Resolution of the National Bank of Ukraine settling several foreign currency transaction issues to take effect on 22 March 2011


The Resolution adjusts NBU acts in accordance with the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine on the Stimulation of Foreign Investments and Credits” No. 2155-VI of 27 April 2010. It amends in particular the following:

► Instructions on the Order of Opening, Operating and Closing Accounts in National and Foreign Currencies, approved by the Resolution of the Board of the NBU No. 492 of 12 November 2003;
► Regulations on the Order of Foreign Investment in Ukraine, approved by the Resolution of the Board of the NBU № 280 of 10 August 2005;
► Regulation of the Order and Conditions of Foreign Currency Trading, approved by the Resolution of the Board of the NBU No. 281 of 10 August 2005;
Regulation on the Order of Issuance by the NBU of Individual Licenses to Use Foreign Currency by Means of Payment on the Territory of Ukraine, approved by the Resolution of the Board of the NBU No. 483 of 14 October 2004;

Regulation on the Order of Issuance by the NBU of Individual Licenses for Placement of Currency Values by Residents (Legal Entities and Natural Persons) in Accounts Outside Ukraine, approved by the Resolution of the Board of the NBU No. 485 of 14 October 2004.

In addition, this Resolution repeals the Regulations on State Registration of Foreign Investment, approved by the Resolution of the Board of the NBU No. 762 of 23 December 2009.

Among the other changes, Resolution No. 572:

- Removes the requirement to transfer foreign investments solely to investment accounts and confirms the right of foreign investors to transfer foreign currency from abroad, including to a resident's current account;
- Envisages the possibility of settlements between foreign investors for investment objects in Ukraine through investment accounts in UAH and foreign currency;
- Authorizes deposit of cash to investment accounts in foreign currency;
- Leaves only non-resident investors-legal entities the right to open deposit accounts;
- Forbids the use of current accounts (in UAH or in foreign currency) to non-residents-individual persons that want to place and debit funds transferred from the investment accounts of foreign investors-legal entities;
- Allows the placement, in an individual person's account, and in a foreign currency, of a foreign investor's assets that have been transferred from the account of a mediator (agent, consignee) for the sale of a subject of investment activity in Ukraine. Similarly, individuals can pay the foreign investor for such investment objects by transferring funds from their accounts in a foreign currency to the account of a resident - intermediary;
- Gives foreign investors-legal entities the right to place deposits in authorized banks not only in UAH, but also in foreign currency of the first group of the Classificatory;
- Excludes the terms "direct" and "foreign" investment;

- Specifies the foreign currency purchase order for the withdrawal of foreign investment or payment of dividends. In particular, the Resolution cancels the obligation to provide a confirmation from the tax authorities about payment of income tax by a non-resident during the sale of an object of investment;
- Allows using foreign currency as a means of payment without a license if the initiator or recipient of the transaction is a foreign investor, during the placing and return of foreign investments through an investment account in an authorized bank;
- Establishes that a resident-individual person who has received an individual NBU license to place values in currency accounts outside of Ukraine may transfer the equivalent of up to UAH 600,000 per year to those accounts;
- Obligates banks to use analytical accounts for checking the compliance of the operations of foreign investors in the national currency with the investment account regime.

STA of Ukraine explains the possibility of rejection of VAT privileges

On 20 January 2011 the STAU issued letter No. 1390/7/16-1517-01 explaining the grounds for the relinquishing of VAT privileges under the Tax Code of Ukraine.

Referring to paragraph 30.4 of the Code, the STAU says that the taxpayer has the right to refuse tax privileges or stop using them for one or more tax periods, unless otherwise stated in the Code.

The STAU also indicates that the Code provides the following types of tax benefits in terms of VAT:

- Deduction of the tax obligation after charging taxes (point "б" of paragraph 30.9 of Article 30 of the Code). As for deduction of VAT, it is in the form of a tax credit and is available only to registered VAT payers;
- Establishment a reduced tax rate (point "в" paragraph 30.9 Article 30 of the Code). According to Article 193 of the Code the reduced VAT rate is 0% and it applies to the delivery of specific goods (services) in accordance with Article 195 of the Code, but not to individual taxpayers;
Exemption from taxes and duties (point "г" paragraph 30.9 Article 30 of the Code). STAU considers that this exemption applies to transactions with supply of specific goods (services) defined by Art. 197 of the Code and it is not given to individual taxpayers.

As a result, STAU states that the taxpayer has the right to refuse to use tax privileges or stop to use it only if the exemption is provided directly to the taxpayer, not to the specific transactions with the supply of certain goods or render certain services.

STA of Ukraine issues letter about penalty

In a letter dated 3 February 2011 No. 2963/7/10-1017/302 the STAU clarifies the application of penalties under the Tax Code of Ukraine.

The STAU reminds taxpayers that the Law of Ukraine No. 2181-III "On the Order of Settlement of Taxpayers’ Liabilities to Budgets and State Special-Purpose Funds" has expired and that starting from 1 January 2011 taxpayers are liable under the Tax Code.

In accordance with paragraph 120.1 Article 120 of the Code, in a case when a taxpayer submits a tax declaration (calculation) after the tax reporting deadline, the following penalties apply:

- UAH 170 for each unfiled declaration referred to in the act of verification;
- UAH 1020 for each unfiled declaration in the case of a repeat violation within a year from the date of the submitted tax decision.

The STAU notes that a violation is repeated when the taxpayer submits a tax declaration (calculation) late. The type of tax for which he was already penalized is not taken into account.

In addition, the STAU notes that starting from 1 January 2011, according to Article 126 of the Code, the penalties for violating tax deadlines are:

- for a delay of up to 30 calendar days following the last day of the term for paying the obligations - 10 percent of the repaid tax debt;
- for a delay of more than 30 calendar days following the last day of the term for paying the obligations - 20 percent of the repaid tax debt.

The STAU also emphasizes that the penalties of not more than UAH 1 provided for by paragraph 7 of subsection 10, section XX of the Code apply only for tax law violations in calculation of tax liability for the period from 1 January to 30 June 2011.

Amendments to the Tax Code: terra incognita

According to the information from open sources, the Parliament of Ukraine considers development and introduction of changes to the recently adopted Tax Code till the end of the current plenary session already.

The problems that are being discusses concern, inter alia, problem of VAT refund, application of fines and withdrawal of VAT exemption for certain services etc. Currently, the work is underway and the respective draft is not available yet.

We will keep you informed on further developments.