EBS QUARTERLY REVIEW

LEGISLATIVE CHANGES REVIEW

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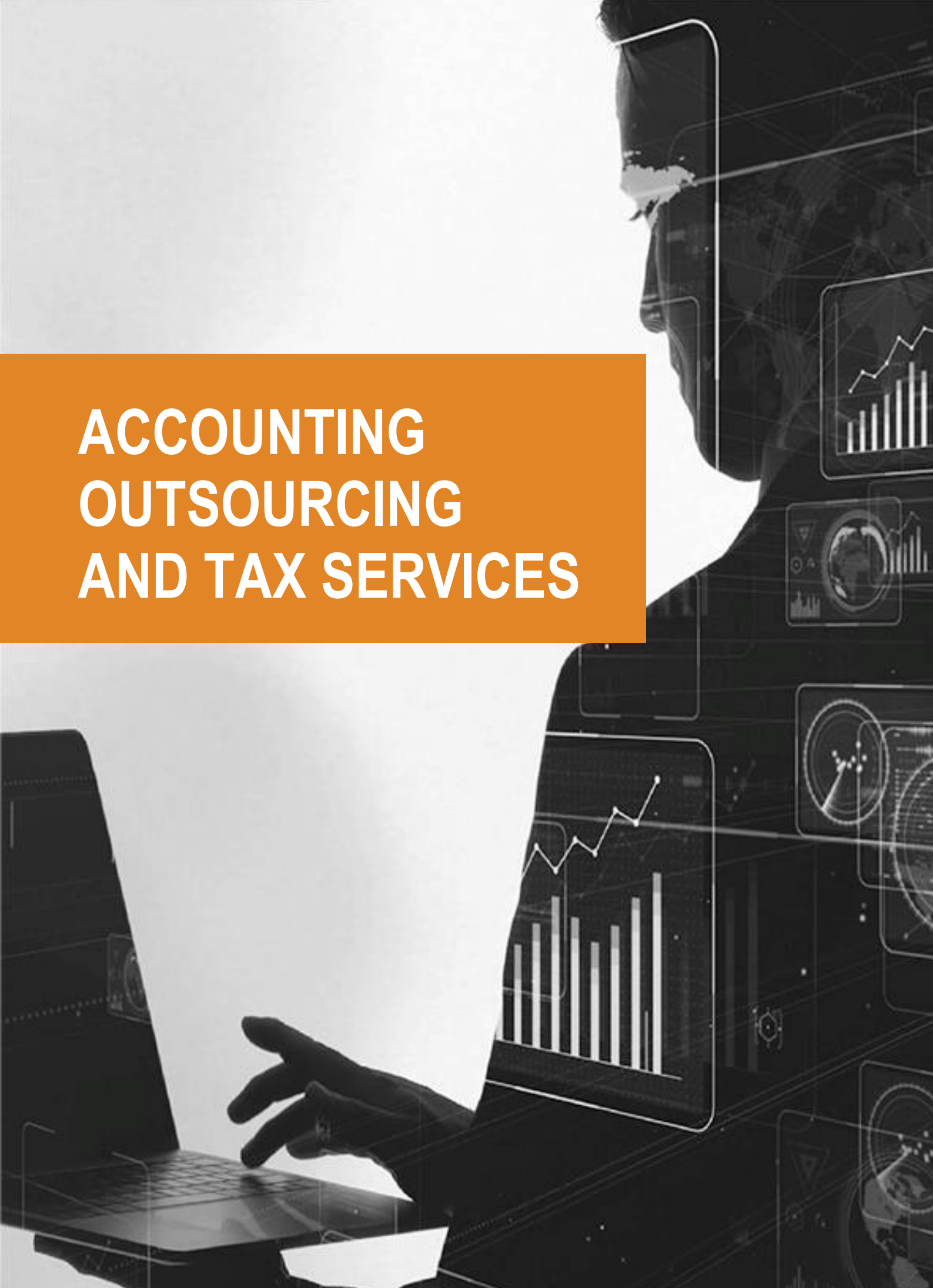

ACCOUNTING OUTSOURCING AND TAX SERVICES

4DF: FEATURES OF FILLING IN AND CORRECTING ERRORS

Old and New Signs of Income

The new salary reporting, which includes the forms of reporting on the unified social contribution (USC), personal income tax and military levy, is already in effect.
About some features of filling out Form No. 4DF – the "successor" of form No. 1DF:
In general, Appendix 4DF to the Calculation in terms of revenue attributes is almost identical to the "old one" — we use the same attributes to fill in. However, keep in mind that new signs have also appeared:

- "198" is the cost of medicines, medical devices and auxiliary equipment provided (transferred) free of charge, services in the healthcare system;
- "199" is the compensation of a part of the amount of punitive (financial) sanctions based on the results of an audit conducted at the request or complaint of the buyer (consumer);
- "200" is the cost of medicines and medical devices provided (transferred) by a person free of charge, purchased at the expense of the state budget and the implementation of programs according to the law.
- Other signs – from "101" to "197" – remained the same.

Non-monetary Income

As before, all amounts in the Calculation we specify as "dirty".
In the case of in-kind payment in columns 3A "Amount of accrued income" and 3 "Amount of paid income" of line 06, Section I, Appendix 4DF to the Calculation, the amount of income in non-monetary form is reflected, calculated taking into account the coefficient provided for in clause 164.5 of the Tax Code of Ukraine (the TCU). Please note that for the personal income tax rate of 18%, the specified coefficient is 1.21951.

If the Location has Changed

In case of a change in the location related to a change in an administrative district, the business entity shall pay personal income tax before the end of the current budget year and submit the Calculation at the previous location.
Since, before the end of the year, the taxpayer is registered with the controlling body at the previous location (secondary place of registration) with the sign that he/she is a taxpayer before the end of the year, and in the controlling body at the new location (primary place of registration) — with the sign that he/she is a taxpayer from the next year.
As for the "migration" of large taxpayers, after they are registered at a new location, they must pay taxes until the end of the calendar year at the place of previous registration, but they must report at the new place of registration.

If the Activity is Ceased

When the Calculation is submitted in case of state registration of termination of economic activity – until the completion of such procedures.

Filling in by Notaries

A notary, in transactions involving the sale and purchase of real estate between individuals in Appendix 4DF to the Calculation, shall reflect the amount of taxpayer's income received from the sale of an object of the relevant property as determined based on the price specified in the sale and purchase agreement, but no lower than the estimated value of such object, calculated by the module for electronic determination of the estimated value of a single base, or no lower than the market value of such object.

In case of sale and purchase of an object of movable property (except for passenger cars, motorcycles, scooters), the notary in Appendix 4DF to the Calculation shall reflect income from such a sale based on the price specified in the sale and purchase agreement (barter), but no lower than the estimated value of this object determined by law.
If a taxpayer sells a passenger car, motorcycle, or scooter, the notary in Appendix 4DF to the Calculation shall reflect the amount of the payer's income specified in the sale and purchase agreement, which must not be lower than the average market value of the relevant vehicle or no lower than its market value determined by law (at the taxpayer's choice).

Adjusting Indicators

The procedure for filling out and submitting tax calculations by tax agents of the amounts of income accrued (paid) in favour of individual taxpayers, and the amounts of tax withheld from them, as well as the amounts of the accrued single contribution, was approved by Order No. 4 of the Ministry of Finance dated January 13, 2015, as amended (hereinafter referred to as Order No. 4). The procedure for making adjustments in case of self-detection of an error or upon notification of the tax authorities is defined in Section V of Order No. 4.

According to clause 2, Section V of Order No. 4, before making adjustments, make sure that the Calculation being amended is adopted by the controlling body and passed all controls, including when uploading to the Register of Insurers and the Register of Insured Persons.

The Calculation generated for error correction must contain only those appendices in which adjustments are made and information only on the lines with details or amounts of accrued personal income tax, military levy, which are specified (clause 6, Section V of Order No. 4).

Direct adjustments are made according to clause 10, Section V of Order No. 4:
1) in Section I:
to exclude one erroneous line from the previously submitted (received) information, repeat all the columns of such a line and indicate "1" in Column 9 — to exclude the line;
to enter a new or missing line, fill in all its columns completely and indicate "0" in Column 9 — to enter the line;
to replace one erroneous line with another, exclude erroneous information according to paragraph 2, subclause 1, clause 10, Section V of Order No. 4 and enter the correct information according to paragraph 3, subclause 1, clause 10, Section V of Order No. 4, that is, completely fill in two lines, one of which excludes previously entered information, and the second enters the correct information. In this case, in the first line in Column 9, indicate "1" — the line for exclusion, and in the second — "0" — the line for entering;
2) in Section II:
in the "Interest taxation" line, to exclude an erroneous line from the previously entered information, in the "Interest taxation – exclusion 2" line, repeat all the columns of the erroneous line, and in the "Interest taxation" line, reflect the correct information;
in the line "Taxation of lottery winnings (prizes)", to exclude an erroneous line from the previously entered information in the line "Taxation of lottery winnings (prizes) — exclusion 3", repeat all the columns of the erroneous line, and in the line "Taxation of lottery winnings (prizes)" reflect the correct information;
in the line "Military levy", when making adjustments to indicators of Appendix 4DF to the Calculation for previous periods, indicate the period for which the adjusted financial statements were submitted, respectively. At the same time, adjusting indicators of the Calculation for periods up to January 1, 2021, columns 5A and 5 are not filled out in Section I.

To exclude an erroneous line from the previously entered information, repeat all the columns of the erroneous line in the "Military levy – exclusion 4" line, and reflect the correct information in the "Military levy" line.

Responsibility. In general, for submitting incorrect information in the 4DF, there is a fine of UAH 1,020 (UAH 2,040 — in case of repeated violation during the year). However, penalties stipulated in clause 119.1 of the TCU are not applied in cases where errors occurred in connection with the recalculation (clause 169.4 of the TCU) and were corrected according to the requirements of Article 50 of the TCU.

ANNUAL FINANCIAL STATEMENTS AND AUDIT REPORTS CAN BE SUBMITTED VIA THE PERSONAL ACCOUNT NO LATER THAN JUNE 10

A taxpayer who is required to publish the annual financial statements and annual consolidated financial statements together with the audit report has the opportunity to send them to the controlling body through the private part of the Personal account no later than June 10 of the year following the reporting year:

- annual financial statements in XML format using the "Reporting input" mode;
- audit report together with a cover letter in pdf format (2 MB limit) using the "Correspondence with the State Tax Service" mode.

The "Correspondence with the State Tax Service" mode of the private part of the Personal account allows the payer to send an audit report in pdf format (2 MB limit) to the STS body along with a cover letter.

The date of submitting the audit report with the cover letter is the date of registration of the cover letter with the STS body. Within one business day after sending such a letter to the STS body, the email's author will be notified of the incoming registration number and registration date. Information about receiving and registering a letter with the STS can be viewed in the "Incoming" tab of the "Incoming/outgoing documents" menu of the private part of the Personal account and sent emails can be viewed in the "Outgoing documents" tab of the "Incoming/outgoing documents" menu.

Source: explanation of STS from category 102.20.01, Section "Q&A from the knowledge base" of the Public Reference Resource (zir.tax.gov.ua)

DOCUMENT RETENTION PERIODS: QUARANTINE AND OTHER AMENDMENTS

Changes Related to the Retention Periods of Documents that Came into Force from the Beginning of 2021.

The quarantine has left its mark on many aspects of the work of business entities.
It also affects the retention periods of primary documents.

These terms are defined in clause 44.3 of the TCU, *last paragraph,* which covers now their prolongation *"for the period of suspension of the statute of limitations in the cases provided for in clause 102.3, Article 102 of this Code".*

One of these cases is to the controlling body **according to the law** and/or a court decision prohibits conducting an audit(s) of the taxpayer (clause 102.3.2 of the TCU).
In general, this can also include the case of a "quarantine" verification moratorium with clause 52^2, Sub-section 10, Section XX of the TCU.

Its validity period is defined as follows: *"for the period from March 18, 2020 to the last calendar day of the month (inclusive), in which the quarantine established by the Cabinet of Ministers of Ukraine throughout Ukraine ends in order to prevent the spread of coronavirus disease (COVID-19) on the territory of Ukraine*".

Conclusion: terms of storage of primary documents from clause 44.3 of the TCU are extended for the period (we add this period to the standard storage period) from March 18, 2020 to the end of the last month of quarantine, when the tax authorities are prohibited from checking the payer. However, this is provided that the start of the countdown period falls on the date before March 18, 2020. Otherwise, you must add the period from the beginning of the term to the end of the last month of quarantine to the standard term.

Nevertheless, there is a discussion about the Resolution of the Cabinet of Ministers of Ukraine "On reducing the validity period of restrictions regarding the moratorium on conducting certain types of inspections" No. 89 dated February 3, 2021 (Resolution No. 89). This Resolution, as it is understood by the tax authorities, was prematurely lifted, among other things, the ban on holding **scheduled documentary inspections of legal entities (!)** — from February 9, 2021.

In this case, if legal entities can already be checked as planned from February 9, 2021, then can we say that this is the end of the extension period?

That is, up to the basic storage period of documents from clause 44.3 of the TCU, we should only add 328 days (or less if the deadline itself started running after March 18, 2020)?

Or is the extension period also extended as long as the quarantine lasts?
There is a certain problem with the "duplication" of norms. In the same clause 52^2, Sub-section 10, Section XX of the TCU, we see a "special" norm that says that the deadline in Article 102 of the TCU **is terminated** for the period from March 18, 2020 **by the end of the last month of quarantine**.

The idea of an "individual approach" looks logical: as soon as the STS has the opportunity to check a specific payer, the terms for storing documents for them are to expire (and the extension period is fixed accordingly and no longer increases).

However, the STS can adhere to the "general approach": as long as the quarantine lasts, only the period for which the basic storage periods of documents are extended increases. With an eye to the fact that not all types of documentary checks are now allowed to them.

For the individual entrepreneurs, the ban on scheduled documentary inspections has not been lifted, so they need to focus on the version – the deadlines **are terminated** for the period from March 18, 2020, **by the end of the last month of quarantine (Art. 102 of the TCU).**

New (effective from January 1, 2021) grounds for suspending the statute of limitations under clause 102.3 of the TCU (and therefore, for extending the storage period of documents) are as follows:
— the controlling body has stopped, extended, or postponed the terms of conducting the audit according to the procedure provided for in *Art.* 44, 82 and 85 *of the TCU* or Customs Code of Ukraine *(the CCU)*;
— the controlling body **cannot conduct an audit and independently determine the number of monetary obligations of the** taxpayer in connection with:
1) drawing up an act on the impossibility of conducting an audit (except in case of recognition of illegal actions to draw up such an act);
2) non-admission by the taxpayer of officials of the controlling body to the audit if the conditions of the controlling body are met:
a) defined in clause 41.1.1 of the TCU provided for in Article 81 of this Code;
b) defined in clause 41.1.2 of the TCU provided for in Article 349 of the CCU;
3) appeal by the taxpayer in court against the decision of the controlling body to conduct an audit (except in cases of declaring illegal and/or cancelling such a decision);
— an administrative or judicial appeal is made by the taxpayer against the decision of the controlling body to charge a monetary obligation.

The Law of Ukraine "On Amendments to the Tax Code of Ukraine Regarding Improvement of Tax Administration, Elimination of Technical and Logical Inconsistencies in Tax Legislation" No. 466-IX dated January 16, 2020 (Law No. 466) made a necessary clarification to clause 44.3 of the TCU, which sets the retention periods for documents.

Earlier, there was a lack of understanding of the question of when to start counting down the 1095-day (2555-day in the case of transfer pricing) period if the documents that the payer is required to have are not used directly for tax reporting.

Please note that the countdown of the document storage period begins as follows:
— in case of submission of tax reports, if the documents are used for its preparation — from the date of submission of such reports;
— in case of its failure to submit — from the deadline for submitting such reports provided for in the *TCU*.
Since May 23, 2020 (Law No. 466), it is also established that the countdown of the document storage period begins as follows:
— for documents related to the implementation of the requirements of other legislation, the control over compliance with which is entrusted to the supervisory authorities, — from the date of **implementation of the relevant business transaction**.

In both cases, the document retention period is 1095 days (3 years).
— for permits — **from the date of expiration of their validity period**.

INDIVIDUAL ENTREPRENEUR PURCHASED A REAL ESTATE OBJECT AS AN INDIVIDUAL: IS THERE A RIGHT TO DEPRECIATION

Individual entrepreneurs under the general tax system (the main type of economic activity is renting out real estate) purchased non-residential premises for their further rental. At the same time, the party to the sale and purchase agreement is not a business entity (individual entrepreneur), but an individual. In this case, is it possible to include depreciation of the purchased property in the expenses?

Answer

First of all, let us say a few words about the execution of the sale and purchase agreement. In particular, the fact that its party is an individual — a citizen and not a business entity (entrepreneur), is not an obstacle, but the only possible and correct option.

So, the STS once in a letter No. 8523/B/99-99-17-02-02-14 dated September 8, 2015, noted:

"Subjects of private property rights under Article 325 of the Civil Code shall be individuals. Article 26 of the Civil Code of Ukraine establishes that an individual has all personal non-property rights and is able to have all property rights provided for by the Constitution of Ukraine, the Civil Code of Ukraine and other laws.

An essential aspect of the implementation of the rights of an individual shall be the right to carry out an entrepreneurial activity governed by the Law of Ukraine No. 755-IV dated May 15, 2003 "On State Registration of Legal Entities and Individual Entrepreneurs".

For the obligations related to entrepreneurial activity, an individual entrepreneur shall be liable with all their property, except for property that cannot be foreclosed on by law (Article 52 of the Civil Code of Ukraine).

Participants in civil relations and subjects of property rights shall be individuals (Part One of Article 2 and Part One of Article 318 of the Civil Code of Ukraine). However, ***the Civil Code of Ukraine does not separately define such a subject of property rights as an individual entrepreneur, the acquisition of such status only allows one to carry out economic activities****.*

Regardless of what status an individual chooses for oneself in the future, including in the case of making a decision to carry out any activity (entrepreneurial or independent professional), the subject of property rights shall be an individual, but not an entrepreneur*".*

A similar position is set out in the current explanation from category 106.01 of the Section "Q&A from the knowledge base" of the Public Reference Resource (zir.tax.gov.ua). Providing an answer to the question about real estate taxpayers, the supervisors confirmed that according to the Civil Code of Ukraine, subjects of private property rights shall be individuals and legal entities:

"Clause 1, Article 320 of the Civil Code of Ukraine No. 435-IV dated January 16, 2003, as amended (hereinafter referred to as the Civil Code of Ukraine), stipulates that the owner shall have the right to use their property for carrying out business activities, except in cases established by law.

Subjects of private property rights shall be individuals and legal entities.

Individuals can be owners of any property, including commercial real estate*, except for certain types of property that, according to the law, cannot belong to them (Article 325 of the Civil Code of Ukraine)."*

Finally, the Ministry of Justice once stated in the explanation "Status of an individual entrepreneur: issues of applying legislation" dated January 14, 2011:
"An interesting issue from the point of view of practical application is that of the registration of ownership of immovable property by individual entrepreneurs.

*<...> it should be noted that the current legislation does not distinguish such a subject of property rights as an individual entrepreneur and **does not contain rules regarding the ownership rights of an individual entrepreneur**. The legislation only establishes that an individual entrepreneur is liable for obligations related to entrepreneurial activity with all their property, except for property that cannot be foreclosed on by law.*

*So, the subject of property rights is recognized as an individual who can be the owner of any property, except for property that cannot be owned by an individual. At the same time, **the legal status of an individual entrepreneur does not affect the legal regime of the property owned by him/her.***

*Thus, **real estate must be registered by an individual**".*
So, it remains to find out if, by chance, the TCU itself happens to contain some restrictions on the depreciation of non-residential real estate.

First of all, please note that the object of taxation for the individual entrepreneurs under the general tax system is net taxable income, that is, the difference between total taxable income (revenue in monetary and non-monetary form) **and documented expenses related to the economic activities of such an individual entrepreneur** (clause 177.2 of the TCU).
At the same time, according to clause 177.4.5 of the TCU, the entrepreneur's expenses shall not include the following:

- expenses not related to the implementation of economic activities by such an individual entrepreneur;
- expenses for the acquisition, independent production of fixed assets and expenses for the acquisition of intangible assets subject to depreciation;
- expenses for the acquisition and maintenance of fixed assets defined by paragraphs 8-10, clause 177.4.6 of the TCU;
- undocumented expenses.

In turn, clause 177.4.6 of the TCU stipulates that entrepreneurs shall have the right (at their own request) to include depreciation charges in the expenses related to implementing their economic activities, with appropriate separate accounting of such expenses. At the same time, depreciation is subject to:

- expenses for the acquisition of fixed assets and intangible assets;
- expenses for the independent production of fixed assets, reconstruction, modernization and other types of improvement of fixed assets (except for routine repairs).
- Expenses for the reporting period are not subject to depreciation and are fully included in the expenses of the reporting period:
- performing routine repairs;
- liquidation of fixed assets (in terms of residual value).

The following fixed assets are not subject to depreciation:

- land plots;
- **residential** real estate objects;
- passenger cars.

Since, in our case, we are talking about **non-residential** real estate, we can conclude that:
restrictions set out in clause 177.4.6 of the TCU do not apply to the situation in question, **and at the same time** to be guided by the principle "everything that is not explicitly prohibited by law is allowed", which follows from Part 1 of Article 8 of the Constitution of Ukraine (the principle of the rule of law).
And the TCU itself clearly mentions residential real estate: both in clause 177.4.6 of the TCU and clause 177.4.3 of the TCU (in the context of the fact that the amounts of tax paid on immovable property other than a land plot cannot be attributed to expenses from objects such as **residential** real estate). And therefore, taking into account the presumption of legitimacy of the taxpayer's decisions enshrined in clause 4.1.4 of the TCU, we believe that there is no reason to talk about restrictions in terms of depreciation of non-residential real estate objects (if the latter will be used in economic activities, and the cost of its acquisition will be documented). At the same time, please note that according to clause 177.4.9 of the TCU, the minimum allowable depreciation period is 10 years.

PAYROLL OUTSOURCING

SALARY IN FOREIGN CURRENCY EQUIVALENT: HOW TO APPLY

The company introduces the following remuneration scheme for top management: 50% of the salary is fixed in UAH, 50% — in EUR with payment at the NBU foreign exchange rate on the last business date of the month in case of an increase in the foreign exchange rate. For example, the salary as of March 1, 2021, is UAH 100 thousand. UAH 50 thousand are fixed in the corresponding parts — in EUR at the foreign exchange rate as of March 1, 2021. If the foreign exchange rate decreases or does not change, the employee will receive UAH 100 thousand, and if the foreign exchange rate at the end of the billing month increases, then the corresponding amount is paid, taking into account the increased foreign exchange rate. What documents must be issued when switching to such a scheme? What information must such documents contain? And whether it is necessary to issue monthly orders for salary payments according to the foreign exchange rate.

Article 1 of the Law on Labour Remuneration stipulates that *"a salary is a reward calculated, as a rule, in monetary terms, which is determined by an **employment contract** and paid to the employee by the employer for the work performed"*. Its amount depends on the complexity and conditions of the work performed, the professional and business qualities of the employee, the results of their work and the economic activity of the company.
The employee shall have the right to pay for their work according to legislative acts and the collective agreement **based on the concluded employment contract** (Part 1 of Article 21 of the Law on Labour Remuneration).

The employment contract is an **agreement** between the employee and the employer, under which:

- the employee undertakes to perform the work specified in this agreement;
- the employer undertakes to pay the employee **salary** and ensure the working conditions necessary for the performance of work provided for by the labour legislation, **collective agreement and agreement of the parties** (Article 21 of the Labor Code).

The Law on Labour Remuneration stipulates that the salaries of employees of companies on the territory of Ukraine shall be paid in banknotes that have legal circulation on the territory of Ukraine (Part 1 of Article 23). The legal tender on the entire territory of Ukraine shall be the currency of Ukraine — UAH. However, foreign currency can also be used in Ukraine in cases and according to the procedure established by law (Article 192 of the Civil Code of Ukraine).

Part 1, Article 533 of the Civil Code of Ukraine stipulates that the monetary obligation must be fulfilled in UAH. Simultaneously in Part 2 of this Article, it is stipulated that the parties can determine the monetary equivalent in a foreign currency in a monetary obligation. Thus, UAH as the national currency is the only legal tender on the territory of Ukraine. However, **obligations can be defined in a foreign currency**.

Therefore, the parties to the employment contract can determine the amount of the employee's salary in UAH, indicating the equivalent amount in foreign currency, which does not contradict Article 192, Article 533 of the Civil Code of Ukraine (see Supreme Court judgment No. 761/21776/16-ц, No. 61-14745св18 dated June 26, 2019). In other words, determining the amount of salary in foreign currency in an employment contract is legitimate, provided that the salary is paid only in the national currency.
The collective agreement (if any) must provide for the possibility of determining the amount of salary in the equivalent of foreign currency. A similar provision must be provided for in the employment contract. For example, in an employment contract, you can specify:
"The official minimum salary shall be UAH 100,000.00.

The official salary shall include:

- *fixed part in the amount of UAH 50,000.00;*
- *the settlement part in the amount of EUR 1,477.54, which is converted into the national currency at the corresponding NBU foreign exchange rate. The NBU foreign exchange rate shall be determined in the amount of at least UAH 33.84/EUR, determined as of January 1, 2021. In case of a decrease in the foreign exchange rate as of the last day of the billing month, the salary shall be calculated at the rate of 33.84 UAH/EUR. In case of an increase in the foreign exchange rate on the last day of the billing period, the salary shall be calculated at the NBU foreign exchange rate, which is actually set on the last day of the billing period".*

In addition, it is essential to specify the mechanism for calculating salary in such cases in the regulations on labour remuneration. In particular, it is necessary to determine at what foreign exchange rate of foreign currency salary will be calculated in UAH if its amount is specified in the contract in foreign currency. It is also appropriate to note the options for possible calculations of salary accrual, the amount of which is determined in the equivalent of foreign currency.

Please note. If all 100% of the official salary is defined in the employment contract in the equivalent of foreign currency, it is advisable to provide for the application of the foreign exchange rate as of the first day of the month of the billing month or at the time of accrual, to avoid problems when calculating the advance payment. After all, when calculating salary for the first part of the month, the foreign exchange rate on the last day of the billing month is still unknown.

Meanwhile, in the **staffing table**, you also need to specify the amount of salary provided for this position. Since there is no fixed salary for such a position (there is only a minimum one), it is necessary to detail information in the staffing table. Despite the fact that the company has the right to independently determine the form of the staffing table, in the case under consideration, the column on the amount of the official salary for the corresponding position can be divided into 3 separate columns, in which, for example, indicate the following information:
— in the first column — **total amount** of the official salary — UAH 100,000* and make a note:
*"*The minimum amount of official salary shall be indicated, taking into account the NBU foreign exchange rate as of January 1, 2021, in the amount of UAH 33.84/EUR"*;
— in the second column — **part** of the official salary, which is paid in UAH: UAH 50,000;
— in the third column — **part o**f the official salary in the equivalent of foreign currency — EUR 1,477.54**, stating in the note the following:
*"**Salary accrual in this part shall be carried out at the NBU foreign exchange rate as of January 1, 2021 in the amount of UAH 33.84/EUR. In case of a decrease in the foreign exchange rate as of the last day of the billing month, the salary in this part shall be calculated at the rate of 33.84 UAH/EUR. In case of an increase in the foreign exchange rate on the last day of the billing period, salary in this part shall be calculated at the NBU foreign exchange rate, which is actually set on the last day of the billing period".*

This is just one of the likely options. You cannot specify the specific amount of the foreign currency exchange rate in the notes but make a reference to the foreign exchange rate determined by the terms of the employment contract.
For such cases, it is necessary to develop a particular form of settlement and payroll, taking as a basis Standard Form No. P-6 approved by Order of the State Statistics Committee No. 489 dated December 5, 2008. This opportunity is stipulated in Article 9 of the Law on Accounting. The independently developed form of the statement must be approved by the order (decree) of the manager.
In the form of a payroll statement, it is necessary to provide separate columns for displaying:

- fixed part of the official salary in UAH;
- fixed part of the salary in EUR;
- the foreign exchange rate, which is determined according to the terms of the employment contract;
- part of the salary in EUR converted into UAH at the specified foreign exchange rate;
- the total amount of accrued salary.

If you have such a form of settlement and payroll, which will be filled out according to the terms of the employment contract, and the staffing table, you do not need to issue a separate order (decree) to the management regarding the actual amount of accrued salary for the billing month.

INCREASE IN THE SUBSISTENCE MINIMUM FROM JULY 1, 2021: WHAT ARE THE MAIN INDICATORS AFFECTED?

Starting from July 1, 2021, the subsistence minimum will be increased for all population groups *(see Table)*. This is provided for in Article 7 of the Law of Ukraine "On the State Budget of Ukraine for 2021" No. 1082-IX dated December 15, 2020.

Amount of subsistence minimum from July 1, 2021.

Main population groups	Subsistence minimum from July 1, 2021 *(monthly per person)*
Overall indicator	***UAH 2,294***
Children under 6 years of age	UAH 2,013
Children aged 6 to 18 years	UAH 2,510
Able-bodied persons	**UAH 2,379**
Able-bodied persons, applicable to determine the basic amount of the official salary of a judge	UAH 2,102
Able-bodied persons, applicable to determine official salaries of employees of other government agencies whose remuneration regulated by special laws	UAH 2,102
Persons who have lost their ability to work	UAH 1,854

The amount of the subsistence minimum remained unchanged: in the monthly amount it is UAH 6,000, in the hourly amount – UAH 36.11.

What will be affected by the amount of the subsistence minimum from July 1, 2021 (main indicators)?

*1. **Salary Indexation***

The salary of employees is indexed within the subsistence minimum for able-bodied persons (clause 4 of the Indexing Procedure of Monetary Income of the Population, approved by the Resolution of the Cabinet of Ministers of Ukraine No. 1078 dated July 17, 2003). Thus, from July 1, 2021, the salary of employees will be subject to indexing within the limits of **UAH 2,379.** If a person works part-time, the indexation amount shall be determined based on full-time work/the number of calendar days in the month and shall be paid in proportion to the time worked/official working hours.

2. Alimony Payments

The minimum amount of alimony per child may not be less than 50% of the subsistence minimum for a child of the appropriate age (Part 2 of Article 182 of the Family Code of Ukraine).

Thus, the amount of alimony from July 2021 cannot be less than:

- for children under 6 years of age – **UAH 1,006.50** (UAH 2,013 × 50%);
- for children aged 6-18 years – **UAH 1,255** (UAH 2,510 × 50%).

3. Unemployment Benefits

Unemployment benefits may not exceed four times the subsistence minimum for able-bodied persons (paragraph 2, Part 5, Article 23 of the Law of Ukraine "On Mandatory State Social Insurance in case of Unemployment" No. 1533-III dated March 2, 2000).
Thus, *the maximum amount of unemployment benefits from July 2021* shall be **UAH 9,516** (4 × UAH 2,379).

4. Maternity Benefits

Maternity benefits shall be provided at the rate of 100% of a woman's average monthly income (scholarships, salaries, unemployment benefits, etc.) per month. However, it may not be less than 25% of the subsistence minimum established for an able-bodied person (Article 9 of the Law of Ukraine "On State Assistance to Families with Children" No. 2811-XII dated November 21, 1992, hereinafter referred to as Law No. 2811).
Thus, from July 1, 2021, the *minimum amount of maternity benefits* shall be **UAH 594.75** (25% × UAH 2,379) per month.

5. Single Mother Benefits

The established amount of single mother benefits (single parents, single adoptive parents, etc.), mother (father) in the event of the death of one of the parents who have children under 18 years of age (if the children study full-time in general secondary, vocational (vocational-technical), professional pre-primary and higher education institutions – until graduating from educational institutions by these children, but no longer than until they reach 23 years of age) shall be equal to the difference between 100% of the subsistence minimum for a child of the appropriate age and the average monthly total family income per person for the previous six months (Part 1, Article 18^3 of Law No. 2811). *The maximum amount of such benefits* from July 1, 2021, for children under 6 years will be UAH 2,013, from 6 to 18 years – UAH 2,510, from 18 to 23 years *(when a child is studying full-time at a higher educational establishment) – **UAH 2,379.***

6. Benefits to Children whose Parents Evade Paying Alimony

The amount of benefits shall be equal to the difference between 50% of the subsistence minimum for a child of the appropriate age and the average monthly total family income per person for the previous six months (paragraph 1, clause 8 of the Procedure for assigning and paying temporary state benefits to children whose parents evade paying alimony, are unable to support the child or their place of residence is unknown, approved by the Resolution of the Cabinet of Ministers of Ukraine No. 189 dated February 22, 2006; hereinafter referred to as the Procedure).

Thus, *the maximum amount of benefits* from July 1, 2021, for children under 6 years of age shall be **UAH 1,006.50** (50% × UAH 2,013), from 6 to 18 years old – **UAH 1,255** (50% × UAH 2,510). Such benefits shall not be assigned to children after the age of 18, even if they continue their studies (paragraph 3, clause 10 of the Procedure).

7. Old-age Pension

The minimum age pension shall be set at the subsistence minimum for persons who have lost their ability to work, if any (Part 1, Article 28 of the Law of Ukraine "On Mandatory State Pension Insurance" No. 1058-IV dated July 9, 2003):

- men must have 35 years of pensionable service;
- women must have 30 years of pensionable service.

Thus, under the specified conditions, *the minimum age pension amount* starting from July 1, 2021, will be **UAH 1,854.**
For your information! The next increase in the subsistence minimum is planned for December 1, 2021.

SINCE JUNE 23, THE UPDATED PROCEDURE FOR PROVIDING PARTIAL UNEMPLOYMENT BENEFITS HAS BEEN IN EFFECT

The Cabinet of Ministers has set out in a new version the Procedure for providing and returning funds aimed at financing partial unemployment benefits for the quarantine period established by the Cabinet of Ministers to prevent the spread of acute respiratory disease COVID-19 caused by the SARS-CoV-2 coronavirus on the territory of Ukraine (the Procedure).

On June 23, 2021, it was officially published (Uriadovyi Courier No. 118), and Resolution of the Cabinet of Ministers of Ukraine No. 635 dated June 16, 2021 entered into force. It **sets out a new version of the Procedure for the provision and refunding to finance partial unemployment benefits for the period of quarantine and/or emergency, established by the Cabinet of Ministers of Ukraine**.

This Procedure defines the mechanism for providing funds aimed at financing partial unemployment benefits for the period of quarantine and/or emergency, established by the Cabinet of Ministers of Ukraine, the amount, terms of provision, as well as the mechanism for returning funds aimed at financing such benefits.

Who Gets Benefits, and Who does Not?

Benefits shall be provided by the employment centre to insured persons, in particular:

- employees with whom the employer has issued employment relations, in case of loss of part of their salary or income due to a forced reduction in the length of working hours provided for by law due to the suspension (reduction) of activities, at the request of the employer or an individual entrepreneur who is an insured person, for their payment to employees with whom the employment relations have not been terminated,
- or an individual entrepreneur who is an insured person and does not receive benefits as an employee.

Benefits shall not be provided to individual entrepreneurs who have chosen the simplified taxation system and belong to the first group of single taxpayers and who have not paid insurance premiums based on paragraphs 9-10.1, Section VIII "Final and Transitional Provisions" of the Law on USC.

Amount of Benefits

The number of benefits shall be determined and provided for each month of the specified period in proportion to the working time of the employee or individual entrepreneur who is the insured person, that is reduced.

The number of benefits shall be provided to employers, including individual entrepreneurs who are insured persons, from among small and medium-sized businesses for the period of suspension (reduction) of activities if the employer or an individual entrepreneur who is an insured person pays a single contribution to mandatory state social insurance within six months preceding the date of suspension (reduction) of activities.

Payment of Benefits

Payment of benefits to employees shall be made by the employer with whom the employment relations are registered (except for persons working part-time for the employer).

Payment of benefits to individual entrepreneurs who are insured persons shall be carried out by the employment centre.

An employer or an individual entrepreneur who is an insured person can apply for benefits within 90 calendar days from the date of suspension (reduction) of activity.
The period of payment of benefits shall not be taken into account when considering applications for subsequent receipt of partial unemployment benefits for the period of quarantine under Article 47 of the Law "On Employment of the Population".

To receive assistance, an employer or individual entrepreneur who is an insured person must apply to the employment centre at the place of registration as a USC payer and submit (in person or through the Unified State Web Portal of Electronic Services, including through the information systems of state and local self-government bodies integrated with it (if technically possible) the documents specified in clause 9 of the Procedure.

The employer/individual entrepreneur, who is an insured person, may additionally provide other documents specified in clause 9 of this Procedure, confirming that the scope of activities was suspended (reduced) due to the implementation of measures provided for by quarantine and/or an emergency, to prevent the spread of particularly dangerous infectious diseases.

If a decision is made to refuse to provide benefits, the employment centre shall inform the employer/individual entrepreneur who is an insured person thereof in writing within three business days from the date of making such a decision, with justification for the reasons for refusal.

If an employer/individual entrepreneur who is an insured person is denied benefits for reasons beyond their control, one shall have the right to re-apply for funds to pay benefits to employees within the period of quarantine and/or emergency.

UPDATED LABOUR REPORT FORMS AND 25 OTHER STATISTICAL REPORTING FORMS

The State Statistics Service has updated 27 forms of state statistical observations, including, in particular:

- Labour report under form No. 1-PV (monthly) "Labour Report" (first submitted for January 2022) and **No. 1-PV** (quarterly) "Labour Report" (first submitted for Q1 of 2022) (Order of the State Statistics Service No. 135 dated June 25, 2021);
- **No. 3-debt** (monthly) "Report on salary arrears" from the report for January 2022 (Order of the State Statistics Service No. 136 dated June 25, 2021);

The following report forms have also been updated:

- **No. 1-services** (quarterly) "Report on the volume of services sold" from the report for Q1 of 2022 (Order of the State Statistics Service No. 146 dated June 25, 2021);
- **No. 2-tr** (annual) "Report on the operation of motor transport" from the report for 2021 (Order of the State Statistics Service No. 145 dated June 25, 2021);
- **No. 51-cargo** (2 times a year) "Survey of an individual entrepreneur engaged in road cargo transportation on a commercial basis" (for the first time submitted for the second week of April 2022) and **No. 51-pass** (2 times a year) "Survey of an individual entrepreneur engaged in passenger road transportation on the route" (for the first time submitted for the second week of May 2022) (Order of the State Statistics Service No. 144 dated June 25, 2021);
- **No. 31-auto** (quarterly) "Report on the transportation of goods by road by types of cargo and passengers by types of communication" from the report for Q1 of 2022 (Order of the State Statistics Service No. 143 dated June 25, 2021);
- **No. 51-auto** (monthly) "Report on cargo and passenger transportation by road" from the report for January 2022 (Order of the State Statistics Service No. 142 dated June 25, 2021);
- **No. 2-etr** (monthly) "Report on the operation of urban electric transport" from the report for January 2022 (Order of the State Statistics Service No. 141 dated June 25, 2021);
- **No. 51-wat** (monthly) "Report on the work of a water transport enterprise" (first submitted for January 2022) and No. 31-wat (quarterly) "Report on cargo and passenger transportation by water transport" (submitted for the first time for Q1 of 2022) (Order of the State Statistics Service No. 140 dated June 25, 2021);
- **No. 51-tsa** (monthly) "Report on the main performance indicators of the aviation enterprise" from the report for January 2022 (Order of the State Statistics Service No. 139 dated June 25, 2021);
- **No. 12-pipe** (monthly) "Report on cargo transportation by main pipelines" from the report for January 2022 (Order of the State Statistics Service No. 138 dated June 25, 2021);
- **No. 1-cpt** (annual) "Report on the activities of the collective placement tool" from the report for 2021 (Order of the State Statistics Service No. 137 dated June 25, 2021); No. 2-investment (quarterly) "Capital Investment Report". We submit for the first time from the report for Q1 of 2022 (Order of the State Statistics Service No. 134 dated June 25, 2021);
- **No. 2-oz inv** (annual) "Report on the availability and movement of non-current assets, depreciation and capital investments". We submit for the first time in 2021 (Order of the State Statistics Service No. 134 dated June 25, 2021);
- **regarding the state of business activity of enterprises** (Order of the State Statistics Service No. 133 dated June 25, 2021).

Effective from January 1, 2022:

- **No. 2K-P** (monthly) "Survey of business activity of an industrial enterprise";
- **No. 2K-P inv** (twice a year) "Survey of business activity of an industrial enterprise (investment)";
- **No. 2K-S** (quarterly) "Survey of business activity of an agricultural enterprise";
- **No. 2K-B** (quarterly) "Survey of business activity of a construction enterprise";
- **No. 2K-T** (quarterly) "Survey of business activity of wholesale and retail enterprises, repair of motor vehicles and motorcycles";
- **No. 2K-SP** (quarterly) "Survey of business activity of a service sector enterprise".
- **No. 2-entrepreneurship** (annual) "Structural survey of the enterprise" from the report for 2021 (Order of the State Statistics Service No. 132 dated June 25, 2021);
- **No. 1-B** (annual) "Report on mutual settlements with non-residents" from the report for 2021 (Order of the State Statistics Service No. 131 dated June 25, 2021);
- **No. 1-ICT** (annual) "Use of information and communication technologies at the enterprise in 2022" from January 1, 2022 (Order of the State Statistics Service No. 130 dated June 25, 2021);
- **No. 3-science** (annual) "Research and Development Report" from the report for 2021 (Order of the State Statistics Service No. 129 dated June 25, 2021).

Please note that on June 22, the State Statistics Service Updated ten more forms of statistical reporting: No. 9-ZEZ (quarterly), No. 14-ZEZ (quarterly), No. 11-MTP (annual), No. 10-ZEZ (quarterly), No. 1-tourism (annual), No. 1-debt (housing and communal services) (quarterly), No. 1-housing stock (annual), No. 1-prices (housing) and No. 1-prices (prom) (monthly).

PECULIARITIES OF PAYING FOR INSURANCE ON A BUSINESS TRIP

The list of travel expenses that are reimbursed to the employee and are not subject to personal income tax and the military levy is clearly defined in clause 170.9.1 of the TCU. This list includes mandatory **insurance expenses**. Such expenses shall be confirmed by the originals of the relevant documents and be related to the business activities of the enterprise. For each type of insurance, it is necessary to determine whether it can be classified as mandatory.

The most common types of insurance, the cost of which is paid:

1. **on business trips in Ukraine** — personal insurance against transport accidents; tourist insurance (medical and accident insurance);
2. **on business trips abroad** — medical and accident insurance; civil liability insurance for land vehicle owners.

Transport Accident Insurance

If an employee uses passenger transport on a business trip in Ukraine, one cannot avoid **personal insurance against transport accidents**. After all, this type of insurance **is mandatory** according to clause 6, Article 7 of Law No. 85.

The procedure for carrying out such insurance in relation to passengers of railway, sea, inland water, automobile and electric transport, except for internal urban transport, during a trip or stay at a railway station, port, station, pier is established by Regulation No. 959. According to its norms, passengers are considered insured from the moment of declaring boarding the vehicle until the end of the trip.

The insurance payment for mandatory personal insurance against accidents on transport is deducted from the passenger by the carrier. The carrier acts on behalf of the insurer for remuneration based on the contract of assignment.

The carrier acting as the insurer's agent issues an insurance policy to each insured person. It can be issued either on a separate form or placed on the back of the ticket, where the amount and amount of insurance are indicated. Most often, it is a transport ticket that is a document confirming not only travel expenses, but also the cost of personal insurance against transport accidents.

Since personal motor accident insurance is mandatory, **no taxable income arises** for the employee on reimbursement of the costs of such insurance.

There are no grounds for withholding personal income tax and military levy. **We do not charge USC** due to the fact that any travel expenses are not included in the salary fund according to clause 3.15 of Instruction No. 5. Clause 6, Section I of List No. 1170 confirms it, which determines payments from the employer that are not subject to USC.

Health Insurance for Business Trips Abroad

Paragraph "a", clause 170.9.1 of the TCU stipulates that if the laws of the country of business trip or the countries through which transit is carried out provide for mandatory insurance of the life or health of the person who is sent or their civil liability (in case of a business trip by car), then **expenses for such insurance upon reimbursement shall not be included in the taxable income of the person who is sent on a business trip**.

So, if **purchasing a health insurance policy is mandatory** for a business trip abroad, the cost of purchasing it can be compensated to the employee **without withholding personal income tax, military levy and USC accrual**.

If health insurance for entering a foreign country is not mandatory, then the employee shall not be entitled to compensation for its cost. You can confirm that health insurance is mandatory by using the list of documents required to enter a particular country. Such a list is usually provided on the website of the country's embassy in Ukraine.

Automobile Liability Insurance when Travelling Abroad

If you are planning a business trip abroad by a company's vehicle, please note that according to Article 16 of Law No. 85, in case of departure of a motor vehicle registered in Ukraine to the territory of another member country of the International Auto Insurance System "Green Card", the **owner** of such a vehicle **must**:

1) conclude an agreement of international compulsory civil liability insurance for land vehicle owners, which applies to these countries;
2) get from the insurer — a full member of the Motor (Transport) Insurance Bureau a "Green Card" insurance certificate of a single sample, which is accepted in all member countries of this international insurance system.

Control over the availability of the "Green Card" certificate is entrusted to the Border Guard Service.
Thus, if a business trip is carried out using the company's vehicle to the member countries of the "Green Card" auto insurance system, the purchase of a "Green Card" insurance policy is mandatory. Compensation for the cost of purchasing the "Green Card" **is not the employee's taxable income and the base for calculating USC**.

Please be careful! If an employee leaves for a business trip abroad in their own car, which was not leased or borrowed by the employer, then if the employer compensates for the costs of purchasing a "Green Card" certificate, the employee will have income subject to personal income tax and military levy. In addition, the amount of such compensation will be the basis for calculating USC as a component of salary (clause 2.3.4 of Instruction No. 5).

Insurance in the Advance Report

If the insurance under which expenses were incurred on a business trip is mandatory, when such expenses are reimbursed, the employee shall not have any taxable income. To compensate an employee for the costs of compulsory insurance on a business trip, original supporting documents and the presence of a link between such expenses and the economic activities of the enterprise shall be required.

Driver Insurance

Personal insurance against transport accidents shall be mandatory insurance provided for by clause 6, Article 7 of Law No. 85. This type of insurance is mandatory only **for drivers-employees of transport companies directly engaged in transport operations** (clause 1 of Regulation No. 959).

The determination of whether enterprises belong to transport companies is given in Article 6 of the Law on Transport. Thus, transport companies are considered to transport passengers, cargo, baggage, mail and provide other transport services.

Drivers must be insured by legal entities or individual entrepreneurs who own or operate vehicles and have concluded insurance contracts with the insurer (clause 4 of Regulation No. 959). Drivers are considered insured only **for the duration of the trip service** (clause 2 of Regulation No. 959).

This is established in clause 165.1.5 of the TCU and subclause 1.7, clause 16[1], Sub-section 10, Section XX of the TCU. In Section I of Tax Calculation 4DF, it is necessary to reflect the amounts of such insurance premiums **with the income attribute "132"**.

If the company does not belong to transport companies, then drivers' insurance will be provided **voluntarily**.

At the same time, the insured person will have taxable income (personal income tax at the rate of 18%, military levy at the rate of 1.5%). In Section I of Tax Calculation 4DF, it is necessary to reflect income **with the income attribute "124"**. It is also necessary to take into account the non-monetary nature of such income and apply a natural coefficient of 1.219512 when calculating personal income tax. However, the military levy must be deducted from the "net" value of insurance.

In addition, the amount of insurance premiums for voluntary driver insurance will be the basis for calculating USC. After all, it is included in the salary fund (clause 2.3.4 of Instruction No. 5).

In accounting, the amounts of insurance premiums under insurance contracts must be included in the corresponding expenses (National Accounting Regulations (Standards) 16). Transport companies must reflect such amounts as part of general production expenses on account 91 (clause 15.7 of National Accounting Regulations (Standards) 16). If insurance premiums are paid for a long period, it is necessary to account for them as deferred expenses in account 39, and then in each month of validity of the insurance contract, write off the amounts from account 39 to the expenses of the reporting period.

TESTING FOR COVID-19 FOR AN EMPLOYEE TRAVELLING ON A BUSINESS TRIP ABROAD

Testing is a prerequisite for entering a foreign country. The employer paid the cost of testing for COVID-19 for the employee to go on a business trip abroad and took on the costs of purchasing an insurance policy covering treatment for COVID-19. Does this create an additional benefit for the employee?

Types of travel expenses reimbursed to the employee are specified in clause 170.9.1 of the TCU. These expenses include other **documented expenses related to the rules of entry and stay at the place of a business trip** and **compulsory insurance costs**. Exemption from personal income tax of these expenses is provided for in clause 165.1.11 of the TCU. We do not charge a military levy based on subclause 1.7, clause 16[1], Sub-section 10, Section XX of the TCU. These rules apply only if there are original supporting documents and their connection with the business activities of the enterprise.

Thus, if the **entry condition** to a foreign country and stay on its territory **is testing for COVID-19**, when reimbursing the costs of such testing from the employee, **an additional benefit does not arise**.

In addition, to enter some countries, you must also have an insurance policy that covers treatment for COVID-19. If such a policy is mandatory for entering a particular country, the company is obliged to compensate the employee for the cost of purchasing it. After all, without it, the employee will not be able to go on a business trip abroad.

Although COVID-19 insurance is not explicitly specified in clause 170.9.1 of the TCU, its cost, if there is documentary evidence of the expenses incurred, is not the employee's income. These are travel expenses related to the rules of entry and stay at the place of a business trip (second paragraph, subclause "a", clause 170.9.1 of the TCU). The cost of testing and insurance policies related to COVID-19 required for a business trip abroad is also not the basis for calculating USC since travel expenses are not included in the salary fund according to clause 3.15 of Instruction No. 5 and specified in clause 6, Section I of List No. 1170 among the payments for which USC is not accrued.

It is essential to take care of proof that without a negative "COVID" test and a COVID-19 insurance policy, your employee will not be able to be sent to a particular country. To do this, you can apply the information on the website of the Ministry of Health (covid19.gov.ua/border) or on the website of the country's embassy in Ukraine.

You can also choose another way. Clause 165.1.19 of the TCU comes to assistance, which deducts from taxation funds or the value of the property (services) provided as **assistance for** treatment and **medical care** at the expense of the employer if there are supporting documents.

One of the options can be as follows. The employee writes an application with a request to provide assistance for medical care — testing for COVID-19. The employer pays the cost of such testing to the medical institution and issues an order to provide assistance for medical care according to clause 165.1.19 of the TCU. Then it receives documents confirming the provision of services.

The amount of assistance for treatment and medical care of employees must be reflected in Section I of Tax Calculation 4DF **with the income attribute "143"**. Assistance to pay for treatment **is not included in the USC accrual base** since it does not belong to the payroll fund according to clause 3.31 of Instruction No. 5 and given in clause 14, Section I of List No. 1170.

HR CONSULTING

ABOUT ELECTRONIC EMPLOYMENT RECORD BOOKS — ELECTRONIC ACCOUNTING OF LABOUR ACTIVITY

Effective June 10, 2021, the Law of Ukraine "On Amending Certain Legislative Acts of Ukraine on Registering an Employee's Labor Activities in Electronic Form" No. 1217-IX dated February 5, 2021 (hereinafter — Law No. 1217).

The start of this Law is the beginning of the end of the usual paper employment record books, which were used to fix labour relations.

The transition to electronic accounting will last for five years. This is exactly how much time is allocated for the Pension Fund to include missing information about employees' work activities in the Register of Insured Persons of the State Register.

From June 10, 2021:

- the 5-year period for submitting scanned copies of employment record books begins;
- you must comply with the new rules of dismissal from work – issue a copy of the order to terminate the employment relations on any basis of dismissal;
- entries in the paper employment record book are made only at the request of the employee;
- all entries that were previously made in the paper employment record book must be entered in the electronic register through the PFU portal;
- the employer will no longer keep employment record books, they remain with the employee;
- we determine whether an employee is accepted to the principal place of work or part-time, already at the request of the employee, and not upon submission of the employment record book;
- the (non-) accrual of USC in the amount of at least the minimum is affected by such a statement.

Within five years, employers for employees or employees for themselves will be able to transfer missing information about their employment to the Pension Fund in electronic form.
Transfer via the Pension Fund's electronic services web portal (portal.pfu.gov.ua).

There will be two options available (!):

- in the form of scanned copies of employment record books. Go to the Personal account on the PFU web portal. In the section "Communications with PFU", select the service "Information about the employee's work activity". Read the instructions and go to the Downloads section. Filling out the form for your employee. Attach (1) scanned copies of the employment record book and (2) a scanned copy of the employee's consent to the processing of personal data. Scanned copies must be clear and contain pages in chronological order. The recommended scanning resolution must be 300 dpi. The image format must be jpg or pdf; the size of each file must not exceed 1 MB;
- in the form of digitized copies of the employment record book — by creating a corresponding entry in the personal account of the insurer or insured person on the web portal of electronic services of the Pension Fund.

In other words, it will be possible to enter information about employment from the employment record book in the section "Information about employment" and add scanned copies of the documents based on which the records were made. This is a more time-consuming option.

In any case, we advise you to take your time. **PLEASE NOTE!**
The Pension Fund must establish the procedure and deadlines for submitting employment information. This is explicitly stated in clause 2, Section II of Law No. 1217.
If we talk about the deadline for submission, then, presumably, the PFU will first want to get information about the work experience of those employees who do not have long left before retirement. However, the young people will be left for later. After all, it is not enough to get information (including scanned copies of documents). It must be adequately processed.

What personnel issues do employers face starting from June 10, 2021?

Let us start with those employees who, as of June 10, 2021, are in employment relations with an employer (legal entity or individual entrepreneur).

Employer-legal entity. Here, the issue of providing information about employees' work activities to the Pension Fund comes first.

Of course, the legislator does not establish the employer's obligation to send such information. They can be received by the Pension Fund directly from the insured person, i.e. the employee.
Nevertheless, employers-legal entities keep their employment record books. You cannot just give them to employees. In this case, employers-legal entities will probably have to fill in the Register of Insured Persons with missing information.

PLEASE NOTE!

After providing information to the Pension Fund, we issue the existing employment record books at the enterprise to employees against signature. Even if there is only a record of employment. Note that now there is no explanation of where exactly the employee must put their signature on receiving the employment record book.

For this purpose, the Accounting Log for Movement of Employment Record Books and inserts thereto (Standard Form No. P-10) is suitable. In column 12 of this Log, the responsible person of the employer may indicate the date of providing information and the basis for issuing the employment record book, for example: "June 21, 2021, clause 2, Section II of Law No. 1217-IX dated February 5, 2021", and in column 13, the employee will put their signature on receiving the employment record book.

Further, information about employment will be generated electronically. An employee can request the employer to enter information about their work and incentives and awards for success in their work (if any) in their employment record book. And the employer will be obliged to fulfil this requirement.

However, the employer does not keep the employment record book. One made an entry and gave it to the employee. If an employee who was hired before June 10, 2021 leaves, but has not yet been transferred information about their work activity to the Pension Fund. In this case, we proceed according to the usual old scheme. On the day of dismissal, we make a final payment with the employee and issue him/her a duly completed employment record book with a record of dismissal from work.
We also give the employee **a copy of the dismissal order**.

PLEASE NOTE!

Providing the employee with a copy of the dismissal order on the day of dismissal becomes the responsibility of the employer. Having an employment record book on hand, he/she can also transmit information about their work activity to the Pension Fund through the insured person's office on the web portal of electronic services of the Pension Fund.

Employer-individual entrepreneur. He/she does not keep employees' employment record books. Labour documents are on the hand of employees. Therefore, nothing prevents the latter from submitting information to the Pension Fund independently without the participation of an entrepreneur.

If we dismiss an employee on June 10, 2021 or later, be sure to ask him/her if he/she has passed on information about their employment to the Pension Fund.

If:

- no, we make an entry about the dismissal in the employee's employment record book and give him/her a copy of the dismissal order;
- yes, we issue a copy of the dismissal order to the employee. Nevertheless, we make an entry about dismissal in the employment record book only if the employee desires so.

We work with employees who are hired from June 10, 2021 or later under the new rules.

PLEASE NOTE!

When applying for employment, the person will provide the employer with either an employment record book (if any) or information about employment from the Register of Insured Persons.

What kind of information is this? Will they be relevant for the employer when hiring an employee? It is hard to say. After all, today, the Pension Fund draws information about employment from Appendix 5 (D5) of the Joint Report. This report is quarterly. Therefore, PFU employees learn about labour news (acceptance/transfer/dismissal) with a significant delay.

In any case, the employer must comply with the requirement of the Labour Code. Therefore, if the employee does not provide an employment contract, we send him/her to the Pension Fund.

You need to understand how to hire an employee: at the principal place of work or part-time.
The Law on USC stipulates that the principal place of work will be the one that is determined by the employee as the main one according to the submitted application (before the withdrawal).

What kind of application is this, and to whom is it submitted? In the application for employment, we ask the employee to indicate the form of employment clearly: at the principal place of work or part-time, he/she is employed.

We recommend that you ask the employee for an employment record book when applying for a job and then act ad hoc.
If the employment record book is located:

- at another employer, since, according to the employee's information, information about their work activity has not yet been transmitted, we understand that we will be able to accept this employee exclusively on a part-time basis. Therefore, we ask him/her to indicate this form of employment in the work status.
- We send an employee to the Pension Fund to get information about their employment since it is this Fund that keeps the Register of Insured Persons;
- on hand of the employee, then:

1) we find out from him/her whether he/she does not work based on an employment contract at another enterprise (at an individual entrepreneur). We carefully study the employment record book, whether there is an entry in it when applying for a job without a record of dismissal. If there is, please provide a copy of the dismissal order (such an order is not provided for in the Labor Code);
2) please indicate in the application for employment the form of employment: full-time or part-time

Please note!

If an employee provides an employment record book, the employer has the right to read it and then must return it to such an employee.

The fact is that Article 48 of the Labor Code stipulates that the employee's employment record book is kept. The employee may ask the employer to enter information about the job or promotion in the employment record book. You cannot refuse!

Make entries in the employment record book and give it to the employee for safekeeping.

About scanned copies and providing employment information. Since the employee has an employment record book on hand, if required, he/she will be able to provide the necessary information about the work experience to the Pension Fund. Therefore, you do not need to scan for new employees.

However, if you want, you can help them. For this, you will be able to calculate the insurance length of service for sick leave only according to the data of the Register of Insured Persons of the State Register, including the data available in it on the labour activity of employees. Such changes to the recording of sick leave will be made in Part 2 of Article 21 of the Law on Social Insurance.

If you do not want to help, do not have time for it, or the employee wants to scan on their own, we recommend that you make a copy of their employment record book before giving it away. In case the employee gets sick, and the calculation requires insurance experience, but it is not in the State Register because the employee did not transfer it, and you do not have the employee's employment record book.

However, what if the employee does not have an employment record book, but he/she wants to start one because he/she does not trust technological progress? No problem! Even if an employee is applying for a job for the first time and does not have an employment record book, he/she can apply to the employer with a request to issue it. And again, the employer will not have the right to refuse.

It should be noted that the Cabinet of Ministers of Ukraine will have to determine the procedure for maintaining employment record books in the new conditions. Therefore, perhaps very soon, we are waiting for changes here as well. However, it is clear that it is too early to talk about the final farewell to paper employment record books.

LEGAL CONSULTING

AUTHORIZED CAPITAL OF LLC: RULES OF FORMATION

A limited liability company is the most common legal form of business entity in Ukraine. This is due to the convenience of LLC management mechanisms, and therefore their acceptability for small and medium-sized businesses. The formation of the authorized capital is a mandatory stage of establishing an LLC, the basic rules and requirements that must be followed.

The concept of "Authorized Capital of an LLC" and Its Composition.

Until 2018, there was no single code or special law in Ukraine that would determine the legal status of limited liability companies (LLCs) in general and the authorized capital of such companies. The situation has changed with the adoption of the Law of Ukraine "On Limited and Additional Liability Companies" No. 2275 – VIII" dated February 6, 2018 (hereinafter – Law No. 2275), which, in comparison with Law No. 1576, regulates in more detail the issues of creation and operation of LLC — a separate chapter (III) is devoted to the issues of authorized capital and contributions of participants.

What is the Authorized Capital of an LLC from the Point of View of the Legislator?

According to Article 87 of the Commercial Code of Ukraine, the authorized capital of a business company is the sum of contributions of its founders and participants. However, with the entry into force of Law No. 2275, the corresponding Article of the Commercial Code of Ukraine was deleted. However, this does not change the essence: the authorized capital is a set of various values that the participants agreed to give to the LLC for use by the latter in economic activities.

What Exactly can be Added to the Authorized Capital of an LLC, or in What Forms Can such Contributions be Made?

Firstly, the answer to this question is contained in Part 1 of Article 13 of Law No. 2275, according to which the contribution of a company participant may be money, securities, or other property unless otherwise established by law. According to Part 1 of Article 190 of the Civil Code of Ukraine, property as a special object shall be considered a separate thing, a set of things, as well as property rights and obligations.

Under Part Two of Article 13 of the Law on Companies, a company may not provide a loan to pay for a participant's contribution or a guarantee for loans or credits provided by a third party to pay for its contribution.

Thus, property rights arising in the company's loan relations with its founder based on security — promissory note — cannot be a contribution to the authorized capital of a business company".

At the same time, the legislation does not prohibit the formation of the authorized capital of a company by depositing funds received by a participant in the form of repayable financial assistance not from such a company, but from another person".

Separate exceptions to the composition of the authorized capital are also provided for by the legislation.

Article 86 of the Commercial Code of Ukraine prohibits the use of such objects for the formation of the company's authorized (pooled) capital:

- budget funds;
- property of state (municipal) enterprises that is not subject to privatization according to the law (decision of the local self-government body);
- property that is under the operational management of budgetary institutions, unless otherwise provided by law.

In addition, we note that traditionally for Ukrainian legislation, the list of exceptions given in Article 86 of the Commercial Code of Ukraine is not exhaustive.

Thus, guided by the general provisions of civil legislation (Article 178 of the Civil Code of Ukraine), objects of civil rights whose stay in civil circulation is not allowed (objects withdrawn from civil circulation), as well as objects that can belong only to certain participants in the turnover or whose stay in civil circulation is allowed with a special permit (objects that are limited turnover), cannot be contributions.

By the time the authorized capital of an LLC is formed, the founders must check whether their future contributions are not included in the list of objects that, according to the legislation, cannot be contributions to the authorized capital of an LLC.

Special attention must be paid to special legislation, which often contains references to specific objects of civil rights that are prohibited from being included in the authorized capital of an LLC.
For example: according to clause 14, Section X "Transitional Provisions" of the Land Code of Ukraine before the entry into force of the law on the turnover of agricultural land, but no earlier than January 1, 2020, it is prohibited to include the right to a land share in the authorized capital of business entities.

A non-monetary contribution must have a monetary value, which is approved by a unanimous resolution of the general meeting of participants, in which all (!) members of the company took part. When creating a company, such an assessment is determined by the resolution of the founders to establish a company (Part 3 of Article 13 of Law No. 2275).
Similarly, this issue is regulated by Part 2 of Article 115 of the Civil Code of Ukraine. However, with a slight clarification: in cases established by law, the monetary assessment of the contribution of a business entity participant is subject to independent expert verification.

Amount of the Authorized Capital of an LLC

The issue that traditionally concerns participants before establishing an LLC is the legal requirements for the authorized capital. Article 12 of Law No. 2275 stipulates that the amount of the authorized capital of an LLC consists of the nominal value of the shares of its participants expressed in the national currency of Ukraine, and at the same time stipulates that the amount of the share of a company participant in the authorized capital of the company can be additionally determined as a percentage.

What is the minimum amount of the authorized capital of an LLC?

For a long time, the legislation of Ukraine established fixed limits on the authorized capital of an LLC, which participants had to fulfil. This fixed minimum amount of the authorized capital of an LLC has changed several times.

Currently, there are no legal requirements regarding the amount of the authorized capital of an LLC.
The parties have the right, at their own discretion, to decide what amount of the authorized capital the company will have.

At the same time, the founders must consider that according to established practice, the authorized capital of the company determines the minimum amount of the company's property, and this guarantees the interests of its creditors. Therefore, it is natural that the larger the authorized capital of an LLC, the safer cooperation with it will be for counterparties. The amount of the authorized capital agreed by the founders must be fixed in the constituent document — the Charter of the LLC (Part 4 of Article 57 of the Commercial Code of Ukraine).

Terms of Formation of the Authorized Capital

Article 14 of Law No. 2275 stipulates that each participant of the company must make a full contribution within 6 months from the date of state registration of the LLC unless otherwise provided by the charter. The relevant provisions may be included in the charter, amended, or excluded from it by a unanimous resolution of the general meeting of participants, in which all participants of the company took part. The value of the contribution of each participant of the company must not be less than the nominal value of its share.

Confirmation of the fact of adding a property to the authorized capital can serve, for example, the acceptance and transfer act of property, delivery of a bill of lading or another property disposal document. At the same time, since the right of ownership to real estate arises from the moment of state registration (Part 2 of Article 3 of Law No. 1952), if the founder's contribution defines a building or land plot, the date of making the relevant property in the authorized capital will be considered the date of making an entry on the change of ownership in the State Register of Property Rights to Real Estate. All its participants must make their contribution to the authorized capital of an LLC.

Procedure for Changing the Amount of the Authorized Capital of an LLC

When carrying out business activities in an LLC, it may often be necessary to decide on changing (increasing or decreasing) the amount of the authorized capital. The legislation of Ukraine establishes the right of the company to make such a decision but considering certain legislative features.

First of all, it is worth remembering that making a decision on changing the amount of the authorized capital of an LLC falls within the exclusive competence of the LLC's general meeting of participants (clause 3, Part 2, Article 30 of Law No. 2275). This means that neither the director of an LLC nor any of its participants have the right to independently — without a resolution of the general meeting — increase or decrease the amount of the authorized capital of the company.

Since information on the amount of the authorized capital and the amount of the share of each of the founders (participants) is subject to entry into the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Formations (clause 15, Part 2, Article 9 of Law No. 755), the resolution of the general meeting on changing the amount of the authorized capital comes into force no earlier than the date of registration of the relevant changes.

PLEASE NOTE

It is allowed to decide on increasing the authorized capital of an LLC only after all its participants have made contributions in full. An increase in the authorized capital of a company that owns a share in its own authorized capital is not allowed (Parts 1, 2 of Article 16 of Law No. 2275). The authorized capital of an LLC can be increased either with the help of additional deposits (participants and/or third parties) or at the expense of retained earnings.

In case of an increase in the authorized capital due to additional deposits, the nominal value of the company's participant's share may be increased by an amount equal to or less than the value of the additional contribution of such participant (Part 3 of Article 16 of Law No. 2275). When the authorized capital is increased at the expense of the company's retained earnings without attracting additional contributions, the composition of the company's participants and the ratio of their shares in the authorized capital do not change (Part 2 of Article 17 of Law No. 2275).

There are also certain legislative features regarding reducing the amount of the authorized capital of an LLC. They are primarily because reducing the amount of the authorized capital of an LLC is important for the counterparties of this company.

Part 3 of Article 19 of Law No. 2275 stipulates that after deciding to reduce the authorized capital of an LLC, its executive body must notify each creditor whose claims against the company are not secured by a pledge, guarantee or guarantee of such a decision within 10 days.

In the event of a decrease in the nominal value of the shares of all the company's participants, the ratio of the nominal value of their shares must remain unchanged (Part 2 of Article 19 of Law No. 2275).

Consequences of Incomplete Formation of the Authorized Capital of an LLC

As we have already noted, unless otherwise specified in the charter, LLC participants must form the authorized capital within 6 months from the date of state registration of the LLC. At the same time, the legislation also regulates cases when the company's participants have not made or have not fully made their contributions to the authorized capital within the established period — see Article 15 of Law No. 2275.

Thus, in case of late payment of a contribution by a participant, the company's executive body must send him/her a written warning about the delay. The latter must contain information about the contribution or part thereof that was not made in a timely manner and the additional period provided for repayment of the debt. This period is established by the company's executive body or charter and must not exceed 30 days.

If the LLC participant does not fully fulfil its obligations to contribute to the authorized capital even within the additional period allotted to it, the meeting of participants convened by the LLC's executive body may make one of the following resolutions:

- on the exclusion of a company participant who is in arrears in contributing;
- on reducing the authorized capital of the company by the amount of the unpaid part of the share of the company's participant;
- on the redistribution of unpaid share (part of share) among the other company's members without changing the amount of the authorized capital and payment of such debt relevant stakeholders;
- on the company's liquidation.

If the relevant decision is made, the votes that fall on the share of a participant who is in arrears to the company are not considered when determining the voting results. The LLC is obliged to maintain the availability of assets with a value not less than the amount of the authorized capital.

GROUNDS AND PROCEDURE FOR REDUCING THE AUTHORIZED CAPITAL OF AN LLC

Cases of Mandatory Reduction of the Authorized Capital

Late Contribution

Each participant of the company must make a full contribution within 6 months from the date of state registration of the company (Part 1 of Article 14 of the Law on LLC). However, the law allows providing for a different term in the charter.

If the participant is late in making the contribution or part thereof, the company's executive body must send him/her a written warning indicating the additional period provided for repayment of the debt. Such an additional period is established by the executive body or the company's charter, but it should not exceed 30 days (Article 15 of the Law on LLC).

Provided that the participant has not contributed to repay the debt within the provided additional period, the company's executive body must convene a general meeting of participants, which may make one of the following resolutions:

- on the exclusion of a company participant who is in arrears in contributing;
- on reducing the company's authorized capital by the amount of the unpaid part of the company's participant's share;
- on the redistribution of unpaid share (part of share) among the other company's members without changing the amount of the authorized capital and payment of such debt relevant stakeholders;
- on the company's liquidation.

PLEASE NOTE.

If the general meeting of the company decides to exclude the debtor participant from the company with payment of a part of the company's property proportional to the share he has made in the authorized capital (option No. 1), the authorized capital will also have to be reduced.

In general, the Law on LLC does not require automatic reduction of the authorized capital in case of withdrawal of the participant with payment of their share in the authorized capital. After all, the remaining participants can decide on the redistribution of the share of the participant who leaves the company in proportion to their share in the authorized capital.

Decrease in the Net Asset Value

As provided in Part 3 of Article 31 of the Law on LLC, if the company's net asset value has decreased by more than 50% compared to this indicator as of the end of the previous year, the company's executive body must convene a general meeting of participants, which must be held within 60 days from the date of the decrease in the net asset value.
Net assets — the company's assets less its liabilities. (clause 4 of National Accounting Regulations (Standards) 19)
The agenda of the mentioned general meeting includes the following issues:

- measures to be taken to improve the company's financial condition;
- reduction of the company's authorized capital

or

- liquidation of the company.

Repurchase of a Participant's Share by the Company

The company has the right to acquire a share or part of a participant's share in its own authorized capital without reducing it by the amount of such share only if, on the day of this acquisition, the company forms reserve capital in the amount of the purchase price of the purchased share (part thereof). Such reserve capital cannot be used for payments to the company's participants (Part 1 of Article 25 of the Law on LLC).

At the same time, the Law on LLC does not prohibit the purchase of a share of a company participant without creating reserve capital, but at the same time with a reduction in the authorized capital. For more information about buying out a share of one's own corporate rights, see the article "Repurchase and Sale of a Share of Own Corporate Rights: Tax and Accounting".

Regarding the purchase of a share, there is another requirement provided for in Part 4 of Article 25 of the Law on LLC: in case of acquisition of a participant's share (part thereof) by the company itself without reducing the authorized capital, the company is obliged to carry out retaliatory alienation of such share (part of the share) no later than one year from the date of its acquisition.

Along the way, a question arises to which there is no clear answer: is the LLC obliged to reduce the authorized capital if it does not sell the share purchased from the participant within the specified year? The Law on LLC does not require an unconditional reduction of the authorized capital in case of non-fulfilment of the requirement to sell the repurchased share during the year. Therefore, before the appearance of explanations, you may not rush to reduce the authorized capital. In general, the decision to reduce the authorized capital can also be made voluntarily.

The Successor did not Apply to Join the Company

Now, Part 1 of Article 23 of the Law on LLC provides: in the event of the death of a company participant, their share shall pass to their heir or legal successor without the consent of the company participants. Therefore, the option of not accepting the successor to the list of participants is no longer relevant.

However, Part 2 of Article 23 of the Law on LLC provides: if the successor's share in the company is less than 50%, he/she must submit an application for joining the company within one year from the date of expiration of the term for accepting the inheritance. And if the successor does not do this, the company may exclude the participant from the company (with payment of their share to the successor), and such an exception, of course, may lead to a reduction in the authorized capital.

For more information on this topic, see the article "Inheritance of a Share in the Company: Tax Consequences for the Successor".

Voluntary Reduction of the Authorized Capital

Considering the norms of Part 1 of Article 19 of the Law on LLC, the company shall have the right to reduce its authorized capital. Such a reduction can occur either with or without payments to participants of their share (for example, in connection with the participant's withdrawal from the company). However, we emphasize that if the nominal value of all participants' shares decreases, the ratio of the nominal value of their shares must remain unchanged (Part 2 of Article 19 of the Law on LLC).

As for the amount of payment to participants, it can be either less (equal to) the amount of reduction of the authorized capital or more than the amount of reduction of the authorized capital.

In addition, the decision to reduce the authorized capital may be made to cover (reduce) the amount of losses of the company, even if the value of the company's net assets has not decreased by more than 50% compared to this indicator as of the end of the previous year.

Reduction Procedure of the Authorized Capital

Decision to Reduce the Authorized Capital

It is adopted by three-quarters of the votes of all participants of the company who have the right to vote on relevant issues (Part 2 of Article 34, clause 3, Part 2, Article 30 of the Law on LLC). However, the company's charter may establish a different number of votes of the company's participants for making such a decision, but no less than the majority of votes (Part 5 of Article 34 of the Law on LLC).

If the general meeting decides to reduce the authorized capital due to late payment of a contribution by a participant, the votes that fall on the share of such participant will not be taken into account when determining the voting results (Part 3 of Article 15 of the Law on LLC).

Notification of Creditors

After making a decision to reduce the authorized capital of the company, its executive body must notify each creditor whose claims against the company are not secured by a pledge, guarantee or surety of such decision within 10 days (Article 19 of the Law on LLC).

Creditors have the right to apply to the company within 30 days after receiving the notification with a written request to implement one of the following measures at the company's choice within 30 days:
1) ensure the fulfilment of obligations by entering into a security agreement;
2) early termination or fulfilment of obligations to the creditor;
3) enter into another agreement with the lender.

If the company fails to comply with the specified claim within the established time limit, creditors have the right to demand early termination or fulfilment of obligations by the company in court.
However, if the creditor has not submitted a written request to the company within the above period, it is considered that it does not require the company to perform additional actions to fulfil its obligations to it.

State Registration of Amendments to the Charter

It is evident that reducing the authorized capital requires making changes to the charter since this leads to changes in the composition of participants, their share and the amount of the authorized capital. Such information is subject to entry in the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Formations (clause 15, Part 2, Article 9 of Law No. 755). Therefore, after the general meeting of participants makes a resolution to reduce the amount of the authorized capital, it is necessary to contact the state registrar to register the relevant changes.

For more information about what documents must be submitted for this purpose, how much to pay the administrative fee, and other features of making changes to the unified state register, see the article "Increase in the Authorized Capital of an LLC: Procedure and Accounting".

At the same time, please note: the Law on LLC does not set a deadline for notifying the state registrar of changes in the constituent documents. In addition, the Law on LLC does not provide for a deadline for the entry into force of the meeting's decision to reduce the authorized capital. Therefore, in fact, such a decision actually comes into force from the date of its adoption.

FROM THE MOMENT OF OPENING THE LIQUIDATION PROCEDURE, ALL RIGHTS OF THE HEAD OF THE LEGAL ENTITY ARE TRANSFERRED TO THE CHAIRMAN OF THE LIQUIDATION COMMISSION (LIQUIDATOR)

According to Part 1 of Article 104 of the Civil Code of Ukraine, a legal entity shall be terminated as a result of reorganization (merger, accession, spin-off, transformation) or liquidation. In case of reorganization of legal entities, the property, rights, and obligations shall be transferred to the legal successors.

Participants of a legal entity, the court or the body that made the decision to terminate the legal entity, under the Civil Code of Ukraine, shall appoint the termination commission of the legal entity (reorganization commission, liquidation commission), the chairman of the commission or the liquidator and establish the procedure and time limit for creditors to file their claims against the legal entity that is being terminated (Part 3 of Article 105 of the Civil Code of Ukraine).

The functions of the termination commission of a legal entity (reorganization commission, liquidation commission) may be assigned to the management body of the legal entity.

The termination commission of a legal entity (reorganization commission, liquidation commission) or liquidator shall be responsible for managing the affairs of the legal entity from the moment of appointment. The chairman of the commission, its members or the liquidator of a legal entity shall represent it in relations with third parties and act in court on behalf of the legal entity that is being terminated (Part 4 of Article 105 of the Civil Code of Ukraine).

According to Part 7 of Article 111 of the Civil Code, to conduct inspections and determine the presence or absence of debt, in particular, for the payment of taxes, fees, a single contribution to mandatory state social insurance, the liquidation commission (liquidator) shall ensure timely provision to the STS bodies of documents of a legal entity (its branches, representative offices), including primary documents, accounting and tax accounting registers.

Prior to the approval of the liquidation balance sheet, the liquidation commission (liquidator) shall prepare and submit reports for the last reporting period to the STS bodies.

Consequently, from the moment of opening the liquidation procedure, all rights of the head of a legal entity shall be transferred to the chairman of the liquidation commission (liquidator). Such a taxpayer (represented by the chairman of the liquidation commission (liquidator)) must submit and sign tax reports to the controlling body at the place of registration and/or at the secondary place of registration before the date of making an entry on the termination of the legal entity in the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Formations.

In case of state registration of termination of entrepreneurial activity of an individual entrepreneur by its decision, tax reports shall be submitted against the signature of the individual himself/herself or another person notarized by the taxpayer to carry out such filling.

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SINCE MARCH 19, THE PROCEDURE FOR ACCOUNTING FOR TAXPAYERS HAS BEEN CHANGED

On March 19, 2021, changes to the Accounting Procedure for Tax and Fee Payers was published (Order of the Ministry of Finance No. 62 dated February 8, 2021). The document is valid on the day of its official publication, except for its individual paragraphs, which come into force simultaneously with the entry into force of subclause 1, clause 84, Section I of Law No. 466-IX to clause 133.1.5 of the TCU.

The amendments are primarily intended to establish the procedure for registering and registering non-residents with regulatory authorities.

For registration, a foreign company or organization applies to the controlling body under Form No. 1-OPN. This form has been updated.

Non-residents (foreign law firms, organizations) that carry out activities in Ukraine through separate divisions, including permanent representative offices, and as of March 19, 2021 are not registered with the regulatory authorities, are required to submit documents for registration within two months defined in clauses 4.2, 4.4 of Section IV of the Accounting Procedure.

The Ministry of Finance also clarified that the date of receipt of documents by regulatory authorities (information, applications, requests, and other documents):

- submitted in paper form – is the date of receipt by the relevant controlling body;
- submitted in electronic form – is the time and date of receipt of such an electronic document, which are indicated in the electronic notification (receipt) generated by the STS software, in the format approved according to the procedure established by law.

If the document submitted in electronic form was received later than 16 hours of the business (operational) day, then the date of its receipt is the next business (operational) day after it.

Registration with the STS will now be confirmed not by an extract from the Unified State Register, but by information published on the portal of electronic services.

The grounds for making an entry in the Register of Self-Employed Persons on the termination of entrepreneurial activity of an individual entrepreneur or independent professional activity of an individual have also been updated.

THE LAW ON THE ELECTRONIC COURT HAS BEEN IN EFFECT SINCE MAY 26, 2021

On May 26, 2021, the Law of Ukraine No. 1416-IX dated April 27, 2021 "On Amending Certain Legislative Acts to Ensure Phase-by-Phase Introduction of the Unified Judicial Information and Telecommunication System" (UJITS) entered into force.

The Law provides for the gradual introduction of the functioning of the UJITS in connection with the decision to postpone the start of operation of the entire UJITS system.

The Law defines for the implementation of relevant initiatives that:

- separate subsystems (modules) of the Unified Judicial Information and Telecommunications System begin to function in 30 days from the date of publication by the High Council of Justice in the newspaper "Voice of Ukraine" and on the web portal of the judicial power of Ukraine of the announcement on the creation and maintenance of the corresponding subsystem (module) of the UJITS. The High Council of Justice publishes announcements in the newspaper "Voice of Ukraine" and on the web portal of the judicial power of Ukraine about the beginning of the functioning of the Unified Judicial Information and Telecommunications System, consisting of all subsystems (modules) necessary for its full functioning;
- Regulations on the Unified Judicial Information and Telecommunications System and/or regulations defining the functioning of its individual subsystems (modules) are developed by the State Judicial Administration of Ukraine and approved by the High Council of Justice after consultation with the Council of Judges of Ukraine.
- Procedural documents in electronic form must be submitted by the participants of the case to the court using a single Judicial Information and Telecommunications System according to the procedure defined by the Regulations on the UJITS and/or the provisions defining the procedure for the functioning of its individual subsystems (modules). If documents are submitted to the court in electronic form, the participant in the case must provide proof of sending copies of the documents submitted to the court by letter with an inventory of the attachment to other participants in the case.

The court, during the judicial consideration of the case, carries out the **complete recording of the court session with the help of sound recording equipment** according to the procedure provided for in the Regulations on UJITS and/or regulations defining the functioning of its individual subsystems (modules). At the request of any of the participants in the case or at the initiative of the court, the full recording of the court session is carried out using video recording technical means (if there is a technical possibility in the court and if there are no objections from any of the participants in the trial).

During the implementation of a full recording of the court session by technical means, as well as holding the court session in videoconference mode, the minutes of the court session are created by the Unified Judicial Information and Telecommunications System according to the procedure defined by the Regulations on the UJITS and/or provisions defining the procedure for the functioning of its individual subsystems (modules). The minutes of the court session are sealed with the electronic signature of the secretary of the court session and attached to the case.

All court decisions are presented in writing in the paper and electronic forms.
Court decisions in electronic form are set out using the Unified Judicial Information and Telecommunications System, published according to the procedure defined by the Regulations on the UJITS and/or regulations defining the functioning of its individual subsystems (modules), and signed with the electronic signature of the judge (in case of collegial consideration – with the electronic signatures of all judges who are members of the panel).

HOW TO SUBMIT INFORMATION ABOUT BENEFICIARIES TO THE STATE REGISTRAR?

Effective July 11, 2021 Regulations on the Form and Content of the Ownership Structure (approved by Order of the Ministry of Finance No. 163 dated March 19, 2021, published in the newspaper "Uriadovyi Courier" dated June 11, 2021).

The ownership structure is an official document that is provided to the state registrar to establish the ultimate beneficial owner of a legal entity without fail.

It is prepared in any form and in the form of a schematic image. The ownership structure shows all persons who directly or indirectly own a legal entity independently or jointly with other persons. In the ownership structure, it is necessary to indicate the amount of participation of each of the owners, as well as indicate persons who, regardless of formal ownership, can influence the management or activities of the legal entity significantly. In addition, it is necessary to indicate the description of the implementation and the nature of the decisive influence of the final beneficial owner on the activities of the legal entity.

If information about the ultimate beneficial owner of a legal entity is not clearly tracked according to the Unified State Register, official documents confirming the possibility of such a decisive influence must also be attached to the schematic image.

Samples of drawing up a schematic image of the ownership structure are published on the official website of the Ministry of Finance.

The Law of Ukraine "On Preventing and Counteracting to Legalization (Laundering) of the Proceeds from Crime, Terrorist Financing and Financing Proliferation of Weapons of Mass Destruction" No. 361-IX dated December 6, 2019 obliged **all previously registered legal entities to submit to the state registrar information about the ultimate beneficial owner (hereinafter referred to as the UBO) and the ownership structure within 3 months from the date of entry into force of the regulatory legal act, which will approve the form and content of the ownership structure.**

This Law also required maintaining up-to-date information about the UBO and ownership structure, updating it and notifying the state registrar of changes within 30 business days from the date of their occurrence, and submitting documents confirming these changes to the state registrar.

Submission of information about the UBO of a legal entity is expected for the first time in 2021 after the adoption of a regulatory legal act that approved the form and content of the legal entity's ownership structure.

The Ministry of Justice will check the facts of non-submission of information about the UBO.

CONDITIONS FOR AVOIDING DOUBLE TAXATION WITH THE NETHERLANDS HAVE BEEN CHANGED

The Verkhovna Rada, at a meeting on June 15, 2021, ratified the Protocol between Ukraine and the Kingdom of the Netherlands on amendments to the Convention between the two countries for the avoidance of double taxation and prevention of tax evasion with respect to taxes on income and property.

The Protocol provides for:

- taxation of dividends at the rate of 5% — if the actual owner of dividends is a company (other than a partnership) that directly owns at least 20% of the capital of the company paying dividends (the provision on taxation of dividends at the rate of 0% is excluded), and 15% — in all other cases;
- increase in the interest tax rate — from 2% to 5%;
- increase in the royalty tax rate that is paid for the use or right to use of any copyright in scientific works and patent, trademark, design or model, secret formula, or process, or for information related to industrial, commercial or scientific experience — from 0% to 5%;
- a new version of the article on information exchange, which provides for a significant expansion of the capabilities of the competent authorities to exchange tax information;
- rules on the application of the right to receive benefits. Benefits will not be granted in relation to the type of income or property if one of the main purposes of any agreement or agreement between business entities was to directly or indirectly obtain such an advantage.

THE GOVERNMENT HAS ADJUSTED THE RULES OF QUARANTINE AND RESTRICTIVE ANTI-EPIDEMIC MEASURES

The Cabinet of Ministers of Ukraine by Resolution No. 230 dated March 22, 2021 amended Resolution No. 1236.

The rules of quarantine and restrictive anti-epidemic measures have been adjusted.

Major changes include the following:

Firstly, **within the framework of the "yellow", "orange" and "red" levels of epidemic danger, measures were allowed to assess the quality of education,** that is, a trial and classic EIT.

Second, the ban was lifted within the "yellow" and "orange" levels of epidemic danger **for carrying out planned measures for hospitalization by state and municipal health care institutions**.

Third, for regions where the "orange" level of epidemic danger is established, local commissions on technogenic and environmental safety and emergencies were allowed to establish additional restrictive anti-epidemic measures.

Fourth, on the territory of regions where the "red" level of epidemic danger is established, **by a separate decision of the Regional Commission on Fuel and Energy Efficiency and Emergencies, regular and irregular passenger transportation may be prohibited** by road and rail transport within the respective regions, except for transit and transportation:

- passenger cars, the number of passengers, including the driver, in which no more than five people excluding children under the age of 14;
- official and/or rented motor vehicles of enterprises, establishments and institutions within the number of seats and exclusively along the routes of movement, about which the national police authorities have been informed at least two days in advance;
- passengers by road in international traffic if they have a laboratory-confirmed negative test result for COVID-19 by polymerase chain reaction, which was carried out no more than 48 hours before the day of the trip.

Fifth, the list of bans for the "red" regions was supplemented with the following:

- by a separate decision of the State Commission on Fuel and Energy Efficiency and Emergencies, it is prohibited to board passengers in road or rail transport that provides communication between regions, except for boarding passengers on trains of special railway flights in domestic traffic, the decision on which is made in each specific case by the carrier at the request of regional, Kyiv and Sevastopol City State Administrations in coordination with the Ministry of Infrastructure and the Ministry of Health; the introduction of other alternative restrictions, including restrictions on vehicle occupancy, based on the epidemic situation in specific regions;
- it is prohibited for state and municipal health care institutions to carry out planned measures for hospitalization (except for providing medical care due to the complicated course of pregnancy and childbirth, assistance to pregnant women, women in labour, newborns, assistance in specialized departments of health care institutions for patients with cancer and pulmonological diseases, providing palliative care in hospital settings, providing planned medical care by national-level health care institutions that provide tertiary (highly specialized) medical care, carrying out other urgent and urgent measures for hospitalization, if due to their postponement (postponement) there is a significant risk to life or health people);
- suspended cable cars are prohibited from operating;
- **it is forbidden to stay in public areas without wearing personal protective equipment respirators** or protective masks covering the nose and mouth, including self-made ones.

They also clarified the rules of self-isolation in connection with the crossing of the state border by Ukrainian citizens or checkpoints of entry to the temporarily occupied territories.

TRANSFER PRICING

NEW FORM FOR REPORTING CONTROLLED TRANSACTIONS: ANALYSIS OF CHANGES

New Reporting

By Order No. 841, which entered into force on March 19, 2021, the Ministry of Finance set out the following in a new version:

- Report on Controlled Transactions;
- Procedure for drawing up a Report on Controlled Transactions.

They were brought into line with Law No. 466, which made a number of changes to the TCU.

Amendment 1

Definition of the term "related parties" (for transfer pricing purposes), which, in particular, increased the threshold of connectedness from 20% to 25% (Appendix 2, Sign code of the link of a person: for legal entities — 501 and 502, for individuals — 502 and 511) and introduced a new category of related persons — "education without the status of a legal entity" (Sign code — 524).

Related parties are legal entities and/or individuals and/or entities without the status of a legal entity, the relationship between which may affect the conditions or economic results of their activities or the activities of the persons they represent, taking into account the criteria defined by clause 14.1.159 of the TCU.

In case of business operations by entities without the status of a legal entity with a related person of any of the participants in the joint activity agreement, the amount of contributions in the common property is 25 percent or more, entities without the status of a legal entity (joint activity agreement) and such a related person of any of the participants in such agreement are recognized as related.

Education without Legal Entity Status

An entity without the status of a legal entity is an entity created on the basis of a transaction or registered according to the legislation of a foreign state (territory) without creating a legal entity, which, according to the legislation and/or documents regulating its activities (personal law), has the right to carry out activities aimed at generating income (profit) in the interests of its participants, partners, founders, principals or other beneficiaries.

Entities without the status of a legal entity may include, in particular, but not exclusively, partnerships, trusts, foundations, and other institutions and organizations established based on a transaction or the law of a foreign state (territory). Entities without the status of a legal entity are considered to be non-resident persons whose legal form is included in the list approved by the Cabinet of Ministers of Ukraine according to paragraph "d", subclause 39.2.1.1, subclause 39.2.1, clause 39.2 of Article 39 of the TCU, which according to the personal law are not legal entities

Amendment 2

Features of applying transfer pricing methods for controlled transactions with commodities and using a list of information sources to obtain quotation prices for such goods.

For controlled transactions with commodities, compliance of the conditions of controlled transactions with the "arm's length" principle is established using the comparable uncontrolled price method (clause 39.3.3.4 of the TCU). For the purposes of this subparagraph, commodities are understood as goods for which unrelated persons use quotation prices as a reference point (benchmark) for setting the price of uncontrolled transactions. As of today, List No. 1221 is valid.

Quotation Prices

Quotation prices (for the purposes of Article 39 of this Code) are prices of commodities in the relevant period obtained on the international market of goods, which include the results of exchange trading, prices obtained from recognized agencies with transparent price reporting, statistical agencies or from government pricing agencies, where such indices are used as a reference (benchmark) by unrelated persons to determine prices in transactions between them. A quotation price is defined as a price (average price) and/or price range for a specific date or period (subparagraph 14.1.94-1 of the TCU).

Also, a taxpayer who performs controlled transactions with raw materials must notify the controlling body of the conclusion of the relevant agreement (contract).

If such notification is sent in a timely manner and the essential terms of the contract remain unchanged (in particular, the characteristics and price of goods, volume, terms of delivery and payment), the price of the controlled transaction will be compared with the quotation prices as of the nearest date to the pricing date agreed by the parties to the agreement.

If the terms of such an agreement (contract) are not consistent with the actual behaviour of the parties to the transaction and the actual terms of its conduct, the tax authority gets the right to compare the price of the controlled transaction with the quotation prices on the date of transfer of ownership or on the date of shipment of the goods according to the goods and transport documents.

Amendment 3

Indication by taxpayers of the information sources used to ensure compliance with the requirements for justifying in the transfer pricing documentation the compliance of the conditions of controlled transactions with the "arm's length" principle.

If the taxpayer applies the "arm's-length" principle to determine whether the terms of controlled commodity transactions comply with the methods of the "arm's-length" principle referred to in subparagraphs 39.3.1.2 to 39.3.1.5 of the TCU, the taxpayer in the transfer pricing documentation must:

- justify the impossibility of using the comparable uncontrolled price method or the fact that the comparable uncontrolled price method is not the most appropriate in relation to the facts and circumstances of the controlled transaction;
- indicate information about all persons who participated in the supply chain of such goods from the manufacturer (supplier) to the first unrelated person or a non-resident person who does not meet the criteria defined by paragraph "b", "d", clause 39.2.1.1 of the TCU. The information must contain data on the level of profitability indicators of these individuals, which are most appropriate, based on the facts and circumstances of their activities in the supply chain.

If the taxpayer does not provide such information, the controlling body shall have the right to independently determine the price level of the controlled transaction, which corresponds to the "arm's length" principle, using the comparable uncontrolled price method, taking into account the requirements of clause 39.3.3.4 of the TCU.

Please note, reasonable economic reason (business purpose)!

Starting from January 1, 2021, the concept of "reasonable economic reason (business purpose)" will be applied to all transactions recognized as controlled in relation to transfer pricing — a reason that can only be available if the taxpayer intends to obtain an economic effect because of economic activity.
Transactions carried out with non-residents have no reasonable economic reason (business purpose) if their main purpose is not to pay taxes and/or to reduce the taxable income of the taxpayer, and in comparable circumstances, a person would not be prepared to acquire (sell) such goods, works (services), intangible assets, other items of business transactions, other than goods, in unrelated persons.

Thus, according to the new clause 140.5.15 of the TCU, when performing transactions with non-residents that do not have a business purpose, the financial result before taxation of the payer is increased by the amount of expenses incurred in this regard. The controlling body will be responsible for proving the circumstances of the absence of a business purpose.

Also, for tax purposes, such payments on transactions with non-residents pertaining to the categories specified in paragraphs "a"," b", "d", clause 39.2.1.1 of the TCU:

1. amounts of income in the form of payments for securities (corporate rights) paid in favour of a non-resident in controlled transactions more than the amount that corresponds to the "arm's length" principle;
2. the value of goods (works, services) (except for securities and derivatives) purchased from such a non-resident in controlled transactions more than the amount that corresponds to the "arm's length" principle;
3. the amount of underestimation of the cost of goods (works, services) sold to such a non-resident in controlled transactions, compared to the amount that corresponds to the "arm's length" principle.

Amendment 4

Use of the same sources of information that the taxpayer used during inspections on compliance with the "arm's length" principle. According to Section III of Order No. 344, the taxpayer shall be obliged, at the request of the officials of the controlling body conducting the audit, to provide documents related to the subject of the audit within 10 business days from the start date of the audit.

During the audit, officials of the controlling body shall have the right to receive additional documents from the taxpayer confirming the implementation of financial and economic operations, compliance of the conditions of controlled transactions with the "arm's length" principle, completeness of calculating and paying taxes during controlled transactions.

The taxpayer shall submit such documents within the agreed period at the oral request of the officials conducting the audit. And in case of failure to submit documents within the agreed period, the inspection bodies shall send the taxpayer a written request indicating the documents that must be provided by such a taxpayer within 15 business days from the date of receipt of the request from the controlling body.

Other Changes to the Controlled Transaction Report

Two new columns to the section "Information about controlled transactions" are added, namely:

- column 26 — which indicates the code(s) of the type of source(s) of information used by the taxpayer to establish compliance of the conditions of the controlled transaction with the "arm's length" principle;
- column 27- — which indicates the name(s) of the source(s) of information used by the taxpayer to establish compliance of the conditions of the controlled transaction with the "arm's length" principle. If there are several names of information sources, enter all names separated by commas and spaces (", ").

In case of application in the previous column 26 of code "610" in column 27, put down the name(s) of the source(s) of information on quoted prices for raw materials from the recommended (non-exclusive) list of such sources published by the STS, which was used by the taxpayer according to clause 39.3.3.4 of the TCU. If there are several names of sources of information about commodity prices, specify all names separated by commas and spaces (", ").

In addition, the link code "523" is added to the Information about related parties when disclosing information for which the sign of link is indicated according to paragraph "c", clause 14.1.159 of the TCU at the time of performing the controlled transaction.

Please note that starting from 2021, we have a three-level transfer pricing reporting structure:

1. transfer pricing documentation submitted to local tax authorities and a report on controlled transactions;
2. global transfer pricing documentation (master file), which is submitted by a taxpayer who is part of an international group of companies whose annual income is equal to or exceeds the equivalent of EUR 50 million, at the request of the STS body. The request may be sent no earlier than 12 months and no later than 36 months from the end date 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 — no earlier than 12 months and no later than 36 months after the end of the reporting year. Global transfer pricing documentation (master file) must be provided by the taxpayer to the STS within 90 calendar days from the date of receipt of the request;
3. a country-by-country report of an international group of companies, which is submitted if the total consolidated annual income of the international group of companies, which includes the taxpayer, exceeds the equivalent of EUR 750 million, submitted by the parent company or an authorized member of an international group.

However, as the tax authorities explain in the Public Reference Resource (category 131.03), the submission of this report will begin no earlier than the competent authorities conclude a Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports. Please note that the form of the Country-by-Country Report of the International Group of Companies and the procedure for its drawing up was approved by Order of the Ministry of Finance No. 764 dated December 14, 2020.

When Must We Report using the Updated Form?

According to clause 46.6 of the TCU, the updated tax reporting forms must be used for reporting for the period following the period of their official publication. That is, according to the rules of the TCU, for the first time in the updated form, you will have to report on TP for 2021 until October 1, 2022.
Liability for the failure of a taxpayer to submit a report is provided for in clause 120.3 of the TCU and for late submission of a report — in clause 120.6 of the TCU.

Checking Compliance with the "Arm's Length" Principle

Article 39 of the TCU stipulates that tax control over establishing compliance of the conditions of controlled transactions with the "arm's length" principle shall be carried out by monitoring controlled transactions and conducting inspections on the taxpayer's compliance with the "arm's length" principle.

According to clause 39.1.1 of the TCU, a taxpayer participating in a controlled transaction must determine the amount of their taxable profit according to the "arm's length" principle.
The amount of taxable profit received by a taxpayer participating in one or more controlled transactions shall be considered to correspond to the "arm's length" principle if the conditions of these transactions do not differ from the conditions applied between unrelated persons in comparable uncontrolled transactions (clause 39.1.2 of the TCU).

If the conditions in one or more controlled transactions do not comply with the "arm's length" principle, the profit that would have been accrued to the taxpayer in terms of the controlled transaction that meets this principle is included in the taxpayer's taxable profit (clause 39.1.3 of the TCU).

Inspections on the taxpayer's compliance with the "arm's length" principle are radically different from other documentary inspections, primarily in terms of the purpose, procedures, and terms of their implementation.

The TCU notes that the taxpayer's compliance with the "arm's length" principle is checked according to the general provisions of Chapter 8, Section II of the TCU, but considering the specifics defined in Article 39 of the TCU.

Grounds for Verification

Verification of the taxpayer's compliance with the "arm's length" principle shall be carried out if there are grounds defined by the following criteria: subparagraphs 39.5.2.1 and 78.1.14-78.1.16 of the TCU.

That is, according to clause 39.5.2.1 of the TCU, verification may be carried out by the controlling body in the following cases:

- provision by the taxpayer of transfer pricing documentation according to clause 39.4.4 of the TCU;
- failure to submit or submission in violation of the Report on Controlled Transactions, transfer pricing documentation, global transfer pricing documentation (master file), country-by-country report of the international group of companies;
- submission by the taxpayer of an application for intention to make a proportional adjustment.

Under subclauses 78.1.14-78.1.16 of the TCU, verification shall be carried out:

- in case of obtaining documented information and data indicating non-compliance of the conditions of the controlled transaction with the "arm's length" principle and/or establishing non-compliance of the conditions of the controlled transaction with the "arm's length" principle, according to the procedure provided for in clause 39.5.1.1 of the TCU;
- failure by the taxpayer to submit or submission in violation of the Report on Controlled Transactions and/or transfer pricing documentation, or in case of violations during monitoring of such report or documentation according to the requirements of clauses 39.4 and 39.5 of the TCU;
- failure of the taxpayer to submit a clarifying calculation within 20 business days to correct errors identified based on the results of an electronic audit conducted at the taxpayer's request.

Therefore, verification can be ordered for any of the above reasons.

Who Conducts the Verification

According to Section II of Order No. 344, the head (their deputy or authorized person) of the controlling body shall issue an order to conduct an audit after the SFS approves the information notice provided by him/her with the justification of the grounds for conducting the audit.

According to clause 39.5.2.4 of the TCU, the controlling body shall not have the right to conduct more than one audit of compliance with the "arm's length" principle of one taxpayer during a calendar year. The controlling body shall not have the right to re-conduct an audit on compliance with the taxpayer's "arm's length" principle, which has already been verified, except in the following cases:

- appeal against the results of the audit (clause 78.1.5 of the TCU);
- conducting an internal investigation (disciplinary proceedings have been initiated or suspicion of committing a criminal offence has been reported) against officials who conducted the inspection (clause 78.1.12 of the TCU).

Terms of Verification

According to clause 39.5.2.8 of the TCU and clause 5, Section 1 of Order No. 344, the duration of the audit on the taxpayer's compliance with the "arm's length" principle must not exceed 18 months.

If it is necessary to obtain information from foreign state bodies, conduct an expert examination and/or translate into Ukrainian documents necessary for the study of compliance of the conditions of the controlled transaction with the "arm's length" principle, the period for conducting an audit by decision of the head (deputy head) of the central executive authority implementing the state tax policy may be extended for a period not exceeding 12 months (clause 39.5.2.9 of the TCU).
That is, according to the TCU, the duration of verification on compliance with the "arm's length" principle must not exceed 30 months (18 months with the possibility of extending it for 12 months).

FINANCIAL AUDIT

HOW TO SUBMIT AN AUDIT REPORT TO THE FINANCIAL STATEMENTS FOR 2020?

The Tax Service of Ukraine has provided an explanation of when, in what format and how taxpayers can submit an audit report to the financial statements for 2020.

According to clause 3 of Article 14 of the Law of Ukraine "On Accounting and Financial Reporting" No. 996-XIV dated July 16, 1999 (Law No. 996), depending on the category of the business entity, financial statements together with the auditor's report must be submitted by:

- enterprises of public interest (except for large enterprises that are not issuers of securities), public joint-stock companies, subjects of natural monopolies in the national market and business entities operating in extractive industries-no later than April 30 of the year following the reporting period must publish the annual financial statements and annual consolidated financial statements together with the audit report on their webpage (in full) and in other ways in cases defined by law;
- large enterprises that are not issuers of securities and medium-sized enterprises – no later than June 1 of the year following the reporting period, must publish the annual financial statements together with the audit report on their webpage (in full);
- other financial institutions pertaining to micro-enterprises and small businesses – no later than June 1 of the year following the reporting period, must publish the annual financial statements together with the audit report on their own webpage (in full).

As the STS notes, for the first time, the norm on mandatory submission of annual financial statements together with the auditor's report is applied based on the results of the 2020 reporting year.

Please note, the annual financial statements for 2020 are submitted together with the auditor's report no later than June 10, 2021.

At the same time, as the STS explains, XML files are used for generating and transmitting financial statements in electronic form, but the software for such generating electronic documents is chosen by the taxpayer independently and at its own discretion (in particular, this can be the Information and Telecommunications System "Personal Account").

At the same time, it is indicated that the "Correspondence with the STS" mode of the private part of the Personal account allows the payer to send an audit report in pdf format (limited to 2 MB) to the STS body along with a cover letter.

Thus, a business entity, through the private part of the Personal account, has the opportunity to send it to the controlling body no later than June 10 of the year following the reporting year:

- annual financial statements using the "Reporting input" mode
- auditor's report together with a cover letter in pdf format (2 MB limit) using the "Correspondence with the STS" mode.
- from transactions of sale (exchange) of property, donation, income from which is not taxed according to Section IV of the TCU, is taxed at a zero rate and/or from which tax was paid during certification of agreements according to Section IV of the TCU;
- in the form of inheritance objects that are taxed at a zero tax rate and/or from which tax is paid according to clause 174.3 of the TCU.

MANAGEMENT CONSULTING AND IT

COMPANIES' FINANCIAL STATEMENTS ARE ONE OF THE MOST POPULAR AND PRIORITY DATA SETS FOR BUSINESSES AND SOCIETY. FROM NOW ON, IT HAS BECOME PUBLIC.

The State Tax Service has published the financial statements of companies on the Unified Open Data Portal, and on its own web portal, the STS fulfilled the requirements of the updated version 835 of the resolution on open data. The information contains data about income, losses, assets, and funds that are on the balance sheet of companies.

Everyone can get acquainted with the actual financial situation of companies and the amount of taxes they pay to the budget.

Open financial statements will help Ukrainian businesses:

- increase transparency in signing agreements with contractors;
- it is better to evaluate the development of your company in relation to key competitors and understand your market share
- reduce the risk of cooperation with shell companies

Opening up information about companies' financial statements is an essential stage in shadowing the market and another step towards transparency of the Ukrainian economy.

Previously, this information was confidential. The exception was private joint-stock companies — their financial statements were open, and they were required to publish them regularly.

Based on materials: Ministry and Committee of Digital Transformation of Ukraine

THANK YOU
FOR YOUR ATTENTION

The issue is prepared for publication
by practical experts in
Outsourcing of Financial Management
and Accounting

Should you have any further questions about the materials provided, please send your comments or suggestions to:

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We would appreciate feedback!