



# INFORMATION BULLETIN

REVIEW OF SIGNIFICANT LEGISLATIVE CHANGES

2 QUARTER 2018



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## I. Accounting and taxation

### 1.1. Amendments to the VAT declaration and the procedure for its filling

The Ministry of Finance of Ukraine (MFU) amended the VAT declaration and the Procedure for its filling. The corresponding amendments were approved by the order of the MFU of March 23, 2013, No. 381.

The new version contains annexes 1, 5 and 9 to the declaration.

The amendments, in particular, stipulate:

1. In case of formation of the amount of tax liabilities **for the reporting period** on the basis of **tax invoices**, not registered in the Unified Register of Tax Invoices (ERNN) on the date of submission of the declaration, information on such tax invoices are indicated in **table 1.1 of Annex 5** to the declaration.

Information on the amounts of VAT that are specified in **tax invoices** drawn up from July 1, 2015 and not registered in the ERNN as of the filing date, included in the amount of tax liabilities for the **previous reporting periods**, are indicated in **table 1.2 of Appendix 5** to the declaration.

2. In case of adjustment of tax liabilities due to an increase in the amount of compensation **for the reporting period** on the basis of **calculations of the adjustments** made in the reporting period and not registered in the Unified Register of Tax Invoices (ERNN) as of the filing date, the **table 1.1 of Annex 1** to the declaration is filled.

Information on adjustments to tax liabilities in the event of an increase in the amount of compensation **for previous reporting periods** based on calculations of the adjustment to tax invoices compiled from July 1, 2015 and not registered in the ERNN, are indicated in **table 1.2 of Appendix 1** to the declaration.

3. Annex 9 to the declaration, which is submitted by agricultural enterprises, is supplemented with new lines.

Order No. 381 came into force on the first day of the month following the month of its official publication. In this case, the date of publication of the Order is May 4, 2018.

Consequently, the declaration on the new form is filed for the first time in the reporting period in **June 2018**. The clarifying calculation of the VAT tax liabilities in connection with the correction of self-identified errors, with amendments introduced by Order No. 381, is filed starting **June 1, 2018**. Corresponding explanations are posted by the State Fiscal Service of Ukraine in the database "ZIR" (subsection 101.23).

### 1.2. The Regulation on the conduct of cash transactions is amended.

The National Bank of Ukraine (NBU) amended the Regulation on the conduct of cash transactions in the national currency in Ukraine. The amendments were approved by the NBU Resolution No. 54 of May 24, 2018 and provide for the following.

1. Business entities (enterprises, etc.) have the right to use up to 30.06.2018 "old" (valid until 05.01.2018) forms of documents:

- pay list for payment of money;
- cash receipt voucher;
- cash payment voucher;
- register of incoming and outgoing cash documents;
- cash book;
- book of record of issued and received cash by the senior cashier;
- act on the results of the inventory of available funds.

2. Business entities up to June 30, 2018 (inclusive) must:

- to develop and approve the procedure for recognition of cash at the cash desk and the procedure for calculating the cash desk limit, taking into account the provisions of the Regulation on the conduct of cash transactions;

- to use the limits of the cash desk, established and approved before the entry into force of this resolution.

3. It has been clarified that it is considered a cash recognition in the cash desk of institutions/enterprises and individual entrepreneurs.

Resolution No. 54 entered into force on June 1, 2018 (from the day following the day of its official publication).

### **1.3. The requirement to obligatory sale of 50% of currency proceeds is saved**

NBU by the resolution of the Board of 12.06.2018, No. 65, retained the requirement of compulsory sale of 50% of proceeds in foreign currency in favor of legal entities. The remaining receipts in foreign currency remain at the disposal of residents and non-residents and are used by them in accordance with the rules of currency regulation.

According to the Board of the National Bank, the extension of this measure is necessary to maintain the stability of the currency market in Ukraine.

Resolution No. 65 came into force on 14.06.2018 and is valid until 13.12.2018 inclusive.

## **II. Payroll preparation**

### **2.1. The procedure for granting information about the insured persons to the Pension Fund is changed.**

The regulations on the register of insured persons of the State Register of Compulsory State Social Insurance are set out in a new version. The document was approved by the resolution of the Board of the Pension Fund of Ukraine (PFU) of March 27, 2013 No. 8-1 and entered into force on June 12, 2018.

According to the new version of the Regulation, information on insured persons can be provided to PFU not only in paper but also in electronic form after identification of the insured person in the database of the PFU website.

To the insured (employers), information from the Insured Person's Register is provided about the insured persons who are in labor relations with these insured persons for the period of the person's stay in the labor relations with the insured, as well as information on the insurance experience of these insured persons necessary for assigning social payments.

Thus, with the consent of the employee, the employer will be able to obtain information about his insurance experience for calculating insurance payments. At the same time, information from the Register of Insured Persons will be provided electronically through the web portal of the PFU.

## **2.2. Penalty for non-payment/incomplete advance payment**

Article 115 of the Labor Code of Ukraine provides that the amount of wages for the first half of the month is determined by the collective agreement or regulatory act of the employer agreed with the elected body of the primary trade union or other body authorized by the labor collective (and in the absence of such bodies - representatives elected and authorized by the labor collective), **but no less than the payment for actually worked time** from the calculation of the wage rate (official salary) of the worker.

What is the penalty for non-compliance with this requirement of the law?

The Ministry of Social Policy of Ukraine (Ministry of Social Policy) and the State Service for Labor hold different opinions on this matter.

The Ministry of social policy in the letter from March, 16th, 2008 № 118/0/22-18 explains, that in this case the penalty stipulated by paragraph 3 of art. 265 of Labor Code for late payment of wages **in 3 times the minimum wage** (at the current time - 11,169 UAH).

According to opinion of the State Labor Service of Ukraine (letter No. 2547/4/4.1-DP-18 of 03.04.2018), the requirement of Part 3 of Art. 115 of Labor Code relative to the amount of wages for the first half of the month, not less than payment for actually worked time is the minimum state guarantee. At the same time, non-observance of the minimum state guarantees in remuneration of labor in accordance with paragraph 4 of part two of Article 265 of the Labor Code entails imposition of a fine on the employer **in the tenfold amount of the minimum wage** established by the law at the time of the violation (currently - UAH 37,230), for each employee in respect of whom the violation was committed.

## **2.3. The Ministry of social policy: the raising factor is applied, even if the enterprise does not have a collective agreement**

The Ministry of Social Policy of Ukraine (hereinafter - the Ministry of Social Policy) in letter No. 838/0/101-18 of May 17, 2017 provided clarification on the application of the raising factor in calculating the average wage.

In this letter, the Ministry of Social Policy recalls that according to paragraph 10 of the Procedure for calculating the average wage approved by Resolution of the Cabinet of Ministers of Ukraine on February 8, 1995

No. 100 (hereinafter - Procedure No. 100), in cases of an increase in tariff rates and salaries at the enterprise, institution, organization in accordance with acts of legislation, as well as on decisions provided for in collective agreements (agreements), both in the accounting period and in the period during which the employee retains average earnings, wages, including bonuses, etc. The other payments taken into account when calculating the average wage are adjusted for the period of time before **the increase by the coefficient of their increase**.

Proceeding from the above provision of Procedure No. 100, in the event of an increase in official salaries (tariff rates), the employer is obliged to adjust the wage that is taken into account when calculating the average wage for vacation payments and in other cases provided for by law (except for hospital costs) .

In the commented letter, the Ministry of Social Policy states that it **is necessary to carry out** an adjustment of the average salary to an increasing coefficient **in the absence of a collective agreement at the enterprise**.

The letter also notes that if self-supporting (non-state) enterprises or an individual entrepreneur do not have the opportunity to adjust the average wage to the ratio of the increase in official salaries (tariff rates), then a decision is made **to reduce the correction factor**, based on the financial capabilities of the enterprise.

The decision to reduce the correction factor in connection with financial opportunities is formalized by an **order** that must necessarily be agreed with the trade union committee or other authorized representative of the interests of employees by the body. At the same time, the order **specifies reasons** that do not allow for a full adjustment (in particular, a decrease in profitability, production volumes, inadequate working capital, etc.).

The coefficient for adjusting the payments is calculated by dividing the salary (the wage rate) established after the increase by the salary (the wage rate) that the employee had before the increase.

## **III. Human resources management**

### **3.1. The General Data Protection Regulations came into force**

On May 25, 2018, the General Data Protection Regulation (GDPR) came into force. This regulation applies to the protection of personal data of individuals within the EU and the European Economic Area.

The regulation applies to companies:

- registered in the countries of the European Union;
- Ukrainian companies that collect or process personal data of individuals located within the EU.

The Regulations, in particular:

- prohibits the use of data of person and other actions with personal information without his prior consent;
- provides for the consent of the person **for each purpose** of data collection and processing;
- provides an individual with the right to request the termination of the use of information about him (on request), as well as the right to request the removal of his personal data;

- obliges to notify the subjects of personal data within 72 hours of violations of operation with their data.

For violation of the rules established by the GDPR, a fine of up to 20 million euros or 4% of the company's annual turnover may be applied.

The official translation of the Regulations into the Ukrainian language can be found on the [Government Portal](#).

## **IV. Novelties of July 2018 and promising legislation**

### **4.1. New dimensions of the subsistence minimum**

According to the Law "On the State Budget of Ukraine for 2018" of December 7, 2017 No.2446-VIII (Article 7), from July 1, 2018, a new subsistence level per person per month is calculated - 1777 UAH.

For the basic social and demographic groups of the population in 2018 the following values of the subsistence minimum are established:

- for children under the age of 6: from July 1 - 1559 UAH; from 1 December - 1626 UAH;
- for children aged 6 to 18 years: from July 1 - 1944 UAH; from December 1 - 2027 UAH;
- **for able-bodied people: from July 1 - 1841 UAH;** from December 1 - 1921 UAH;
- for persons who have lost their ability to work: from July 1 - 1435 UAH; from 1 December - 1497 UAH.

Recall that, according to Art. 95 of Labor Code, the amount of wages can not be set by the employer below the **subsistence minimum for able-bodied people**. At the same time, taking into account additional payments, the salary of an employee who has fulfilled the monthly (hourly) labor standard can not be lower than the minimum wage (Article 31 of the Law of Ukraine "On Labor Remuneration"). The size of the minimum wage from July 1, 2018 remains the same: at a monthly rate - 3723 UAH., at hourly rate - 22.41 UAH.

### **4.2. Changes in the Report on UST (unified social tax) and the Procedure for its formation and provision**

On August 1, 2018, the order of the MFU of May 15, 2018 No. 511 comes into force. This order amends the form of the UST Report (Form No. D4), and will also be stated in the new version of the procedure for its formation and provision.

The document, in particular, provides the following:

- in columns 12-15 of table 5 "Vedomosti about labor relations of persons and the period of passage of military service" the professional name of the work, code OKPDTR, the code of the classifier of trades and the post of the taken/dismissed worker will be indicated;

- the code of the classifier of professions (code CP), the code of the all-Union classifier of professions, posts and tariff grades (code OKPDTR), the professional title of the work is selected from the directory corresponding to the national classifier of Ukraine "Classifier of professions DK 003: 2010";

- The title of the position must match the entry in the workbook.

Order No. 511 provides that it shall enter into force on the first day of the month following the month of its official publication. Since the document was published on July 6, 2018 in the newspaper "Official Gazette of Ukraine", it will come into force on 01.08.2018. Thus, the Report on the new form will have to be submitted for the reporting period "August 2018" for the first time.

#### **4.3. The draft law on the tax on the withdrawn capital**

The President submitted to the Verkhovna Rada of Ukraine the draft Law on Amendments to the Tax Code of Ukraine regarding the **tax on the withdrawn capital** (the bill of 05.07.2018 № 8557).

The explanatory note to the draft specifies that it provides for the replacement of the corporate profit tax with the tax on the withdrawn capital from January 1, 2019. At the same time, for 3 years (until December 31, 2021), the use of profit tax by banks on their resolution is permitted. The bill also provides that the amount of dividends paid for the year 2018 (and for banks that continued to pay income tax after January 1, 2019 for 2021) will not be taxed on the withdrawn capital within the amount of taxable profits from which previously was paid income tax.

**Object of taxation** on the withdrawn capital is determined by operations for the withdrawal of capital and operations equated to operations for the withdrawal of capital.

The operations **for the withdrawal of capital** include, in particular:

- payment of dividends in favor of the taxpayer;
- return of deposits to the owner of corporate rights - to the taxpayer (in the amount exceeding the cost of the contribution made by the founder and / or the owner to the authorized capital of such legal entity), etc.

Operations **equal** to capital withdrawal operations, in particular, include:

- interest paid to non-residents - related persons and non-residents registered in states that are low-tax jurisdictions;
- payments under insurance or reinsurance contracts in favor of non-resident insurers (in certain cases);
- financial assistance provided by the tax payer to a tax non-payer who is not refundable or given to an affiliated person, or given to an unrelated person and remains unreturned for 12 months (except for individual cases);
- payment (transfer), which is carried out in connection with: transfer of funds from accounts in Ukrainian banks to taxpayer accounts opened abroad; repayment of obligations arising from contracts, the execution of which does not lead to the transfer of funds to the accounts of taxpayers in Ukrainian banks or to the receipt by the taxpayer of property, works, services;
- economic transactions that are recognized controlled by transfer pricing rules, if their conditions do not correspond to the principle of "outstretched hand", in terms of additional amounts;
- operations on gratuitous provision of property to a tax non-payer (except for certain cases);

- payments made in connection with investing in investment objects (including the acquisition of property) that are outside the territory of Ukraine, the acquisition of work, services from a non-payer of a non-resident tax and / or the transfer of property, the provision of work, services to a non-paying taxpayer if settlements or deliveries of property, work, services under the relevant transactions are not carried out within 360 days or other period in accordance with the legislation);

- funds and/or value of property transferred to the charter capital of the tax non-payer;

- funds and/or property value paid in connection with the acquisition of goods, works and services from related individuals using a simplified taxation system;

- Payment of royalties in amounts exceeding the limit and in other individual cases.

Payers of the tax on the withdrawn capital are required to identify residents (business entities - legal entities that carry out economic activities both on the territory of Ukraine and abroad) and non-residents (legal entities that carry out activities defined in the Tax Code on the territory of Ukraine and permanent representations of non-residents carrying out activity in the territory of Ukraine).

It is proposed to apply the following **tax rates** on the withdrawn capital:

- 15% - to operations on the withdrawal of capital;

- 20% - to operations equal to capital withdrawal operations (except for the following operations, taxed at a rate of 5%);

- 5% - to means paid in fulfillment of debt obligations to related non-resident persons; in cases of exceeding the aggregate amount of debt obligations to all related non-resident persons over the amount of the payer's own capital by more than 3.5 times (for financial institutions and companies that exclusively carry out leasing activities - more than 10 times) or registration of a non-resident in the state, which is a low-tax jurisdiction, a rate of 20% will apply.

## Number is ready for release:

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