



INFORMATION BULLETIN

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REVIEW OF SIGNIFICANT LEGISLATIVE CHANGES



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I. Accounting and taxation

1.1. The Procedure for Presenting Financial Statements has been changed.

The Cabinet of Ministers of Ukraine (CMU) amended the Procedure for the presentation of financial statements, approved by the Resolution of the Cabinet of Ministers of February 28, 2000, No. 419. The changes include, in particular, the following:

1. The list of companies that comprise financial statements according to international standards is supplemented.
2. It has been established that enterprises submit financial statements to the tax authorities along with the income tax declaration in the manner prescribed by the Tax Code of Ukraine (TCU).
3. Enterprises may file revised financial statements and revised consolidated financial statements in lieu of previously filed financial statements and consolidated financial statements based on the results of an audit to correct independently identified errors or for other reasons.
4. Clarified the Procedure for Disclosing Financial Statements.
5. The Procedure for Presentation of Consolidated Financial Statements is regulated.

Changes to the Procedure were made in accordance with the Law of Ukraine "On Amendments to the Law of Ukraine "On Accounting and Financial Reporting in Ukraine" Regarding the Improvement of Certain Provisions" dated October 5, 2017, No. 2164-VIII.

This document entered into force on July 14, 2018 (from the date of its official publication).

1.2. The Procedure for Prior Approval of Pricing in Controlled Transactions is set out in the new edition.

The CMU updated the Procedure for the Preliminary Approval of Pricing in Controlled Transactions, stating it in a new edition (Resolution No. 518 of July 4, 2018). Transfer pricing in controlled transactions is applied when calculating income tax.

The procedure determines the Procedure of Preliminary Approval of Pricing in Controlled Transactions, the results of which are agreements on prior approval of pricing.

The Procedure regulates:

- Pricing Approval Procedure, including preliminary review;
- The procedure for filing and content of the relevant applications of the taxpayer, which are filed with the tax authority;
- The procedure for concluding agreements on the preliminary approval of pricing, which may be one-sided, bilateral or multilateral;
- The grounds for amending contracts (agreements).

The procedure, in particular, determines that the term of the contract is determined by the parties and cannot exceed five years.

In the event of termination of the contract (agreement), supervisory authorities have the right to decide on the additional accrual of tax liabilities, fines and penalties for controlled transactions that are the subject of such a contract (agreement) and whose conditions do not comply with the “arm's length” principle exclusively for the period starting from the date of termination of the contract (agreement).

The new Procedure is in effect from July 10, 2018 (from the day of publication of the Resolution).

1.3. The Ministry of Finance approved the generalized tax consultations.

The Ministry of Finance of Ukraine (MFU) approved 4 generalized tax consultations:

1) Regarding the peculiarities of VAT taxation of the negative difference between the purchase price (normal price) of the product and the sale price of such goods for export.

In the case of an operation to export goods at a price lower than the purchase price (normal price) of such goods, a zero rate is applied to such an operation as a whole, subject to confirmation of export of goods in the relevant customs regime by a duly executed customs declaration.

Thus, the difference between the purchase price and the selling price in this case does not need to be taxed at a rate of 20%.

2) Regarding the documentary evidence of the annihilation or destruction of the main production or non-production assets.

The consultation described the procedure for documentary confirmation of the destruction of fixed assets, which is necessary in order not to charge VAT on the liquidation of these facilities.

3) Regarding VAT taxation of transactions to obtain financing by a permanent representative office of a non-resident company from the parent company as a non-resident company.

The State Fiscal Service (SFS) in this consultation draws the following conclusions:

- Since the funds received at the account of the permanent representative office of a non-resident company in Ukraine from the non-resident parent company do not compensate for the cost of goods / services supplied by such a representative office, due to the absence of the object of VAT taxation, upon receipt of funds, the representative office **does not charge** VAT tax obligations;

- The amount of funding received from the parent company **is not taken into account** in the total volume of taxable transactions for the purposes of compulsory registration of a permanent establishment by the VAT payer.

4) Regarding the VAT taxation of bank transactions and other financial institutions on the transfer to financial leasing of property acquired by them as a result of foreclosure of such property.

Generalizing tax advice approved by the order of the MFU dated August 3, 2018, No. 673.

1.4. The NBU raised the size of the bank rate.

The Board of the NBU made the Decision (dated July 12, 2018, No. 443-pw) to raise the discount rate to 17.5% per annum. The new NBU discount rate is valid from July 13, 2018. Earlier (from March 2, 2018) the discount rate was set at 17%.

The size of the discount rate, in particular, affects the amount of penalties charged in case of late payment of taxes.

II. Salary Calculation

2.1. The Alimony Transfer Procedure and submission of the Report to the Executive Service has been changed.

The Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Concerning the Creation of Economic Prerequisites for Enhancing the Protection of the Child's Right to Proper Maintenance" of July 3, 2018, No. 2475-VIII changed the Procedure for the Transfer of Alimony Withheld from the Wages of Employees, as well as the period for which a report on the deductions and payments made to the Executive Service.

The said Law amended Art. 69 of the Law of Ukraine "On Enforcement Proceedings" dated June 2, 2016, No. 1404-VIII, which provides for the following:

1) Employers make deductions from the wage of the debtor and transfer funds to the appropriate account of the State Executive Service Body, the account of The Private Executor in the period established for making these payments to the debtor, and if such a period is not set, until the tenth day of the month following the month for which recovery is made.

In the future, the Executive Service transfers funds to the account of the alimony recipient (Part 2 of Art. 47 of the Law "On Enforcement Proceedings").

Thus, the employer transfers funds **not directly** to the recipient of alimony, but **to the account of the Executive Service** / Private Executor.

2) Employers send a **Monthly** Report to the Executor on the deductions and payments made. Previously, such a report was provided to the Executive Service on a quarterly basis.

The Law No. 2475-VIII entered into force on August 28, 2018.

2.2. The living wage (subsistence level) for able-bodied persons has been changed.

Since July 1, the subsistence level for able-bodied persons has been increased from UAH 1,762.0 up to UAH 1,841.0 (Art. 7 of the Law of Ukraine "On the State Budget for 2018").

Remuneration is indexed within the subsistence level established for able-bodied persons (Paragraph 2 item 4 of the Procedure for the Indexation of Money Incomes of the Population, approved the Resolution of the CMU dated July 17, 2003, No. 1078).

Thus, in the period from July to November 2018, the wage will be indexed within UAH 1,841.0.

In addition, according to Art. 95 of the Labour Code of Ukraine wages of the employee cannot be set at a rate less than the subsistence level for able-bodied persons.

2.3. The Procedure for Financing by the Social Insurance Fund and the Regulation on the Commission for Social Insurance have been reviewed.

1) By the Decree of the Social Insurance Fund of Ukraine (SIFU), No. 12 of July 19, 2018, the new edition approved the Procedure for Financing Insurers to Provide Material Support to Insured Persons due to Temporary Disability and Certain Payments to the Injured at Work at the Expense of the Fund.

In particular, according to the document, at the expense of the SIFU funds, the insured is financed in order to provide material maintenance not only due to temporary disability, but also payments to the injured at work.

In addition, a new form of payment statement (Appendix No. 1 to the Procedure) is put into effect and a system for prompt notification by employers of payments to insured persons is introduced by providing the Fund with a notification (Appendix No. 2 κ to the Procedure).

The Resolution No. 12 entered into force on October 1, 2018.

2) The new edition approved the Regulation on the Commission (authorized) for insurance in connection with temporary disability (approved by the SIFU Resolution dated July 19, 2018, No. 13).

Among other changes that are not significant, a new form of the Minutes of the Meeting of the Social Insurance Commission / Commissioner's Decision was issued at the enterprise (Appendix No. 1 κ to the Procedure).

The new form of the Protocol is applied starting from the date of entry into force of Resolution No. 13 dated July 27, 2018.

2.4. A new form of Labour Report has been approved.

The State Statistics Service (SSS) approved the form of state statistical observation No. 1-ΠΒ (quarterly) as "Labour Report".

The new form is put into effect, starting with the report for the 1st quarter (Q1) of 2019. At the same time, the valid form, approved by the Order of the SSS dated June 10, 2016, No. 90 will become invalid from February 1, 2019.

The form of the Report in a new edition was approved by the Order of the SSS dated July 6, 2018, No. 134.

III. HR Administration

3.1. The requirement on maintaining employment record book of employees of foreign businesses by Directorate General for Foreign Missions Maintenance (GDFMM) has been cancelled.

On July 27, 2018, the Resolution of the Cabinet of Ministers of Ukraine of July 18, 2018, No. 513-p, entered into force.

This Resolution abolished the requirement of Clause 2.21 of the Instruction on the Procedure for Maintaining Employment Record Books of Employees for Maintenance by the Directorate General for Foreign Missions Maintenance (GDFMM) of employment record books of employees working under labour contracts (agreements) in **foreign missions**.

Thus, at present, the GDFMM **does not have legal grounds** on its own behalf to make entries in the employment record books of employees of foreign missions.

We draw attention to **the need** to refer to the GDFMM in order to:

- Terminate the Contract (Agreement) for Personnel Service and transfer on the Acceptance Certificate the personnel documents of the employees of the representative office; **or**

- Conclude a new contract (agreement) (supplementary agreement to the existing contract (agreement) with the GDFMM, according to which the GDFMM will continue to maintain personnel documents, with the records in the employment record books of employees will be made on behalf of the Representative Office.

3.2. Independent elimination of violations of labour legislation.

In the case of **self-elimination** by the employer before the start of the inspection visit of a violation of labour legislation, this fact will be **taken into account** by an authorized person when deciding on the case of imposing penalties.

This is indicated by the State Labour Service (SLS) in a Letter dated May 7, 2018, No. 3571/4.1/4.1-ДП-11.

This Letter addresses the situation where an employer independently resolves a violation related to the payment of compensation for unused vacation when dismissing an employee in accordance with Articles 116 and 117 of the Labour Code of Ukraine (LCU).

At the same time, the SLS recalls that failure to comply with the minimum state guarantees in labour remuneration in accordance with Paragraph 4 of Part 2 of Article 265 of the LCU imposes **a fine** on a legal entity and an individual entrepreneur who uses wage labour **ten times the minimum wage** established by the law at the time of detection of the violation, **for each employee** in respect of which the violation was committed.

IV. Changes in October 2018 & Perspective Legislation

4.1. The new Law "On Electronic Trust Services" comes into force.

On November 7, 2018, the Law of Ukraine "On Electronic Trust Services" dated October 5, 2017, No. 2155-VIII, comes into force.

The Law, in particular, provides for the following.

1 Identification of an individual who applied for obtaining the service of forming a Qualified Public Key Certificate is subject to his/her **personal presence** using a passport of a citizen of Ukraine or other documents that make it impossible to raise any doubts about a person in accordance with the legislation on the Unified State Demographic Register and identity documents, confirming the citizenship of Ukraine or the special status of the person.

Therefore, after the entry into force of this Law, an electronic signature can be issued only with the personal presence of the signatory. The use of Power of Attorney, including notarized, is not provided by the Law.

2 Users of electronic trust services must:

- Ensure the confidentiality and inability of other persons to access the private key;
- Promptly notify the electronic trust provider about the suspicion or the fact that the private key was compromised.

Thus, the use of a private key of an electronic signature by another person is expressly prohibited by law.

4.2 The government has initiated measures aimed at the legalization of labour relations.

On October 5, the Order of the CMU dated September 5, 2018, No. 649-p, came into force, the main purpose of which is to strengthen supervision over the registration of labour relations.

The Order prescribes to the supervision authorities:

1. In accordance with the established procedure, carry out comprehensive measures aimed at eliminating the income of the population from October 5, 2018. The procedure of these measures is governed by laws and executive regulations.

2. Conduct a sensitisation and awareness campaign about the inadmissibility of admitting employees to work without formalizing an employment relationship.

3. The executive authorities have to review their own executive regulations and, if necessary, amend them in order to strengthen supervision over a formal employment relationship.

4. To the executive authorities to report on the work carried out in the manner prescribed by the Order.

Thus, from October 5, the work of state bodies as the State Labour Service, the State Fiscal Service, and others, is intensifying, aimed at identifying violations of labour laws by employers, in particular as engaging in work without a formal employment relationship.

4.3. A draft of the State Budget for 2019 has been submitted.

The Cabinet of Ministers presented the draft law on the State Budget of Ukraine for 2019 (No. 9000). The draft provides the following extents of social standards for 2019:

1. The subsistence level for able-bodied persons: from January 1, 2019 is UAH 1,921.0; from July 1, 2019 is UAH 2,007.0 and from December 1, 2019 is UAH 2,102.

2 Minimum Wage is the following:

- In monthly amount: from the 1st of January is UAH 4,173.0; and

- In an hourly rate: from the 1st of January is UAH 25,13.0.

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We are looking forward to your suggestions!