HTP 2.0: New opportunities for IT companies in Belarus
On 21 December 2017 the President of the Republic of Belarus issued Decree No. 8 “On the Development of a Digital Economy” (Decree No. 8), which will enter into force on 28 March 2018. This decree extends the special Hi-Tech Park (HTP) legal regime until 2049, expands the tax benefits and types of activities allowed within the HTP, eliminates barriers in the way of IT product companies in Belarus, makes it easier to invest in Belarusian IT companies, and establishes the basic legal framework for blockchain technology, initial coin offerings (ICO), the circulation of cryptocurrencies and transactions using smart contracts. In the IT community, the new regime has been unofficially dubbed “HTP 2.0.” In what follows, we outline the main aspects of business of HTP residents, taking into account future changes.
What is the HTP?

The HTP is a special legal regime for IT companies which is governed by the Regulations approved by Decree No. 8. Overall coordination, management and control are the responsibility of the HTP Supervisory Board, while day-to-day management of the park is handled by the HTP Administration, a state institution. The membership of the HTP Supervisory Board is approved by the President of the Republic of Belarus.

Who can become an HTP resident?

Applicants for HTP residency must be Belarusian legal entities and individual entrepreneurs engaged in or planning to engage in one or more types of activities allowed under the Regulations on the HTP. The list of permitted types of activities has been greatly expanded by Decree No. 8 and now includes:

- analysis and design of information systems and software, including development and deployment as well as implementation, support and maintenance services
- data processing based on software
- technical and cryptographic data protection
- audits of information systems and software, IT consulting
- software publishing and promotion (including computer games)
- Internet advertising and intermediary services using software developed by an HTP resident
- design, development, support and maintenance of software making use of blockchain technology
- mining, services involved in creating and issuing digital tokens, cryptocurrency exchange activity, cryptocurrency converter activity
- development of unmanned vehicle driving systems
- services of data processing centers, including hosting
- creation and training of neural networks and other activities in the field of artificial intelligence
- elaboration and implementation of the Internet of Things concept
- development of financial technologies
- cybersport and IT education
- other types of activities allowed under the Regulations on the HTP

By decision of the HTP Supervisory Board, residents may engage in other types of business not indicated in the Regulations on the HTP.

How do you become an HTP resident?

Applicants for HTP residency must submit certain documents to the HTP Administration, the most important of which is the business project to be realized by the prospective resident. The HTP Administration reviews the documents and forwards them, along with its conclusion on whether the applicant should be accepted, to the HTP Supervisory Board. If needed, the documents can be subjected to a scientific and technical expert examination.

The HTP Supervisory Board decides whether or not to accept an applicant based on the significance of its business project for the development of new and high technologies. Documents must be considered and a decision made within one month after an applicant makes its submission.
What is the rate of tax in Belarus on dividends paid by an HTP resident?

The rates of tax that apply to dividends paid by an HTP resident are 12% for Belarusian companies, 5% for foreign companies and 9% for individuals.

Double tax treaties of the Republic of Belarus may stipulate a more favorable regime for entities that are not residents of Belarus. HTP residents are also exempt from offshore duty on dividends paid to their founders (participants) registered in offshore zones.

What main tax benefits are available to HTP residents?

HTP residents pay 1% of their gross revenues to the HTP Administration and are then fully exempt from corporate profit tax as well as VAT on goods (work, services, property rights) sold in Belarus. An exception is interest earned by HTP residents, income from the alienation of participatory interest in companies' authorized capital and from sales of securities as well as dividends from sources outside Belarus, all of which are subject to 9% corporate profit tax.

HTP residents are exempt from customs duties and VAT on certain kinds of equipment imported into Belarus to be used in investment projects involving permitted types of activities. Property tax and land tax preferences may also apply to buildings and land within the boundaries of the HTP.

An HTP resident’s employees are subject to 9% personal income tax. Compulsory social insurance contributions (35%) are calculated and paid not on an employee’s actual pay, but on the national average, which is several times less than the pay level in the Belarusian IT industry.

Are there any tax benefits for the acquisition by HTP residents of licenses and services from foreign companies and for interest payments to such companies?

Decree No. 8 exempts HTP residents from VAT in Belarus on licenses; advertising, marketing and consulting services; database creation; and certain other services needed by an IT business and acquired from foreign companies. A zero rate of withholding tax applies to foreign companies’ revenues from services provided to HTP residents involving data processing, web hosting, and intermediary, advertising and some other services as well as to interest and royalty income.

HTP residents are also exempt from offshore duties on payments made to nonresidents registered in offshore zones for intermediary, marketing and advertising services.

How can HTP residents monetize their IT products?

Decree No. 8 entitles HTP residents to earn revenues from any use of software that they were involved in developing or that is distributed in connection with software publishing. Revenues may be earned, among other things, from advertising in software, paid software subscriptions and payment for additional features, collection or systematization of data in connection with its application by users.
What restrictions are there on audits of HTP residents?
Controlling bodies are not allowed to audit HTP residents without the prior consent of the HTP Administration. In addition, Belarus has a general ban on audits for two years after a company’s state registration.

If an HTP resident declares bankruptcy, will its founders have subsidiary liability for its debts?
Under Decree No. 8, if an HTP resident declares bankruptcy, subsidiary liability does not apply to such resident’s founders (participants) or other parties (including the chief executive) that have the right to give the resident binding instructions or are otherwise able to influence its activities. Cases in which bankruptcy is caused by the actions of such parties, and the parties are held criminally liable for their actions, are an exception to this rule.

How is document management simplified for purposes of working with foreign counterparties?
For accounting purposes, Belarusian companies are required to draw up a primary accounting document (e.g., a certificate verifying that services were rendered) for each business transaction. Following the adoption of Decree No. 8, HTP residents performing transactions with foreign counterparties are entitled:
• to unilaterally draw up a primary accounting document, i.e., without the involvement of the foreign counterparty
• to use a single primary accounting document to document homogeneous transactions performed in a single month
• to use a document received from a nonresident or information in a foreign language as a primary accounting document under certain conditions
• to use facsimiles in preparing a primary accounting document

What are the simplified migration requirements for foreign nationals staying in Belarus due to the HTP?
Foreign nationals who are hired by an HTP resident or are founders of HTP residents or employees of such founders do not require visas to enter (and leave) Belarus and may stay in the country 180 days during a year.
Foreigners who enter into an employment contract with an HTP resident do not need a permit to work in Belarus and may obtain a temporary residence permit for the term of their contract.

What legal constructions can an HTP resident, as an employer, use to protect its rights?
Under Decree No. 8, an HTP resident is entitled:
• to enter into non-competition agreements with its employees
• to enter into non-solicitation agreements with third parties that stipulate liability for hiring employees away
What ramifications does the HTP have for the legal regulation of corporate relations and M&As?

As a legal experiment, Decree No. 8 entitles HTP residents:

- to enter into convertible loan agreements under which loans may be converted into shares (participatory interest in the authorized capital) of the borrower
- to enter into option contracts and agreements granting an option to contract
- to use such legal mechanisms as representations and indemnity for losses unrelated to any breach of contractual obligations
- to issue irrevocable powers of attorney

To regulate corporate relations between shareholders (participants), an HTP resident may enter into shareholder agreements (agreements on the exercise of participants’ rights) drawn up in accordance with foreign law, and disputes under such agreements may be referred to foreign courts and arbitration.

What venture investment opportunities are there as part of high-tech projects?

Belarusian companies with up to 100 employees may enter into convertible loan agreements with nonresidents if they do business involving information and telecommunication technologies, biotechnologies, microelectronics and radioelectronics, robotics and instrumentation, artificial intelligence, nanotechnologies and other technologies specified in Decree No. 8.

How are relations involving blockchain technologies and cryptocurrencies regulated? What role do HTP residents play?

Decree No. 8 sets the basic rules for relations involving the use of blockchain technologies and defines such key concepts as blockchain, token, cryptocurrency, mining and smart contract. A token, for example, is defined as an entry in a ledger of transaction blocks (blockchain) or in another distributed information system that verifies the rights to objects of civil rights and/or is a cryptocurrency. Tokens are objects of proprietary rights and are assets for accounting purposes. Legal entities and individuals may freely possess tokens and store them in virtual wallets. Legal entities may carry out transactions with tokens through HTP residents, including acquiring and alienating them and holding ICOs in Belarus and abroad, i.e. create and offer their own tokens. HTP residents may provide crypto-exchange and ICO services. They can also engage in mining and other activities with tokens, including creating and issuing their own tokens. The mining, acquisition and alienation of tokens by individuals are not entrepreneurial activities, and tokens do not have to be declared. Until 2023 a number of tax benefits are provided for transactions with tokens. For example, revenues from the mining, acquisition and alienation of tokens are not taxable for individuals and HTP residents. Monetary investments that legal entities receive as a result of creating and issuing their own tokens through an HTP resident are not taxable revenue.

Currency law as well as laws on securities and licensing do not apply to HTP residents’ activities involving the use of tokens, nor are such activities regarded as banking activities.

What is a smart contract, and who can use one?

Decree No. 8 defines a smart contract as a program code designed to function in a distributed information system for purposes of concluding and/or performing transactions or performing other legally relevant actions automatically. An entity that carries out a transaction using a smart contract is regarded as duly informed of its terms until proven otherwise. HTP residents are entitled to perform transactions using smart contracts.
EY’s legal, tax and accounting services in Belarus

1. Corporate and indirect tax services

• Preparation of conclusions on tax issues, including the tax implications of external financing
• Tax analysis of contracts and transactions
• Advice on the application of EEC legislation, including such issues as customs clearance, declaration and payment of customs duty
• Liaison with the tax authorities, including the preparation of official inquiries and assistance in resolving disputes with the tax authorities

2. Legal services

• Subscription services
• Registration of legal entities and representation of foreign companies, legal support for changes in corporate structure
• Assistance in obtaining special permits (licenses) and other required permissions
• Drafting and legal analysis of agreements
• Preparation of conclusions on various legal issues and transactions, including the legal implications of external financing

3. HR services

• Assistance in recruiting professionals (lawyers, accountants, tax professionals)
• Management of HR records and HR audits
• Management of hiring and employment-termination records
• Advice on compensation programs for staff and management
4. **International tax planning**

- Corporate restructuring, including for purposes of external financing
- Advice on transfer pricing law
- Advice on the tax laws of other countries (including Russia, Ukraine and Kazakhstan)

5. **Preparation of personal income tax declarations**

- Tax interviews and determination of personal tax liabilities
- Preparation of standard personal income tax declarations (calculations)
- Assistance with personal income tax payments
- Reconciliation of a foreign national’s tax balance with the Belarusian tax authorities
- Assistance in obtaining tax residency certificates
- Assistance in obtaining a refund of withheld personal income tax

6. **Global mobility services**

- Advice on international tax issues affecting individuals
- Advice on social security of foreign nationals
- Migration support services, including assistance in obtaining the required permits and registering employment contracts between foreign nationals and employers in the Republic of Belarus
- Assistance in obtaining visas and temporary residence permits

7. **Transaction support**

- Comprehensive legal and tax support for development and construction projects as well as real estate transactions
- Legal and tax transaction structuring (in Belarus and abroad)
- Legal and tax due diligence
- Legal and tax support for investment projects
- Preparation of investment agreements and involvement in obtaining approvals at various levels
- Support for privatization transactions
8. Intellectual property services

- Preparation of legal conclusions concerning the protection and use of intellectual property
- Advice on financial and tax accounting implications for intellectual property rights
- Advice on the customs clearance of goods containing intellectual property
- Advice on e-commerce (via the Internet) involving intellectual property

9. Transfer pricing services

- Transfer price planning
- Analysis of transfer pricing risks and risk management
- Advice on transfer pricing issues
- Preparation of transfer pricing documentation (economic justification of prices)
- Adaptation of group-wide transfer pricing documentation to meet Belarusian legal requirements
- Analysis of transfer pricing implications for specific business structures
- Resolution of transfer pricing controversies and assistance with tax audits

10. Accounting services

- Set up of accounting, including tax accounting
- Maintenance of accounting records in compliance with the laws of Belarus
- Preparation of financial statements and filing with the Belarusian authorities
- Calculation of salaries and related tax and non-tax payments
- Tax accounting, preparation and filing of tax declarations
- Preparation and filing of statistical reports in compliance with the law
- Preparation and transformation of Belarusian accounting data to meet international standards for the parent company
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