

***.:accace.eu***

## ***Newsletter***

***Changes in Ukrainian tax legislation effective from  
November 24, 2009***

**Date:** 26 November 2009

**Drafted by:** Accace TOB

*Dear accace client,*

*with respect to our previous cooperation, we would like to take the opportunity and inform you about changes in the legislation that come into effect on November 24, 2009.*

*The Law "On Amendment of Certain Laws of Ukraine with the Purpose of Overcoming the Negative Consequences of the Financial Crisis" No. 1533-VI (the "Law") was adopted which includes some important provisions related to all Ukrainian companies.*

*The list of the most significant changes with short explanation of their implication is summarized below.*

## **01 Foreign economic activities**

The maximum term for the return by a Ukrainian exporter of foreign currency proceeds under the export contracts after the goods were shipped abroad as well as for the delivery of goods into Ukraine under the import contracts after the payment abroad was made has been reduced from 180 days to 90 days.

The failure to comply with the maximum terms results in a fine of 0.3% of the amount of the delayed payment or delivery imposed on the Ukrainian party for each day of delay.

While it is not clearly stated in the Law, the reduced terms are likely to be applied not only to contracts concluded after the Law enters into force but also to the effective contract which are currently under performance.

## **02 Foreign Investment Procedures**

The Law establishes that foreign investment in monetary form should be carried out only through investment accounts opened with the authorized Ukrainian banks and is subject to conversion in the Ukrainian hryvnia. As a result, foreign investments in Ukraine contemplated without opening of intermediary investment accounts will not be possible, and where a local subsidiary needs funds in foreign currency, such funds would need to be advanced in ways other than via capital contribution, or else the investor would face the burden of double conversion of the currency.

Also, the Law introduces a temporary requirement of mandatory state registration of foreign investments, both monetary and non-monetary. However, the existing procedure of registration of foreign investment by local state administrations is as of now applicable only to non-monetary investment, while the monetary investment is subject to registration procedures to be introduced by the National Bank of Ukraine. No such procedures have been adopted by the NBU so far, and before they are adopted the state registration of monetary foreign investment will not be technically possible. Even though the Law specifies no clear legal consequences for the failure to comply with the registration requirements, the foreign investors might face difficulties in case of foreign investment return (be it through the sale of interest in Ukrainian company, redemption of shares or otherwise).

## **03 Loans in Foreign Currency**

The Law temporarily limits the possibility to render foreign currency loans to natural persons (individuals) only to those advanced for the payment for medical treatment and education, by way of direct transfer of funds to the medical or educational institutions (no cash payments to the borrower!). Foreign currency loans to private entrepreneurs are allowed only by way of bank transfers.

Repayment of the loans in foreign currency granted after the new law enters into force and payment of interest on them may take place only via bank transfers.

These amendments are to remain effective until 1 January 2011.

## ***04 Debt Acceleration Prohibition***

The Law temporarily prevents acceleration of payments under foreign currency loan agreements with non-resident lenders. For this purpose the Law also obliges the National Bank to temporarily suspend registration of the supplementary agreements whereby the parties seek to accelerate the payment under the existing loan agreements, and bars early payments under agreements which were concluded before the Law enters into force.

Therefore, many debt restructuring schemes currently used might not work any longer, and provisions of any new loan agreements detailing payment schedules should be now worded differently.

These amendments are to remain effective until 1 January 2011.

## ***05 Other Provisions***

A number of other provisions introduced by the new law constitute reinstatement or minor clarification of already existing legislation.

It is specifically set forth that the provisions on carrying out and mandatory registration of foreign investment, prohibition of foreign currency loans to natural persons as well as prohibition of debt acceleration will remain effective until 1 January 2011.

We would like to stress that the Law has not yet been specified by the National Bank of Ukraine. As soon as there is new information available we will immediately inform you,

In the course of the above mentioned changes we will gladly provide you with the following services:

- § **Tax advisory regarding foreign-economic activity**
- § **Assistance in receiving NBU certificate for loan contract with Ukrainian non resident**

In case you're interested in further details concerning the changes or in accace services mentioned above, feel free to contact us.

Your accace team.