as of January 1, 2023.

6.2 Permanent establishment implications

There is a potential risk that a permanent establishment could be created in Ukraine as a result of extended business travel, but, if structured properly, this risk may generally be mitigated.

6.3 Indirect taxes

In Ukraine, value-added tax (VAT) at 20 percent is levied on the supply of goods and services on the customs territory of Ukraine and on the importation of goods and services to Ukraine. Certain supplies are VAT-exempt (e.g. domestically produced baby food products, published periodicals, textbooks, books etc.). Export supplies are zero-rated.

For certain types of the transactions, a reduced 7 percent VAT rate could be applied (in particular, supply and import of medicines and medical products allowed for the production and consumption in Ukraine and included to the State Register of Medicines or allowed for clinical studies, provision of services of cultural and entertainment events (cinema, theater, circus, etc.) and hotel services).

Also, reduced 14 percent VAT rate could be applied to supply and import into custom territory of Ukraine of defined types of cattle (except breeding purebred animals excluded from import VAT) and agricultural products (including for example soybeans, seeds of flax, rape, sunflower, other oilseeds, carob, seaweed and other algae, sugar beet and sugar cane, etc.).

In general terms, Ukrainian VAT payer is required to charge VAT on top of the goods/ service price and report this VAT in the reporting period (i.e. a month), in which either the goods/ services are supplied, or the prepayment (advance payment) for the goods/ services is received, whichever event occurs first (i.e. so-called ‘first event rule’). Ukrainian VAT paid or payable to the suppliers of goods/ services can usually be claimed in the VAT returns as input VAT credits based on the ‘first event rule’.

Under the Tax Code of Ukraine there are certain incentives related to VAT. For example until 1 January 2025, the import of goods used for the needs of the aircraft industry, as well as the import into the customs territory of Ukraine of the results of research and development work performed for the needs of the aircraft industry.

Until 1 January 2027, supply transactions, including imports of waste and scrap of ferrous and non-ferrous metals, as well as paper and cardboard for recycling, are exempt from VAT.

Until 31 December 2023, transactions on the importation of medicines, medical devices and auxiliary products to them procured at the expense of the state budget into the customs territory of Ukraine, are exempt from VAT.

Import of equipment related to specially envisaged projects with huge investments is also exempt from VAT until 1 January 2035.

The administration of VAT is conducted electronically:

Every VAT payer has its own electronic VAT account within the State Treasury of Ukraine

A VAT payer should register each VAT invoice issued on each VAT-able supply (if any) in the Electronic Register of VAT Invoices.

The Ukrainian VAT taxation system is rather complicated. A VAT payer would be required to maintain detailed accounting of VAT and proper registration of VAT invoices in the Electronic Register of VAT Invoices, which effectively means simultaneous payments of 20 percent VAT output/liabilities on sale/other disposal of VAT-able goods/services (unless a VAT payer has VAT input/credit exceeding such VAT output/liabilities accrued).

The tax authorities are empowered to block registration of VAT invoice if such VAT invoice falls under the risk criteria.

6.4 Transfer pricing

Transactions between related parties are subject to transfer pricing rules introduced by the Tax Code of Ukraine. Income received by a taxpayer from transactions with a related party should be determined in accordance with arm's length principle.

Controlled transactions are business transactions of the taxpayer that may affect the object of taxation by corporate income tax of the taxpayer (for residents of Diia City - taxpayers on special conditions - the financial result before taxation determined in the financial statements in accordance with national accounting regulations (standards) or international financial reporting standards), namely business transactions carried out by Ukrainian taxpayers with:

- Non-resident related parties, or
- Non-resident non-related parties registered in "low-tax jurisdictions" listed by the Cabinet of Ministers of Ukraine, or
- Non-resident non-related parties with special legal forms listed by the Cabinet of Ministers of Ukraine, or
- Through non-resident commission agents, or
- Through nominal conduit are deemed controlled for TP purposes if the following cumulative criteria are met:
- A taxpayer's gross annual income volume from all activities exceeded UAH 150 million (ca. EUR 3,7 million as of FY, 2023) and
- Annual volume of all transactions with each counterparty exceeded UAH 10 million (ca. EUR 250 thousand as of FY, 2023).
- Transactions between non-residents and their permanent establishments are deemed controlled provided that the volume of such transactions exceeds UAH10 million.
- To be in compliance with the Tax Code of Ukraine in respect of the controlled transactions, companies should take the following steps:
- Prepare and submit to tax authorities a Report on controlled transactions before 1 October of the year following the reporting (fiscal) year
- Prepare and submit to tax authorities a Notification on company's participation in MNE before 1 October of the year following the reporting (fiscal) year and

Prepare local TP documentation files supporting the arm's length level of prices applied in the controlled transactions in order to be able to provide such documentation files to the Ukrainian tax authorities within 30 calendar days following their request.

All reporting documents (Report on controlled transactions, Notification and local TP documentation files) should be prepared in Ukrainian language only.

The documentation(Master File) shall be submitted within 90 calendar days from the date of receipt of the request, but not earlier than 12 and not later than 36 months from the date of the end of the financial year established by the international group of companies to which such taxpayer belongs, and in the absence of information about the financial year established by the international group of companies - not earlier than 12 months and not later than 36 months after the end of the reporting year.

Starting from 2021 additional transfer pricing reporting is introduced in Ukraine, which includes the following:

Country-by-country report (CbCR) (submitted for the first time for the financial year 2022). The CbCR is mandatory if the taxpayer belongs to the international group of companies and the total consolidated income of such group for the financial year preceding the reporting year exceeds 750 million euros (EUR). The taxpayer submits the CbCR to the tax authorities within 12 months after the end of the financial year, which is defined by the parent company of an international group of companies.

Global transfer pricing documentation (Master File) (submitted for the first time for the financial year ending in 2021). Master File is mandatory if the taxpayer belongs to the international group of companies and the total consolidated income of such group for the financial year preceding the reporting year exceeds EUR 50 million. The taxpayer submits the Master File only upon request of the tax authorities within 90 calendar days upon its receipt. Such request should be sent not earlier than 12 months from the date of the end of the financial year that is established by the international group of companies to which the taxpayer belongs.

“Constructive dividends” rules

A portion of income paid to a related non-resident, non-resident included in the List of low-tax jurisdictions and/or in the List of legal forms adopted by the Cabinet of Ministers of Ukraine in a controlled transaction in excess of an amount of income calculated in compliance with the “arm’s length” principal is treated as dividend payment for tax purposes.

This means that in case of non-compliance with the arm's length principle, the identified deviations are treated as dividends from such transactions:

- sale of securities/corporate rights
- sale/purchase of goods, works and/or services

Such income is taxed at the rate of 15%, unless otherwise provided by international agreements.

Penalties as of January 2023

Failure to submit a report on controlled transactions (penalty is 300 minimum cost of living for all undeclared transactions - ca. EUR 20,180 as for FY2023) and 1 percent (but not more than 300 minimum cost of living) of each individual transaction volume if such transaction is not disclosed in the Report.

Penalty for failure to submit the TP documentation file at request is 3 percent of the respective transaction volume, but not more than 200 minimum cost of living – ca. EUR 13,500 as for FY2023 for TP documentation file with each counterparty.

Also, there are new penalties for each day of late submission of the Report on controlled transactions/declaration of controlled transactions (in the amount of 1 minimum cost of living for every day of late submission) and transfer pricing documentation file (in the amount of 2 minimum cost of living for every day of late submission) after established deadlines but not more than 200 minimum cost of living.

In case of the second failure to submit Report on controlled transactions / transfer pricing documentation after 30 calendar days for penalties expired there is a new fine in the amount of 5 minimum cost of living for every day of such failure (ca. EUR 340 as for FY2023).

According to the Tax Code of Ukraine, the payment of penalties does not release the taxpayer from the obligation to submit the Report on controlled transactions and/ or transfer pricing documentation files.

In case the prices/ profitability levels in controlled transactions are found to lie outside the arm's length range, the tax authorities can adjust the respective prices/profitability levels for tax calculation purposes to the median of the range. In case of self-adjustment the taxpayer may adjust prices/profitability level only to maximum/minimum of the arm's length range. Such adjustments will be performed only if this does not result in decrease of a taxpayer's tax liability in Ukraine.

If the Ukrainian taxpayers have entered into Advance Pricing Agreement ("APA"), the tax authorities have no right to change TP methodology during TP audits that was previously negotiated and specified in APA between the taxpayers and tax authorities.

Transfer pricing documentation file that substantiates the arm's-length nature of royalty payment to a non-resident gives taxpayer a right to attribute such costs to gross expenditures.

Also, a taxpayer should increase its financial result for 30 percent of a transaction value from transactions on sale or purchase of goods/assets/services to/from a related or non-related party registered in a "low-tax jurisdiction" or registered under special legal forms. This rule is not applicable if a taxpayer prepares TP documentation file substantiating the arm's length level of prices established in such transactions.

The period for which the tax authorities can audit the controlled transactions (limitation period) is 2555 days (7 years).

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Immigration

7 Immigration

7.1 Work permit/visa requirements

The period for reviewing applications for obtaining, extending or amending a work permit is:

- obtaining a work permit - up to 7 working days
- extension of the work permit or amendments to it – up to 3 working days.

The period for reviewing applications for citizens of the Russian Federation and the Republic of Belarus can be extended or applications may be rejected.

Starting from 2022, the legislation no longer contains any minimum wage requirements for foreigners. This means that it is not necessary to set a salary of at least 10 minimum living costs and it is sufficient to comply with the general rules of the Ukrainian employment legislation.

There is no need to obtain a visa for applying a work permit. The requirement to apply for a visa will depend on the physical presence of the individual in Ukraine.

Ukraine has a visa free regime for citizens of CIS counties. The EU, US and Japanese citizens and citizens of some other countries/jurisdictions may also enjoy visa free presence in Ukraine for 90 days within 180 days period.

In case a foreign individual intends to obtain a temporary residence permit in Ukraine, he/she has to obtain visa D (despite of the visa regime with the country/jurisdiction of the nationality).

7.2 Local data privacy requirements

According to the Ukrainian law on personal data protection, any entity can process an individual's personal data only upon having the individual's consent. Illegal collection, storage, use, destruction, distribution or change of personal confidential information (including personal data) is subject to both criminal and administrative liability.

7.3 Exchange control

Bank system of Ukraine is operating under Martial Law as follows:

- Cash withdrawals from client accounts shall be limited to UAH 100,000 per day (excluding salaries and social benefits), except for businesses and institutions that ensure the implementation of the government's mobilization plans (objectives) and entities that have the NBU's special permission to operate without paying commissions
- All cashless payments shall be made without limitation
- Release of cash from client accounts in foreign currency shall be prohibited, except for businesses and institutions that ensure the implementation of the government's mobilization plans (objectives) and entities that have the NBU's special permission
- Payments to and by the Ukrainian government shall be made without restrictions, in accordance with legislation governing this special period
- A moratorium on cross-border foreign currency payments (except for payments of enterprises and institutions ensuring mobilization plans (tasks) and the Government, and payments under special permits by the NBU)

- Banks shall stop debit transactions on the accounts of the residents of the state that effected the armed aggression against Ukraine.
- Banks issuing e-money shall suspend issuance of e-money, replenishing e-wallets with e-money, and e-money distribution.

7.4 Non-deductible costs for assignees

The deduction of assignee-related costs is very limited and is possible in case:

- an assignee is treated as a tax resident of Ukraine
- the costs are borne on the territory of Ukraine
- there are costs of certain type: donations to charitable organizations, tuition payments, life insurance premiums and pension contributions, interests on a mortgage loan etc.
- the amount of the costs does not exceed the amount of the salary from the Ukrainian company.

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