

## Tax Code of Ukraine and its part on Corporate Income Tax

The **Tax Code of Ukraine** # 2755-VI dated December 02 2010 (hereinafter TCU) in the part of **corporate income tax (CIT)** in the Chapter III of TCU and comes into force **in April 01, 2011**.

The following changes relating to the CIT shall be pointed out:

### ***01 New rules of incomes determining***

Income from sales of goods is recognized at the date the buyer receives the ownership rights for goods (p. 137.1).

Income from sales of services is recognized at the date of acceptance act or other document drawn up due to the current legislation (p. 137.1).

Advances received will not continue to be included in taxable income.

Special rules for separate types of income are stated in art.137 and art.159.

### ***02 New rules of expenses determining***

Expenses forming the cost price of sold goods, services are recognized as expenses of the accounting period in which the incomes from sales of such goods and services are recognized (p. 138.4).

Cost price of sold goods is determined in accordance with the Accounting Regulations (Standards).

Other expenses are recognized in the reporting period in which they were realized (p. 138.5), except some separate operations foreseen by the Tax Code.

Expenses are recognized on the basis of the primary documents, obligatory bookkeeping and saving of which are foreseen by the Chapter III (p. 138.2).

Expenses can be also accounted on the basis of confirming documents received from non-residents in accordance with the rules of other countries (p. 138.2).

Advances paid will not continue to be included in deductible expenses.

Also it's prohibited to include into gross expenditures expenses incurred in connection with purchase of goods (works, services) and other tangible or intangible assets from private entrepreneurs-unified tax payers (except for the IT services) (p. 139.1.12).

Restrictions on including into gross expenditures services purchased from non-residents:

- **Consulting, marketing, or advertising expenses** in an amount exceeding 4% of the prior year's sales income (excluding VAT and excise tax) for the year preceding the reporting period (except of expenses incurred in respect of the non-residents' permanent representative offices). If non-resident has off-shore status, such expenses are not included into gross expenditures in full amount (p. 139.1.13);
- **Expenses on engineering services** in an amount exceeding 5% of the customs value of the imported equipment in accordance with the corresponding contract (except of expenses incurred in respect of the non-residents' permanent representative offices) (art. 139.1.14). The tax deduction of the mentioned expenses incurred in favor of non-residents that are not beneficial (actual) recipients (owners) of such a

payment for services is entirely prohibited. If non-resident has off-shore status, such expenses are not included into gross expenditures in full amount (art. 139.1.15).

- **Expenses on royalties payments** in an amount exceeding 4% of the prior year's sales revenue (excluding VAT and excise tax) for the year preceding the reporting period (except the expenses incurred in respect of the nonresidents' permanent representative offices and expenses incurred in respect of the legal entities with activities in the sphere of television and broadcasting, that are included into expenses in full amount). The tax deduction of expenses on royalties payments is entirely prohibited in the reporting period in favor of:
  1. non-resident having an offshore status;
  2. non-residents that are not beneficial (actual) recipients (owners) of such payment for services (except the cases when beneficiary provided other legal entities with the right to receive such a payment) (art. 140.1.2);
  3. the royalties are paid to the non-resident in respect of intellectual property rights which were initially registered by a Ukrainian resident;
  4. the non-resident is not subject to tax with respect to the royalties in its country;
  5. legal entity that is due to the art. 154 of this Tax Code is not the subject to tax or pays another tax under the rate which is different from the one stated in p. 151.1 of the art. 151 of this Tax Code.

### ***03 Object of taxation***

Object of taxation is considered to be (p. 134):

- Income = income of the tax period minus cost price of sold goods (performed works, provided services) and other expenses
- Taxable income (profit) of non-resident

Amortization is included into expenses.

### ***04 Corporate tax rates***

- starting from April 1, 2011 till December 31, 2011 - 23%,
- in 2012 - 21%
- in 2013 - 19%
- starting from 2014 - 16%.

### ***05 Transitional provisions***

The rules of Section III are applied for incomes and expenses received and accounted from April 01, 2011.

The order of taxations of operations started before April 01, 2011 and finished after April 01, 2011 is stated in the Final and Transitional provisions to the TCU. At the same time Final and Transitional provisions recalled the Law of Ukraine "On taxation of corporate incomes" dated December 28, 1994 # 334/94-BP, except paragraph 1.20 "Usual price" coming into force starting January 01, 2013. After that the new norms of p. 39 "Methods of determining and applying of usual price" will come into force. Income tax return for the 1<sup>st</sup> Quarter 2011 is

submitted in accordance with the rules determined by the Law of Ukraine "On taxation of corporate incomes" dated December 28, 1994 # 334/94-BP.

## ***06 Usual prices***

Starting from January 01, 2013 applying of usual prices additionally to valid ones will be obligatory under determining:

- incomes in the form of percentage under loans, deposits, concluded with connected persons (p. 153.2.5)
- sums of incomes under the free of charge receiving of goods, works, services (p. 135.5.4)
- initial cost of fixed assets contributed to the statutory capital of company (p. 146.8)
- incomes received from selling of the fixed assets, intangible assets and land (p. 146.14, 147.5)

## ***07 The order of tax loss carryforwards***

In p. 150 of Chapter III TCU **the rules of tax loss carryforwards to gross expenditures of future tax periods** without any restrictions are foreseen. Exceptions are only losses from activities which are the subject to patenting. The amount of such losses is not taken into consideration at all and compensated at the expense of incomes receiving in future tax periods.

Loss declared by tax payer during four tax periods is the basis for unscheduled tax audit (p. 150.3).

## ***08 Financial statements***

Starting from January 1, 2012 companies will have **to file the copies of financial statements indicating tax differences** to tax authorities.

## ***09 Daily allowance***

**Travelling allowance (daily allowance)** for nutrition and financing of other person's needs, that are not confirmed with documents and are carried out in connection with business trip on the territory of Ukraine (but not more than 0,2 of the minimum salary amount valid on the 1<sup>st</sup> of January of the reporting period) and in connection with business trips abroad (not more than 0,75 of the minimum salary amount valid on the 1<sup>st</sup> of January of the reporting period) on the daily basis is allowed to include into gross revenues.

## ***10 Fixed assets***

Starting from April 01, 2011, **16 groups of fixed assets and 6 groups of intangible assets** come into force in tax accounting. Each object is accounted separately.

The methods of amortization will correspond to the methods stated in the Standards of Accounting 7 "Fixed assets". Restrictions are stated in p. 145.1.4.

In respect to the above mentioned changes, companies are obliged to make inventory of fixed assets and intangible assets as of April 01.

## **11 Tax privilege – 0%**

From April 1, 2011 under certain conditions some taxpayers (p. 154.6) will be entitled to apply a **0% tax rate**.

In the same article there are the conditions and spheres of activities for which a 0% tax rate is not entitled.

Should you be interested in the details connected with the important provisions of the Tax Code of Ukraine in its part on CIT, or accace services, please, contact us at:

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