

Ukraine: the Tax Code has recently undergone important amendments

An article by the CMS CEE Tax Group

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Despite only coming into force on 1 January 2011 the Tax Code of Ukraine (the “Code”) has already been amended by the Ukrainian Parliament nine times (the corporate profit tax section of the Code became effective on 01 April 2011). The practice of frequent amendments to the Code runs contrary to the principle of legal certainty embedded in the Code itself. Regardless of this, the most recent amendments under the Law of Ukraine No. 3609 On Amending the Tax Code of Ukraine¹ represent the most significant changes to the Code since its adoption.

The amendments to the Code result in tightening the fiscal policy of the Ukrainian government and enhancing the powers of the tax authorities. However, certain amendments are to the benefit of tax payers; in particular, there are a lot of editorial changes to remove the ambiguities in the Code which arose from its hasty adoption and made the interpretation and application of the Code rather difficult.

In our view, the major positive amendments, inter alia, are as follows:

- The introduction of the notion of general tax letters to be issued by the tax authorities as a summary where there is a number of individual tax letters on a particular matter or matters involve large amounts of taxes to be paid. Any taxpayer acting in reliance on such general letter is exempt from tax penalties (but not re-assessed taxes) even if the tax authorities change their mind afterwards. Before the amendments only individual tax letters given at the request of specific tax payers were provided for in the Code meaning that other tax payers could not rely on such letters.
- The structure of the permitted deductions for the corporate profit tax purposes has been streamlined to bring them in line with the accounting principles.
- The previously existing penalty for overstating tax losses for corporate profit tax purposes has now been cancelled.
- The maximum financial penalty has been reduced from 75% to 50% of tax liability assessed by the tax authorities.
- Uniform principles for taxing profits from operations with securities have been introduced for the purpose of corporate profit tax. Before the changes, a company's founding shareholder was deemed to have a zero tax base in the company's equities. This meant that on alienation of such equities the founding shareholder would be taxed on the entire income received instead of the positive difference between the shareholder's income and costs. The specific rules for taxation of profits from REPO operations with securities have been introduced.
- The requirements for voluntary VAT registration have been simplified. A newly created company whose charter capital or balance sheet assets value exceed UAH 300,000 (approximately EUR 26,000) can now apply for voluntary registration as a VAT payer. Previously, start-up companies could only register as VAT payers voluntarily if at least 50% of their supplies subject to VAT were to other VAT payers.

The following amendments could increase the fiscal pressure on business:

- During the course of any tax audit the tax authorities are now allowed to require a taxpayer to produce copies of tax related documents (free of charge), i.e., even in the course of an off-site tax audit. Previously the tax authorities had this power only during the course of on-site tax audit.

¹ Law of Ukraine On Amending the Tax Code of Ukraine and Certain Secondary Legislation to Improve the Certain Provisions of the Tax Code of Ukraine, No. 3609, dated 07 July 2011 (entered into force on 06 August 2011)

- Tax authorities can now request information in writing at any time during the course of conducting counter-audits of other taxpayers. However, the Code does not clearly explain the extent of information which can be requested, leaving the doors open for the tax authorities to require a significant volume of information which could be burdensome for a tax payer.
- A new requirement is introduced in relation to VAT invoices, in particular, now taxpayers must specify a code of commodities under the Unified Commodities Classifier (so-called UKT ZED). It is not entirely clear how this new requirement will work in practice. It is fraught with potential controversies between tax payers and tax authorities in the future.
- The amendments removed the phrase “other similar services of consulting nature” from the wording of the list of services not subject to VAT, thus, reducing the list of such services. Admittedly, the scope for “other similar services” which could qualify for VAT exemption under the Code has always been controversial in practice.
- A taxpayer is now obliged to pay all taxes and customs duties at the border before or on same day when filing a customs declaration for the customs authority’s review; previously a taxpayer was allowed to delay payment for the taxes and duties until the end of the customs clearance process.

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