

Tax Newsletter # 3

Changes to the Tax Code – 2017: VAT and Excise tax

10 January 2017



Changes to the Tax Code - 2017

In December 2016 Verhovna Rada of Ukraine adopted laws* amending the effective Tax Code of Ukraine.

Below is a summary of the most significant changes in VAT and Excise tax that became effective on January 1, 2017**.



I. Value added tax (VAT)

VAT refund

- Two VAT refund registers in place before December 31, 2016, containing claims submitted after February 1, 2016, were merged into a single Register.
- This single Register should be finalised by the State Fiscal Service (“SFS”) by January 10, 2017. It will reflect information on claims submitted and taxes reimbursed.
- Older claims, i.e. submitted before February 1, 2016, will be included into a separate Temporary Register of VAT refund claims.
- All amounts of VAT refund claimed can potentially be subject to a documental tax audit because the current ban on such audit was lifted.
- The Treasury will issue VAT refunds based on results of tax audits as reflected in the Register. Moreover, if the tax authorities fail to post results of a tax audit within a statutory period, the amount of VAT refund claimed will be treated as confirmed and, thus, due for a refund from the Treasury.

Input VAT

- Taxpayers will have a right to recover import VAT regardless of the transfer of title to the imported goods.
- Within a reorganisation process, the legal successor is entitled to recover input VAT of the reorganised entity. Such input VAT is maintained in the electronic VAT Administration System and can be used for registering future VAT invoices.
- Input VAT can be reflected based on untimely registered VAT invoices within 365 days following their issue by all VAT payers, including those applying cash method.
- The Tax Code now clearly states that input VAT is not adjusted under Article 198.5 if fixed assets are liquidated, whether it was done voluntarily by the owner-taxpayer or against their will.

- Input VAT should not be adjusted due to a VAT-exempt supply of goods for debt repayment under a debt restructuring plan.

Electronic VAT administration

- VAT liabilities under adjusting VAT returns are paid through the electronic VAT Administration System just as VAT liabilities under reporting VAT returns.
- VAT overpayment to the budget is refunded by crediting the VAT payer’s account in the electronic VAT Administration System thus increasing the registration amount thereof.

VAT invoices

Changes, effective from January 1, 2017

- UKTZED code / code from the State Classifier of Products and Services becomes an obligatory attribute of the VAT invoice.
- Temporarily, until December 31, 2017, penalties for errors made in a VAT invoice, which were assessed by the tax authorities as a result of a tax audit initiated based on a customer's’ complaint (para. 1201.3), do not apply if such errors were incorrectly entered tariff (i.e. “УКТЗЕД”) code / code from the State Classifier of Products and Services in the VAT invoice.
- Taxpayers should issue one consolidated VAT invoice for excess of minimum VAT base over the contract price in respect of all such supplies which occurred within one reporting month.
- The direct provision guaranteeing input VAT based on VAT invoices containing errors made in mandatory requisites (except tariff code), which still allow identifying the transaction, is eliminated. Yet, VAT invoice containing such errors has to be accepted by the customer.

* Law of Ukraine “On changes to the Tax Code of Ukraine regarding improvement of investment climate in Ukraine” # 1797-VIII dated 21.12.2016 and Law of Ukraine “On changes to the Tax Code of Ukraine regarding securing of budget revenues on 2017” # 1791-VIII dated 20.12.2016.

** For certain provisions special enforcement period shall apply (see in the text of this newsletter).

- Tax authorities now have 90 days (instead of 15 days) to perform an audit based on a buyer's complaints regarding non-registration/errors in a VAT invoice.
- Fines for late registration of VAT invoices are changed: a fine of 40% of the VAT invoice amount applies for registering it 61 to 365 days late (instead of 180 days) after the registration deadline. Effectively this change extends the period for VAT invoice registration to 365 days following its issue.

Changes, effective from April 1, 2017

- A special procedure for temporary suspension of VAT invoice registration by the tax authorities will be introduced.
- This new procedure allows the tax authorities to suspend registering those VAT invoices that match certain risk criteria.
- Such risk criteria, as well as the procedure itself are yet to be adopted by the Cabinet of Ministers of Ukraine.
- From April 1, to July 1, this newly introduced procedure will operate in test mode, i.e. without actual suspensions.

Changes, effective from July 1, 2017

- The procedure for temporary suspension of VAT invoice registration by the tax authorities will become fully operational. The suspension can be lifted only based on the taxpayer's formal request.
- In case of a suspension of VAT invoice registration, the 365-day period for reporting of the respective input VAT becomes suspended as well. Respective penalties do not apply during the period of such suspension.
- VAT invoice issued and registered in the Unified Register of Tax Invoices after July 1, 2017 is the only document required for the input VAT recognition, i.e. no primary documents are required.

Agriculture

- Special VAT regime for agricultural producers is abolished.
- VAT-registered agricultural producers are entitled to state subsidy. For this purpose they should submit special annex to their VAT return containing a calculation of their share of agricultural production.
- Penalties and late payment interest for understatement of VAT liabilities or

overstatement of VAT refund during 2016 resulting from incorrect distribution of input VAT according to para. 209.15.1 of the Tax Code do not apply.

Extended transitional provisions

- VAT exemption on supply of goods and services used in the aerospace industry is extended till January 1, 2023.
- VAT exemption for the cinematic industry is extended till January 1, 2018.
- VAT exemption for the supply and import of iron and non-ferrous metal scrap and paper waste for recycling is extended till January 1, 2019.
- VAT exemption on supply of coal and coal enrichment products, which may be lifted based on VAT payer's request, is extended till January 1, 2019.
- Application the cash method by providers of electricity, heat, coal and coal enrichment products is extended till January 1, 2019. Now this method should be used by providers of water and sewage services as well.

Miscellaneous changes

- Reassignment of debt claim rights, debt conversion, transfer of ownership right to a finance lease object from the original lessor to another lessor are not subject to VAT irrespective of the form of compensation (if any).
- Importers of qualifying wood processing equipment or rubber and plastic processing equipment (for manufacturing medical goods) may apply for an extended instalment plan to pay the respective import VAT for the period of up to 36 months without being assessed interest and late payment fees.

II. Excise tax

Changes in tax rates on alcoholic beverages

- Rates went up on:
 - ✓ Beer, fortified wines, sparkling wines and aromatized wines like vermouth – by 12%;
 - ✓ Sider and perry (with no added alcohol) and other fermented beverages with low-alcohol content (containing less than 8.5% alcohol) – by 11.5%;
 - ✓ Ethyl alcohol and distilled beverages (hard liquors), other fermented beverages and mixes, specific products of tariff codes 2103 90 30 00 and 2106 90, containing more than 8.5% of alcohol – by 20%.

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- Rates went down on:
 - ✓ Reduced alcohol content beverages (with alcohol content less than 8.5%) of tariff codes 2208 90 69 00 and 2208 90 78 00 – went down by 40%.

Increase of tax rates on raw tobacco and tobacco products

- Specific rates went up by 40% on all products
 - ✓ Raw tobacco, tobacco waste, ready-made tobacco, cigars and cigarillos;
 - ✓ Cigarettes (both filtered and filterless), at the same time the advalore tax rate is left at 12%;
 - ✓ Minimal excise tax liability for cigarettes went up from UAH 425.75 to 596.05.

Increase in tax rates on fuel and oil products

- ✓ Light oils, car engine petrol, ethers, and anti-detonators – by 25 %;
- ✓ Heavy oils – by 40-50%;
- ✓ Liquefied gas (LPG - propane-butane) – by 68%;
- ✓ Benzol, tolyen, xylene – by 27%;
- ✓ Biodiesel – by 9%;
- ✓ Alternative engine petrol – by 35%.

Other changes

- Payment of the assessed excise tax is allowed during 5 days after the purchase of excise tax stamps. However, untimely payment of excise tax upon purchase of excise tax stamps will be subject to 20% penalty, calculated based on the amount of the excise tax assessment.
- Requirements for marking of imported alcoholic beverages were specified. In particular, the amount of excise tax on the stamp should correspond to the amount calculated based on the characteristics (i.e. beverage's strength, volume of a bottle, tax rate) valid on the date of the stamp's manufacture.
- Excise invoices should be created and filed in all cases of fuel consumption (including, but not limited to, an entity's own consumption of fuel).
- Sale of fuel in small packages of up to 2 liters will become a taxable transaction and thus subject to filing and registering excise invoices (e.g. sale of motor engine oil at a retail chain store or gas-station).
- Excise tax on retail sale of fuel is abolished.