



# EBS QUARTERLY REVIEW Q2 2023

OVERVIEW OF  
LEGISLATIVE  
CHANGES



# CONTENTS

## Martial Law

- Are you raising money for the Armed Forces of Ukraine? Nuances of taxation ([read](#))
- "Military" benefits for land tax and real estate tax - the law is in effect from May 6, 2023 ([read](#))

## Tax and Accounting Outsourcing

- The terms of primary documents retention have been changed ([read](#))
- The unified reporting on the unified social tax, personal income tax and military tax has been updated ([read](#))
- Some of the currency restrictions have been eased ([read](#))

## Payroll Outsourcing

- From July 1, new rules for filling out tax and unified social tax payment documents will apply ([read](#))
- The period of military service from June 07, 2023 is included among the valid reasons when accruing sick and maternity leave payments ([read](#))
- On the indexation of monetary incomes of the population ([read](#))

## HR Consulting

- Documents that need to be provided by a person with a disability upon employment ([read](#))
- Employment of the youth (pupils and students) during martial law ([read](#))

## Legal Consulting

- How can an employee who is abroad quit? ([read](#))

## Transfer Pricing: controlled foreign companies

- Draft law on changes to controlled foreign companies, main changes ([read](#))

## Financial Audit

- Are there any penalties for not conducting a mandatory audit? ([read](#))

# MARITAL LAW



## ARE YOU RAISING MONEY FOR THE ARMED FORCES OF UKRAINE? NUANCES OF TAXATION

After February 24, 2022, the Ukrainian volunteer movement experienced its second birth.

According to sociological surveys, more than 60% of Ukrainians in one way or another participated in the volunteer assistance to the Defense Forces: by physical labor or donations for the purchase of necessary equipment or machinery.

However, from the point of view of tax legislation, all these receipts are legally considered as “other personal incomes”.

This means that they must be declared and 18% personal income tax and 1.5% military tax must be paid on them.

Personal incomes shall be declared at the end of the year in the next reporting year. That is, in 2023, it is necessary to declare income for 2022, the deadline for submitting the tax return is May 1, 2023, and taxes on the income declared in it shall be paid by August 1.

It is not necessary to pay taxes on the raised donations received on the personal account of an individual, if the individual is registered in the State Register of Volunteers.

Otherwise, raising funds without declaring and paying taxes on them will be considered a violation of tax legislation, which entails financial, administrative, and even criminal liability.

There is also an option to raise money for the Defense Forces by creating a charity organization or a charity fund and raising funds to accounts of such charity organization or charity fund.

### **How to register as a volunteer?**

In order to be entered into the Register of Volunteers, you need to submit an application to the State Tax Service using form No. 1-PB. This can be done offline, in any territorial department of the tax service.

The application can also be submitted using the online taxpayer area by creating it in the Reporting section under code F1308301.

In the application, it is necessary to indicate the number of the bank account to which the funds are to be raised.

**Attention!** Exclusion of donations from tax liabilities shall only apply to receipts to the account specified in the application.

Receipts to other accounts that are not registered with the tax authorities for receiving charitable donations, from the point of view of the law, can be considered taxable income.

Besides, last year, the Rada passed a law that allowed becoming a volunteer post factum. If a person were registered as a volunteer by December 31, 2022, tax exemption would apply to money raising carried out by such a person from the beginning of the war until the end of last year.

The exemption that gives the right not to pay taxes on raised donations shall only apply to the period after the registration as a volunteer (in the past 2022, it was possible to register as a volunteer until December 31, 2022 and the tax exemption applied to all donations that an individual received from the beginning of the war by the end of last year).

The amounts of such fund raising shall be recorded in Section 3 of the Declaration of Property Status and Income of Individuals (line code 11.3 - “other non-taxable income”). This amount is specified declaratively and it is not necessary to pay taxes on it.

Under the Tax Code of Ukraine, if the State Tax Service discovers that a person received additional income that he/she did not declare and did not pay taxes on, the State Tax Service can impose a fine of up to 25% of the unpaid tax liability. The amount of unpaid taxes will also have to be paid. Upon failure to pay additional taxes, a penalty of 120% of the NBU discount rate shall be charged on the amount of the debt (at the moment, the NBU discount rate is 25% per annum).

### **Control by banks**

Banks whose services are used to raise funds are obliged to conduct financial monitoring.

The bank may block the client's account if the client's financial behavior is unusual. For example, unusually large amounts of money will start to be credited to the account, or unusually large number of money transfers will occur.

If the bank has suspicions, they shall ask the client for documents and information needed for analysis.

After receiving additional information from the client, the bank shall unblock the client's account. In order to prevent banks from blocking the volunteer client's accounts, it is advisable to notify the bank about the volunteer activity.

### **Tax relief on transferred donations**

Individuals can receive a tax relief (return 18% of the amount of donations paid), but the tax relief shall only apply to donations made to non-profit organizations that fall under a number of criteria listed in the Tax Code in the amount that does not exceed 4% of the annual income of an individual.

In order to receive this tax relief, you need to add documents certifying such expenses to the tax return.



## "MILITARY" BENEFITS FOR THE PAYMENT OF LAND AND REAL ESTATE TAX - THE LAW WILL BE IN EFFECT FROM MAY 6, 2023

**On May 6, the Law of Ukraine No. 3050-IX dated April 11, 2023** "On Amendments to the Tax Code of Ukraine and Other Legislative Acts of Ukraine Regarding the Exemption from Environmental Tax, Land Tax, and Tax on Immovable Property Other than a Land Plot, for Destroyed or Damaged Immovable Property".

There are two important norms:

- **the possibility of applying the Order No. 309 of the Ministry of Integration dated December 22, 2022** was established for the purpose of determining the list of territories where hostilities are (were) taking place or temporarily occupied territories (before May 6, 2023, the State Tax Service did not recognize the List of Territories of Hostilities and Temporarily Occupied Territories from the Ministry of Reintegration for tax reliefs);
- exemption from submitting a property status report on income of individuals who received income in the form of material assistance from foreign states or foreign charitable organizations. This applies to the submission of tax returns by refugees who received assistance from foreign countries in 2022;
- already existing land benefits are also extended to group 4 single tax payers. In addition, if 30% of the land bank of commodity producers who were group 4 tax payers before February 24, 2022 also falls on the territories of hostilities or occupied territories, the limit of agricultural production for them is reduced to 50% (this provision will also apply to the 2022 indicators);
- the mechanism for administering land payment benefits, the minimum tax liability and the group 4 single tax for lands in conservation or littered with explosive objects was regulated by obtaining relevant data through the State Land Cadaster;
- the mechanism was created to provide benefits for destroyed real estate or real estate in need of capital repairs, based on the data from the State Register of Property Damaged and Destroyed as a Result of Hostilities, Acts of Terrorism and Sabotage Caused by the Armed Aggression of the Russian Federation against Ukraine.



**TAX AND ACCOUNTING  
OUTSOURCING**

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## THE TERMS OF PRIMARY DOCUMENTS RETENTION HAVE BEEN CHANGED

The Law of Ukraine No. 2970-IX dated March 20, 2023 “On Amendments to the Tax Code of Ukraine and Other Legislative Acts of Ukraine Regarding the Implementation of the International Standard for Automatic Exchange of Information on Financial Accounts” (hereinafter referred to as Law No. 2970) updated Clause 44.3 of Article 44 of the Tax Code of Ukraine (hereinafter referred to as the Tax Code of Ukraine). It was published in the *Holos Ukrainy* newspaper on April 27, 2023.

Law No. 2970 was adopted with the aim of introducing European tax reporting standards in our country and increasing the transparency of taxpayers before the state through the automatic exchange of information to identify assets that have not been declared by taxpayers.

Taxpayers are obliged to keep the documents and information specified in Clause 44.1 of the Tax Code of Ukraine, as well as documents related to the fulfillment of the requirements of the law, the control of compliance of which is entrusted to the control bodies, during the periods defined by the law, but not less than:

- 2,555 days (7 years) - for documents and information necessary for tax control under Articles 39 and 39<sup>2</sup> of the Tax Code of Ukraine;
- 1,825 days (5 years) - for primary documents, accounting registers, financial statements, other documents related to the calculation and payment of taxes and fees, the maintenance of which is provided for by law, which are made by the persons defined in Clause 133.1, Clause 133.2. and Clause 133.4 of Article 133 of the Tax Code of Ukraine, as well as legal entities that have chosen a simplified taxation system, with the exception of documents to which a longer retention period applies under Subclause 44.3.1 of Article 44 of the Tax Code of Ukraine;
- 1,095 days (3 years) - for other documents that are not subject to the requirements of Subclauses 44.3.1 and 44.3.2 of Article 44 of the Tax Code of Ukraine;
- 1,095 days (3 years) - for documents related to the fulfillment of the requirements of other legislation, compliance with which shall be controlled by the regulatory authorities, including permit documents.

In case of liquidation of the taxpayer, the documents specified in Clause 44.1 of Article 44 of the Tax Code of Ukraine, for the period of the taxpayer's activity for at least 1,825 days (2,555 days – for documents and information necessary for tax control under Articles 39 and 39<sup>2</sup> of the Tax Code of Ukraine), preceding dates of taxpayer liquidation of the taxpayer, shall be transferred to the archives in accordance with the procedure established by law.

The new requirements regarding the 1,825-day minimum retention period for documents, as provided for in Clause 44.3 of Article 44 of the Tax Code of Ukraine, shall apply to documents that have been developed: before the date of entry into force of this Law, the retention period of which has not expired as of the date of entry into force of this Law; starting from the date of entry into force of this Law; by an entity in respect of which the termination (liquidation) procedure has been initiated, but not completed, as of the date of entry into force of this Law; by an entity in respect of which a decision on liquidation has been made after the entry into force of this Law.

Law No. 2970 enters into force on the day following its publication (April 28, 2023), except for: Clauses 5 and 12 of Section I thereof (regarding the international automatic exchange of information and submission of reports on accountable items), which shall enter into force on June 30, 2023; Clauses 22 - 26 (regarding the violation of the requirements for identifying accountable items and submitting reports for the automatic exchange of information on financial accounts, except for Paragraphs 2-6 of Clause 26 in relation to Clause 121.2 of Article 121 of the Tax Code of Ukraine) of Section I of that Law, which will enter into force on January 1, 2024; Subclause 6 of Clause 2 of Section II of that Law (regarding amendments to the Law of Ukraine “On Preventing and Combating the Legalization (Laundering) of Proceeds from Crime, Financing of Terrorism, and Financing of the Proliferation of Weapons of Mass Destruction”), which shall enter into force on June 30, 2023.



Types of documents for tax purposes	Minimum retention periods under the Tax Code of Ukraine	Norm of the Tax Code of Ukraine
Primary documents	1,825 days*	Subclause 44.3.2 of the Tax Code of Ukraine
Accounting registers		
Financial reporting		
Other documents related to the calculation and payment of taxes and fees, the maintenance of which is provided for by law, which are made by the persons defined in Clause 133.1, Subclause 133.2.2 and Clause 133.4 of the Tax Code of Ukraine, as well as legal entities that have chosen a simplified taxation system, with the exception of documents to which a longer retention period applies under Subclause 44.3.1 of the Tax Code of Ukraine		
Documents and information necessary for tax control under Articles 39 and 39 <sup>2</sup> of the Tax Code of Ukraine	2,555 days	Subclause 44.3.1 of the Tax Code of Ukraine
Other documents that are not subject to the requirements of Subclauses 44.3.1 and 44.3.2 of the Tax Code of Ukraine	1,095 days	Subclause 44.3.3 of the Tax Code of Ukraine
Documents related to the fulfillment of the requirements of other legislation, compliance with which shall be controlled by the regulatory authorities, including permit documents	1,095 days	Subclause 44.3.4 of the Tax Code of Ukraine

\* Previously, such a period was 1,095 days.

**The new requirements regarding the 1,825-day minimum document retention period**, as provided for in Clause 44.3 of the Tax Code of Ukraine, **apply to documents that have been developed** (Clause 4 of Section II of Law No. 2970):

- **before April 28, 2023**, and the retention period of which has not expired as of April 28, 2023;
- **starting from April 28, 2023**;
- by an entity in respect of which, **as of April 28, 2023**, the termination (liquidation) procedure **has been initiated but not completed**;
- by an entity in respect of which a **decision on liquidation** was made **after April 28, 2023**.

**For the period** until the termination or cancellation of **martial law**, **time periods** determined by tax and other legislation, compliance with which shall be controlled by the regulatory authorities, **are suspended**, with some exceptions specified in Subclause 69.9 of Subsection 10 of Section XX of the Tax Code of Ukraine.

In view of these factors, the minimum **periods of document retention** for tax purposes **have effectively been extended to the entire period of martial law**.

## THE UNIFIED REPORTING ON THE UNIFIED SOCIAL TAX, PERSONAL INCOME TAX, AND MILITARY TAX HAS BEEN UPDATED

A new form of the Calculation was approved and the Procedure for Filling Out a Unified Reporting on the Personal Income Tax, Unified Social Tax, and Military Tax was updated (Order No. 113 of the Ministry of Finance of Ukraine dated March 2, 2023). The Order entered into force on May 5, 2023 (published in the *Ofitsiyni Visnyk* newspaper on May 5).

It will be necessary to **report according to the new Calculation form for Q3 2023**.

There are the following changes:

- The Social Insurance Fund is replaced by the Pension Fund of Ukraine (because in 2023 the Pension Fund already finances payments) – this does not affect the procedure for filling out the report;
- Diia.City (report line code 095) - a mark appeared in the header of the report;
- Special rules on accrued and paid incomes to individual sellers of agricultural products, were removed - this was in a separate section.

(These incomes will need to be reflected according to the basic rules: in Section I, indicating the information about the individual to whom this income was accrued/paid, with the income attribute “179”). The former income attributes 148 and 179 were combined in terms of content in the new one under code 179;

- The content of the income attribute 125 was changed (to a more modern one):

125	Amounts of pension contributions paid by the resident employer at their own cost under the agreements of non-state pension security for a taxpayer and/or under agreements of voluntary health insurance within 30 percent of salary accrued to such an employee (Subclause "c" of Subclause 164.2.16 of Clause 164.2 of Article 164 of Section IV of the Code).	Pension contributions, insurance contributions (premiums) for the taxpayer paid by the resident employer	from January 1, 2023
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- At the end of 2022, income attributes 127, 128, 163 expired (as of January 1, 2023, new definitions of these income attributes were given);
- several new attributes were added to the Directory (from 204 to 209):

204	Amounts of pension contributions paid by the resident of Diia.City at his/her own expense under the agreements of non-state pension security and/or under agreements of voluntary health insurance of the taxpayer - gig specialist within 30 percent of salary accrued to such a gig specialist ( <u>Subclause "d" of Subclause 164.2.16 of Clause 164.2 of Article 164 of Section IV of the Code</u> )		
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205	<p>Amounts paid (given) by benefactors, including by individual benefactors, in accordance with the procedure established by <u>the Law of Ukraine "On Charitable Activities and Charitable Organizations"</u>, for the benefit, including, but not limited to, of combatants - servicemen (reservists, conscripts) and employees of the Armed Forces of Ukraine, the National Guard of Ukraine, the Security Service of Ukraine, the Foreign Intelligence Service of Ukraine, the State Border Guard Service of Ukraine, rank-and-file, senior officers, military personnel, employees of the Ministry of Internal Affairs of Ukraine, the Administration of the State Guard of Ukraine, the State Service of Special Communications and Information Protection of Ukraine, other military formations formed in accordance with the laws of Ukraine, voluntary formations of territorial communities, police officers and employees of the National Police of Ukraine, including those who received injuries, contusions or other damage to health, have been killed, died as a result of injury, contusion or mutilation, who defend (defended) the independence, sovereignty and territorial integrity of Ukraine, take (took) direct participation in repelling armed aggression and ensuring national security, eliminating the threat of danger to the state independence of Ukraine, its territorial integrity during the period of martial law, state of emergency in Ukraine, staying directly in the areas of implementation of these measures, or in favor of family members of such combatants;</p> <p>employees of companies, institutions, organizations, civil defense forces, who are (were) involved and take (took) direct participation in the implementation of measures to ensure the national security and defense, repulse and deter the armed aggression of the Russian Federation in accordance with the procedure established by law, or in favor of their family members; individuals who live (lived) in the territory of settlements where hostilities are (were) taking place, and/or who were forced to leave their place of residence in connection with hostilities in such settlements (<u>Subclause "c" of Subclause 165.1.54 of Clause 165.1 of Article 165 of Section IV of the Code</u>)</p>
206	<p>The amount of income received by the taxpayer in the form of support provided by the Fund of the President of Ukraine for the Support of Education, Science and Sports (<u>Subclause 165.1.62 of Clause 165.1 of Article 165 of Section IV of the Code</u>)</p>
207	<p>The amount of the reward for the military equipment of the aggressor state voluntarily transferred to the Armed Forces of Ukraine and suitable for use, under <u>the Law of Ukraine "On Establishing the Reward for the Military Equipment of the Aggressor State Voluntarily Transferred to the Armed Forces of Ukraine and Suitable for Use"</u> (<u>Subclause 165.1.63 of Clause 165.1 of Article 165 of Section IV of the Code</u>)</p>
208	<p>The amount of funds or the value of property (services) provided to an individual volunteer, with whom a volunteering agreement has been concluded, in terms of the expenses of a non-profit organization that involves volunteers in its activities, for conducting a medical examination and vaccination of the volunteer, other medical and preventive activities directly related to the provision of volunteer assistance by such a person under <u>the Law of Ukraine "On Volunteering"</u> (<u>Subclause 165.1.64 of Clause 165.1 of Article 165 of Section IV of the Code</u>)</p>
209	<p>The amount of reimbursement by a non-profit organization to an individual volunteer, with whom a volunteering agreement has been concluded, of documented expenses related to the provision of volunteer assistance, in the amount and in accordance with the list provided for in <u>Article 11 of the Law of Ukraine "On Volunteering"</u> (<u>Subclause 165.1.65 of Clause 165.1 of Article 165 of Section IV of the Code</u>)</p>



## SOME OF THE CURRENCY RESTRICTIONS HAVE BEEN EASED

Starting June 16, 2023, resident borrowers are granted the permission to transfer funds abroad to fulfill obligations under external credits and loans, but **only under such loans/credits** that are:

- secured by a guarantee or surety of an international financial organization;
- provided with the participation of a foreign export and credit agency or a foreign state through an institution authorized by it or through a foreign legal entity the shareholders of which include a foreign state or a foreign state bank.

The National Bank of Ukraine has determined that residents can carry out such operations in accordance with the terms of repayment of funds and interest payment provided for by the terms of the loan agreement.



# PAYROLL OUTSOURCING



## FROM JULY 1, NEW RULES FOR FILLING OUT TAX AND UNIFIED SOCIAL TAX PAYMENT DOCUMENTS WILL APPLY

The Ministry of Finance, by Order No. 148 dated March 22, 2023, approved the new Procedure for filling out the "Purpose of payment" section.

Procedure No. 148 came into force on April 1, 2023, but payments under the previous rules can be made until June 30.

From July 1, in the "Purpose of payment" section, it is necessary to specify only the tax and unified social tax payment code (in most cases, 101) and indicate the tax name or the unified social tax and the reporting period for their payment.

## THE PERIOD OF MILITARY SERVICE FROM JUNE 07, 2023 IS INCLUDED AMONG THE VALID REASONS WHEN ACCRUING SICK AND MATERNITY LEAVE PAYMENTS

On June 2, the Government approved amendments to the Procedure for Calculating the Average Salary (Income, Financial Support) for the Purpose of Calculating Payouts under the Compulsory State Social Insurance (Procedure No. 1266).

Resolution No. 561 was published in the *Uriadovyi Kurier* newspaper dated June 7, 2023, and came into force on June 7.

The Resolution **supplemented the list of valid reasons**, according to which, when calculating the average salary for the calculation of insurance payouts, calendar days not worked for these reasons shall be excluded from the insured person's assessment period, the period during which the employee performed:

- compulsory military service,
- military service on the conscription of officers,
- military service on the conscription during mobilization for a special period,
- military service on the conscription of reservists during a special period,
- or performed military service under a contract during a special period until its expiry or until the day of actual dismissal, when he/she did not retain the average earnings for such a period and the employer did not pay a unified social tax.

## ON THE INDEXATION OF MONETARY INCOMES OF THE POPULATION

Starting **January 1, 2023**, in connection with the entry into force of the Law of Ukraine No. 2710-IX dated November 3, 2022 "On the State Budget of Ukraine for 2023", **the norms of the procedure for calculating the salary indexation in 2023 were canceled** (Clause 3 of the Final Provisions of the Law of Ukraine "On the State Budget for 2023" suspended for 2023 the Law of Ukraine No. 1282-XII dated July 3, 1991 "On the Indexation of Monetary Incomes of the Population").

Thus, according to the clarifications provided by the State Labor Service of Ukraine in January 2023, the salary indexation for the periods from January 1, 2023 to December 31, 2023 should not have been accrued, regardless of the Consumer Price Index (CPI) value.

However, in May 2023, the Ministry of Social Policy of Ukraine, in its Letter No. 11/0/215-23, provided additional clarifications regarding the preservation of the amount of indexation and financial support that arose for the period before January 2023.

According to the latest clarifications of the Ministry of Social Policy, the calculation of the Consumer Price Index for the accrual of indexation amounts shall not be carried out in 2023. At the same time, as a result of inflation in 2022 and previous years, certain amounts of indexation, including salaries and financial support indexation, as of December 2022, were formed, and therefore, in the opinion of the Ministry of Social Policy, **during 2023, the amount of salary and financial support indexation, which arose in the period before January 2023** (before the suspension of the Law), **should be maintained**. The same opinion is shared by the Ministry of Economy. At the same time, the Ministry of Social Policy acknowledges that **there is no legal act regarding the preservation of the specified amount of indexation in 2023**, since the Law of Ukraine "On the Indexation of Monetary Incomes of the Population" No. 1282-XII dated July 3, 1991 has been suspended for 2023.

At the same time, we should note that the letters of the Ministry of Social Policy are not regulatory legal acts, but are of informative and recommendatory nature and, therefore, do not establish new legal norms.







# HR CONSULTING

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## DOCUMENTS THAT NEED TO BE PROVIDED BY A PERSON WITH A DISABILITY UPON EMPLOYMENT

The State Labor Service provided a list of mandatory documents:

- passport or other identity document;
- employment history record book;
- education document;
- certificate of the medical and social expert commission;
- individual rehabilitation program for a person with a disability (mandatory for all employers).



## EMPLOYMENT OF THE YOUTH (PUPILS AND STUDENTS) DURING MARTIAL LAW

As a general rule, persons are allowed to be employed from the age of 16.

But if certain conditions are met, an employment contract can be concluded with persons younger than 16 years old (Article 188 of the Labor Code of Ukraine, hereinafter referred to as the Labor Code of Ukraine).

The employer has the right to employ persons who have reached the age of 14, subject to the simultaneous observance of three conditions, namely, if such persons:

- 1) have submitted the consent to the employment from one of their parents or a person replacing a parent. It is important to obtain a **written consent** in order to avoid possible disputes as to whether it was given. **The form of the consent is arbitrary;**
- 2) are pupils/students and receive primary, basic secondary or specialized secondary education;
- 3) are employed to perform light work that does not harm health and does not disrupt the learning process, in the time free from learning.

Persons who have reached the age of 15 can be employed with the consent of one of the parents or a person replacing a parent.

It is prohibited to use the labor of minors in jobs with harmful and dangerous working conditions. The list of such works was approved by Order No. 46 of the Ministry of Health of Ukraine dated March 31, 1994.

There are also maximum standards for lifting and moving heavy objects by minors - the standards are approved by Order No. 59 of the Ministry of Health of Ukraine dated March 22, 1996.

All persons under the age of 18 are employed after a medical examination and are subject to a mandatory medical examination in the future.

The list of documents that must be provided by persons in case of employment is given in Part 2 of Article 24 of the Labor Code of Ukraine.

When entering into an employment contract, an individual is required to submit a passport or any other document verifying their identity, an employment record book (if available), or information about employment history from the register of insured persons of the State Register of Mandatory State Social Insurance. In cases prescribed by legislation, an educational document (specifying the specialty and qualification), a health certificate, a relevant military registration document, and other documents may also be required.

It is possible to conclude both an open-ended and a fixed-term employment contract with pupils and students for a certain period established by agreement of the parties or for the time of performing certain work.

The probation period is not established for persons who have not reached the age of 18 (Part 3 of Article 26 of the Labor Code of Ukraine). During the period of martial law, probation may be established for any category of employees.

Article 51 of the Labor Code of Ukraine establishes reduced working hours for minor employees.

Annual basic leave for minor employees is granted for a duration of 31 calendar days (Part 2 of Article 75 of the Labor Code of Ukraine), and they can use this vacation at a time convenient for them.

Before admission to work, the general norm for notifying the tax office of hiring an employee must be observed (according to the form approved by Resolution No. 41 of the Cabinet of Ministers of Ukraine dated June 17, 2015).

A black and white silhouette of a person in profile, facing right, sitting at a desk and using a laptop. The person's hand is on the keyboard. The background is a light, textured grey. Overlaid on the right side of the image is a dark, semi-transparent area containing various digital data visualizations: line graphs, bar charts, and circular gauges. A prominent orange rectangular block is positioned on the left side of the image, partially overlapping the person's silhouette and the background.

# LEGAL CONSULTING

## HOW CAN AN EMPLOYEE WHO IS ABROAD QUIT?

Usually, upon voluntary dismissal, an employee shall submit an employer a handwritten application for dismissal with a signature, date of completion and date of dismissal.

Being abroad, it is difficult to comply with the condition of submitting an employer a signed application for dismissal.

There are several options:

1. An original application for dismissal can be sent to the employer's official address by international mail.

In this case, one should take care of the following:

- there shall be the list of enclosures (because it will not be a registered letter with return receipt as in Ukraine);

- the date of dismissal shall correlate with the delivery time of the letter to the employer.

2. Send a scanned handwritten application for dismissal to the employer's official e-mail. In this case, there is a risk that the email may be identified as "spam" and will be deleted.

3. Sign a scanned application with an electronic digital signature (EDS) and, together with the EDS protocol, send it to email or, if the employer uses a certain electronic document management system, send it using this system. In this case, you should definitely request automatic responses regarding the receipt of your application for dismissal by recipients under Article 11 of the Law of Ukraine "On Electronic Documents and Electronic Document Management".

Pay attention!

All these actions shall be aimed not only at sending the application, but also at collecting evidence of its receipt. There are court precedents in which the court, in particular the Supreme Court, took the side with the employer and rejected the employee's claim, because the employee did not provide evidence that the recipient received the sender's emails, which violates Article 11 of the Law of Ukraine "On Electronic Documents and Electronic Document Management".



**TRANSFER PRICING:  
CONTROLLED FOREIGN  
COMPANIES**

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## DRAFT LAW ON CHANGES TO CONTROLLED FOREIGN COMPANIES, MAIN CHANGES

We **would like to remind** you that the provisions of Article 39<sup>2</sup> and other articles of the Tax Code of Ukraine regarding controlled foreign companies (CFCs) entered into force a year ago, on January 1, 2022.

Legal entities and individuals, which/who are residents of Ukraine, are obliged to notify the State Tax of Ukraine of changes that have occurred in the structure of ownership or control of the CFCs (as provided for in Subclause 39<sup>2</sup>.5.5 of the Tax Code of Ukraine).

The notice shall be given if, as of January 1, 2022, a person who is a tax resident of Ukraine:

- registered or established a foreign company or a non-corporate entity;
- acquired property rights to a share in the assets, income or profits of a non-corporate entity (for example, in a partnership, fund or trust)
- liquidated a foreign company;
- acquired or received a share in a foreign company as a gift (including indirectly through an authorized agent, nominee, or other person);
- sold or donated a share in a foreign company (including indirectly through an authorized agent, nominee, or other person);
- acquired rights or ceased to be a beneficiary of a foreign company;
- acquired the right to control or, conversely, ceased to control a foreign company.

The **deadline** for submitting a notice of controlled foreign companies is **60 calendar days** from the date of acquisition or alienation of a share or from the date of initiation or termination of control over controlled foreign companies.

Failure to submit a notice of controlled foreign companies within the prescribed period entails financial liability in the form of a fine for each such violation. The amounts of fines are significant - 300 subsistence minimums for an able-bodied person, and they will grow every year along with the increase in the amount of subsistence minimum for an able-bodied person.

So, for failure to notify of controlled foreign companies in 2022, the fine was 300 subsistence minimums, or UAH 744,300.00, and in 2023 – UAH 805,200.00 (300 \* subsistence minimum of UAH 2,684.00).

The issue of the imposition of fines remains controversial.

### **Draft Law No. 8137 dated October 19, 2022**

On May 2 this year, the Verkhovna Rada of Ukraine adopted in the first reading Draft Law No. 8137 dated October 19, 2022 on amendments to the Tax Code of Ukraine regarding the improvement of taxation of controlled foreign companies (CFCs), and it was taken as a basis.

This allows us to expect its speedy adoption and significant changes in the Tax Code of Ukraine regarding the tax administration of controlled foreign companies.

**If adopted, it will enter into force on January 1, 2023.** The main changes to the Tax Code of Ukraine:

- **the penalty for failure to submit the Notice of Acquisition/Disposal of a Share in Controlled Foreign Companies will be reduced six-fold**, from UAH 805,200.00 to UAH 134,200.00 for 2023 (from 300 to **50 subsistence minimums for an able-bodied person**);
- **a penalty for late submission of the Notice of Acquisition/Disposal of a Share in Controlled Foreign Companies** will be calculated in the amount of one subsistence minimum for an able-bodied person for each calendar day of non-submission, but no more than 25 subsistence minimums for an able-bodied person, i.e., **not more than UAH 67,100.00**, even if the Notice is submitted a year late, currently this fine is equal to the fine for non-submission - UAH 805,200.00;
- **it will be possible to submit a report on controlled foreign companies for the reporting period** together with the corresponding tax reporting for the year following the reporting year, i.e., much more time is given to prepare the financial reporting on controlled foreign companies - **almost 18 months for individuals and 16 months for legal entities**;
- the criteria for including a person in the list of controlled persons have been clarified, - **the list of related persons** who have joint control **has been limited** to spouses, minor children, persons over whom the guardianship has been established, in respect of whom such an individual has been appointed as a guardian, custodian, adoptive father, adoptive mother, foster father, foster mother, respectively;
- it is clarified that **charitable and public organizations are not considered controlled foreign companies**, and membership in such organizations, accordingly, does not lead to recognition of a taxpayer as a controlled person, however, such circumstances must be documented;
- **the procedure for calculating the adjusted net income of controlled foreign companies has been simplified**, and a separate adjustment for the income and expenses of controlled foreign companies according to the arm's length rules under Article 39 of the Tax Code of Ukraine is excluded, and the need to submit the relevant documentation on transfer pricing regarding controlled foreign companies has been abolished;
- **tax audit procedures regarding controlled foreign companies have been clarified**, namely, a detailed description of the cases and taxpayer's information that may be requested in relation to controlled foreign companies has been given, and grounds have been provided for conducting unscheduled documentary audits of compliance with the requirements of the Tax Code of Ukraine regarding the taxation of controlled foreign companies;
- the norm regarding **the exemption from the obligation to submit copies of primary documents in case of providing an auditor's opinion** on financial statements together with the report on controlled foreign companies has been clarified.

**We will be waiting** for further adoption of the draft law and amendments to the Tax Code of Ukraine.



# FINANCIAL AUDIT



## ARE THERE ANY PENALTIES FOR NOT CONDUCTING A MANDATORY AUDIT?

According to the amendments to the Law of Ukraine "On Accounting and Financial Reporting" No. 996-XIV dated July 16, 1999 (hereinafter referred to as Law No. 996), which were introduced by the Law of Ukraine No. 2435-IX dated July 19, 2022 and **entered into force on August 10, 2022, the following companies are obliged to conduct an audit of their statements for 2022:**

- Companies of public interest (except for large companies that are not issuers of securities), public joint-stock companies, subjects of natural monopolies in the national market, and business entities that carry out activities in extractive industries – no later than **by April 30 of the year** following the reporting period;
- Large companies that are not issuers of securities and medium-sized companies – no later than **by June 1 of the year** following the reporting period;
- Other financial institutions belonging to micro- and small companies – no later than **by June 1 of the year** following the reporting period.
- Parent companies of large groups (except for investment entities and companies that are subsidiaries and do not prepare financial statements in accordance with IFRS) – consolidated statements no later than **June 1 of the year** following the reporting period.

Fines for untimely publication of the auditor's opinion on financial statements are provided for by Article 163<sup>16</sup> of the Code of Ukraine on Administrative Offenses in the amount of:

- 1,000 to 2,000 tax-free minimum incomes of citizens, i.e., from UAH 17,000 to 34,000 for the first violation;
- 2,000 to 3,000 tax-free minimum incomes of citizens, i.e., from UAH 34,000 to 51,000 for the repeated violation.

Furthermore, payment of a fine does not release the company from the obligation to conduct an audit.

**However, during martial law and within three months after its end, fines shall not be imposed.**

In connection with the military aggression of the Russian Federation against Ukraine, the **Law of Ukraine "On Protecting Interests of the Reporting Entities and Other Documents during the Period of Martial Law or the State of War" No. 2115-IX dated March 3, 2022** was adopted (hereinafter referred to as the Law of Ukraine No. 2115), **the norms of which exempt** from administrative and/or criminal liability for non-submission or untimely submission of reports (including financial statements and audit reports) **during the period of martial law or the state of war, as well as within three months after its termination.**

**The law has postponed the deadlines for the disclosure of financial statements** together with the audit report, but the statements **must be made public within three months after the termination** or abolition of martial law or the state of war for the entire period of non-submission of statements or the obligation to submit the document.

**Note!** Within a three-month period after the end of martial law, companies must publish all the necessary reports with relevant audit opinions, otherwise fines provided for by the Code of Ukraine on Administrative Offenses may be imposed on the company.

**There are no exemptions**, including for companies that have suffered losses or damages, including due to damage and destruction of property, or the location of assets in the occupied territories. According to the current legislation, there is only a **postponement of the deadlines** for submitting financial statements and audit reports - no later than three months after the termination or cancellation of martial law.



# THANK YOU FOR YOUR ATTENTION

This issue has been prepared for publication by expert practitioners in  
Financial Management and Accounting Outsourcing

If you have any questions about the materials provided, please send your  
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