



# Human Capital News

## Contacts at Ernst & Young:

Olga Gorbanovskaya  
Tel: +380 (44) 490 3022  
[Olga.Gorbanovskaya@ua.ey.com](mailto:Olga.Gorbanovskaya@ua.ey.com)

Halyna Khomenko  
Tel: +380 (44) 490 3028  
[Halyna.Khomenko@ua.ey.com](mailto:Halyna.Khomenko@ua.ey.com)

## Contents

- ▶ Significant changes in the work permit obtaining procedure!!!
- ▶ Administrative responsibility for violation of rules for staying in Ukraine increased
- ▶ New treatment of tax residence status for foreigners in Ukraine
- ▶ Ukrainian visa regime with Europe may worsen if Europe officials fail to relax their requirements for getting Shengen visa

## Significant changes in the work permit obtaining procedure!!!

The Cabinet of Ministers of Ukraine issued a Resolution on Order of issuing, prolongation and cancellation of work permits for foreign individuals #322 of 08 April 2009. The new Resolution becomes valid on 8 May 2009 and cancels the previous Resolution on Order of obtaining work permits for foreign individuals in Ukraine # 2028 of 01 November 1999. The new document introduced a number of significant changes into the work permit obtaining procedure, in particular:

- ▶ The list of documents required for obtaining the work permit has been significantly expanded. Inter alia, the following documents will be now required in addition to the standard package, used in the past:
  - ▶ 2 color photographs 3.5x4.5
  - ▶ Document confirming absence of employer's debt to Unemployment Fund
  - ▶ Official document stating absence of previous convictions. As stated in the Resolution, the respective document should be issued by the Ukrainian authorities, if at the moment of filing an application a foreign individual resides on the territory of Ukraine, and by the Authorities of the home country of the individual, if he resides outside Ukraine. However, it is still not clear

whether these documents are mutually exclusive or complementary.

- ▶ Statutory fee for applying for work permit increased substantially: from UAH 170 to 4 minimum wages, that currently equals to UAH 2500
- ▶ All documents issued in foreign countries and in foreign languages (including diplomas) should be legalized/apostilled prior to their translation.
- ▶ List of reasons for refusal has also been expanded significantly (e.g. the work permit will not be issued, should less than a year passed after denial to issue IM-1 visa, or cancellation of a previous work permit).
- ▶ Procedure of reporting required after obtaining of a work permit became more sophisticated, in particular, within 3 days after the start and the end date of expatriate's work his employer should notify the Employment Center; after this, the employer should arrange for expatriate employee's registration in the respective bodies of internal affairs in Ukraine and after 5 days upon completing such registration the employer should again notify the Employment Center.

Moreover, work permit obtaining procedure became more diversified as per categories of employees, making clear a distinction between direct employees, secondees and intra-corporate transferees, which is a specific category of secondees. It is worth to note that such a distinction existed previously, however, there was no legally envisaged procedure for obtaining of work permits for secondees, and, in practice, all the categories of employees had to conclude local employment contracts. The new Resolution provided the list of required documents for obtaining work permits for secondees and intra-corporate transferees and this list does not contain a local employment contract.

In practice, before the new Resolution was issued, decisions regarding issuing of work permits were made by a special commission, but without any prescribed procedure and definition of a status of this commission. The new Resolution claimed that for the purposes of reviewing the applications for work permits a special commission, consisting of representatives of different state bodies of Ukraine (bodies of internal affairs, security services, Frontier Service and state tax administration) is formed. Decision to issue, to prolong, to refuse or to cancel a work permit is made by the Director or Deputy Director of the Employment Center.

## Administrative responsibility for violation of rules for staying in Ukraine increased

According to the Law of Ukraine # 1159-VI of 19 March 2009 fines for violation of rules for staying in Ukraine were increased.

Fines for violation of the order of employment, education, registration/deregistration rules for foreigners and people without citizenship increased from 50 - 200 to 100 - 200 non-taxable minimums; fines for failure to perform timely registration of foreigners and people without citizenship increased from 5 - 30 to 20 - 40 non-taxable minimums; fines for violation of the order of providing foreign individuals and people without citizenship with accommodation, transportation and other services increased from 50 - 100 to 60 - 100 non-taxable minimums; fines for illegal transportation of foreigners and people without citizenship within the territory of Ukraine increased from 10 - 50 to 40 - 70 non-taxable minimums; fines for arrangement of hidden places in transport for transportation of illegal immigrants increased from 100 - 200 to 120 - 200 non-taxable minimums; fines for repeated violation of rules for transportation of foreigners and people without citizenship within the territory of Ukraine increased from 150 - 500 to 170 - 500 non-taxable minimums (please refer to the comparative table of fines before and after adoption of the Law # 1159-VI below).

Table1. Amounts of fines for administrative violation of rules for staying in Ukraine

Type of violation	Amounts of fines, non-taxable minimums (UAH)	
	Before adoption of the Law # 1159-VI	According to the Law #1159-VI
Violation of the order of employment, education, registration/deregistration rules for foreigners and people without citizenship	50 - 200 (UAH 850 - 3,400)	100 - 200 (UAH 1,700 - 3,400)
Failure to perform timely registration of foreigners and people without citizenship	5 - 30 (UAH 85 - 510)	20 - 40 (UAH 340 - 680)
Violation of the order of providing foreign individuals and people without citizenship with accommodation, transportation and other services	50 - 100 (UAH 850 - 1,700)	60 - 100 (UAH 1,020 - 1,700)

Illegal transportation of foreigners and people without citizenship within the territory of Ukraine	10 - 50 (UAH 170 - 850)	40 - 70 (UAH 680 - 1,190)
Arrangement of hidden places in transport for transportation of illegal immigrants	100 - 200 (UAH 1,700 - 3,400)	120 - 200 (UAH 2,040 - 3,400)
Repeated violation of rules for transportation of foreigners and people without citizenship within the territory of Ukraine	150 - 500 (UAH 2,550 - 8,500)	170 - 500 (UAH 2,890 - 8,500)

The Law # 1159-VI came into force from the date of its official publication, which is 07 April 2009.

### **New treatment of tax residence status for foreigners in Ukraine**

State Tax Administration of Ukraine issued a new letter #2188/6/17-0716 of 12 March 2009, according to which foreigners should be treated as tax residents of Ukraine after issuing of the notification from the Tax Authorities about residence status of an individual, and, hence, their income gained for the work on the territory of Ukraine will be taxed at 15 % tax rate after granting of the tax residency status by the Tax Authorities. Before issuing of such a notification the foreign individual should be treated as a tax non-resident of Ukraine and his income should be taxed at 30 % tax rate.

The above clarification of the Tax Authorities sounds quite contradictive, as the Personal Income Tax Law does not provide the possibility to have status both of tax resident and tax non-resident of Ukraine within one reporting year.

### **Ukrainian visa regime with Europe may worsen if European officials fail to relax their requirements for getting Shengen visa**

Recently the Ukrainian mass media published the information that the Ukrainian government plans to make the visa regime for European Union citizens more rigorous than now if European officials do not facilitate or simplify visa regime for Ukrainians who visit the European Union.

Currently, Ukraine is holding talks with the European Union on simplification of the visa issuing procedure for Ukrainians wishing to enter the Union.

On the other hand, the results of the European summit in Brussels, which was held on March 19-20, showed that the Eastern Partnership program will not liquidate the visa regime for Ukrainians traveling within Europe, but could make it more liberal. However, no official decision has been taken by the Ukrainian government on this issue yet.