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Newsletter

Tax and legal news

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Parliament lifts some currency control restrictions

On 27 April 2010 the Ukrainian Parliament enacted the Law "On Amending Certain Legislative Acts of Ukraine on Crediting and Stimulating Foreign Investments" (Draft No.6122), which abolishes a number of currency control restrictions that had been introduced back in November 2009.

In particular, the Law cancels:

- ▶ Mandatory foreign investment in UAH through investment accounts opened at Ukrainian banks;
- ▶ Mandatory state registration of foreign investments;
- ▶ Registration of cash foreign investments with the National Bank of Ukraine;
- ▶ Prohibition on early repayment of cross-border loans attracted by Ukrainian residents and amendments to the loan agreements envisaging reduction of the loan repayment term or early repayment of the loan.

The Law was passed along to the President of Ukraine for signing and will come into force when it is published.

Parliament introduces preferences for dividends taxation

On 27 April 2010 the Ukrainian Parliament enacted the Law "On Amending the Law of Ukraine 'On Taxation of the Profit of Enterprises'" (Draft No.6222), which introduces new rules for

taxation of dividends paid to Ukrainian companies by their subsidiaries.

The Law in particular:

- ▶ Relieves from taxation dividends obtained from non-resident subsidiaries of a taxpayer¹. Dividends paid by subsidiaries located in tax havens, however, are not subject to this tax relief.

Please note that the Law could be construed to mean that dividends obtained from Ukrainian resident legal entities that are not controlled by the Ukrainian company are subject to tax in Ukraine.

- ▶ Introduces a "participation exemption" from the advance corporate profit tax. The exemption is provided for "dividends paid by a taxpayer within dividends received from legal entities controlled by the taxpayer paying the dividends."

This rule should substitute for the previous advance corporate profit tax exemption for taxpayers whose income was primarily (more than 90%) derived from dividends paid by Ukrainian legal entities that are controlled by such a taxpayer.

- ▶ Requires that a company paying and receiving dividends from its subsidiaries performs separate tax accounting for paid and received dividends.

The Law was passed along to the President of Ukraine for signing and will come into force when it is published.

The Law of Ukraine "On the State Budget for 2010" becomes effective

On 30 April 2010 the Law "On the State Budget for 2010" No. 2154-VI, adopted by the Ukrainian Parliament on 27 April 2010, was published ("the Law").

The Law in particular provides for:

- ▶ issuing VAT bonds with a five-year maturity term to compensate VAT that was declared prior to 1 May 2010, approved by tax audits and not compensated as at the date of the Law's enactment;
- ▶ the possibility of compensating VAT declared for 2010 operations by purchasing state securities or objects of state regulation, as proposed by Agrarian Fund;

¹ According to para 1.26 Article 1 of the Law "On Corporate Profit Tax."

- ▶ starting from 1 July 2010, cancellation of mandatory state pension insurance contribution withheld from non-cash transactions on sell-purchase of foreign currency in 2010;
- ▶ prohibiting the prolongation of terms for payment of tax and duties. As in previous years, this prohibition will most probably make it impossible to issue promissory notes in the course of importing goods;
- ▶ the Law provides for minimal salary and a living wage for 2010;
- ▶ as in 2009, the Law does not provide for submitting CPT returns for 11 months;
- ▶ royalty rates for production of oil, natural gas and gas condensate will remain at the level approved by the Law "On Amendment of Certain Laws of Ukraine" No.309-VI dated 3 June 2008 ("Law No. 309"). At the same time, certain amendments are introduced to the order of calculation of correcting coefficients;
- ▶ export duty rates for natural gas and royalty payments for transporting natural gas, oil, petrochemicals and ammonia remain the same;
- ▶ the coefficient applicable to normatives of duty for geological exploration performed at the cost of state budget increases to 3.19;
- ▶ an increased (from 3.1 to 3.2) coefficient applies for land tax rates in localities where financial appraisal of land has not been conducted;
- ▶ the additional coefficient 1.143 is added to the absolute normative of payments for subsoil use for mineral extraction and to the duty for special use of surface waters provided by Law No. 309;
- ▶ state unitary enterprises and their associations are bound to pay to the state budget 15% of their net income (profit) within the terms that govern corporate profit taxation. As opposed to 2009, state unitary enterprises-natural monopolies and enterprises that make more than UAH 50,000k in net profit in 2010 should pay 30%;
- ▶ communal unitary enterprises and their associations should pay part of their net profit (income) to local budgets;
- ▶ state-owned companies and companies 50% and more of the share capital of which is owned by state-owned enterprises must pay dividends to the state budget (based on 2009 results) prior to 1 July 2010;

- ▶ the Law also provides for joint-stock companies in 2010 to pay dividends of a minimum 30% of net profit in the reporting year and/or non-distributed profit.
- ▶ before adoption of the law regulating the order of disposal of land plots in state or communal property or the rights to such land plots on a competitive basis (public land sales), the sale of the land plots should be conducted according to an order that the Cabinet of Ministers of Ukraine approves;
- ▶ as in 2009, lease of state and communal property should be performed on a competitive basis, with certain exceptions;
- ▶ selling permission to use subsoil on public sales remains mandatory (with certain exceptions provided for by the Cabinet of Ministers);
- ▶ enterprises 50% and more of the charter capital of which is owned by the state, as well as certain other enterprises, are bound to sell oil, gas condensate of their own production and liquefied gas in exchange auctions and natural gas of their own production directly to entities that have been authorized by the Cabinet of Ministers. Oil and gas condensate not sold at auction should be sold to NJSC Naftogas;
- ▶ in 2010 debts for borrowed money that was raised for state fund accounts and debts under interest for such loans are considered to be tax debt;
- ▶ the Ministry of Finance is allowed to sell openly and publically the right to claim debts that have been overdue for more than three years for loans raised by the state or under state guarantees, for budget loans and refundable financial aid.
- ▶ the Law suppresses certain laws and regulations for 2010 (or parts thereof), in particular the Law "On Rent Payments for Oil and Natural Gas and Gas Condensate."

The Law becomes effective when it is published and applies from 1 January 2010. Some of its provisions apply starting from the publication date.