

4. TAXATION

4.1 General

The general principles of the Ukrainian tax system, as well as the taxes and duties (mandatory payments) which may be levied in Ukraine, are defined in the *Law of Ukraine “On the Taxation System”* (the *Tax System Law*). The *Tax System Law* stipulates that tax rates, tax exemptions, and procedures and mechanisms for tax assessments and payments may not be introduced or changed by legislative acts other than special tax laws. In addition, any changes or amendments with regard to the determination of tax rates, tax exemptions, and procedures and mechanisms for their assessment and payment may be introduced into the tax legislation not less than six months before the beginning of a new budget year, and should take effect at the beginning of such new budget year.

The *Tax System Law* provides for the categories of taxes that may be levied in Ukraine. There are two categories of taxes in Ukraine: state-wide and local. State-wide taxes and duties are established by the Verkhovna Rada and are levied throughout the entire territory of Ukraine. Local taxes and duties (mandatory payments), and the mechanisms and procedures for their assessment and payment, are established by local village or city councils in accordance with, and within the maximum rates established by, the laws of Ukraine.

With the adoption of the *Law of Ukraine “On the Procedure for the Settlement of Obligations of Taxpayers to the Budgets and the State Special Purpose Funds”* (the *Tax Procedure Law*), uniform rules were established for, *inter alia*, filing tax returns and the settlement of tax liabilities; a statutory period of limitations of three years for the payment of tax liabilities; the rates and procedure for calculating penalty interest for late tax payments and penalties for the violation of tax rules; and the administrative procedure for appealing the assessment of tax deficiencies.

4.2 Corporate Income Tax

The *Law of Ukraine “On the Taxation of Enterprise Profits”* (the *Corporate Income Tax Law*), as restated and amended, is the principal law governing the income tax liabilities of corporate taxpayers in Ukraine.

The following persons and entities are subject to the Corporate Income Tax:

- resident business entities, state, public, and other types of enterprises, institutions, and organizations which generate profits from their activity, both within and outside of the territory of Ukraine;
- foreign legal entities which derive profits from Ukrainian sources (with the exception of diplomatic establishments and other organizations enjoying immunity from taxation);
- branches, divisions, and other separate units of the taxpayers identified above which are not legal entities and which are located in a territorial community other than the territorial community of such taxpayer; and
- permanent establishments of foreign entities, which such foreign entities may acquire either through their fixed place of business in Ukraine or through a Ukrainian resident entity.

The *Corporate Income Tax Law* has established the basic Corporate Income Tax rate at 25%. The corporate income tax is levied on “profits,” which are considered to be equal to the adjusted gross income of the taxpayer in any given reporting period less all allowable expenses and depreciation allowances. “Gross income” is defined as the aggregate income received (accrued) by a taxpayer both within and outside of the territory of Ukraine in monetary, in-kind, or non-material forms from all of its activities carried out in Ukraine and abroad during the reporting period.

Under the *Corporate Income Tax Law*, all reasonable business expenses of the corporate taxpayer are allowed as deductions. However certain deductions are expressly limited or prohibited by law:

- expenses which are not related to the business activities of the Ukrainian corporate taxpayer are non-deductible;
- expenses incurred in connection with the acquisition of land plots are neither deductible nor subject to depreciation allowances, except where land is acquired together with a building or other real estate object located on it;
- according to a “transfer pricing” restriction certain types of payments to affiliated persons in excess of arm’s length are non-deductible;
- according to an “earning stripping” restriction interest on a shareholder loan is non-deductible under certain conditions; and

- according to a “tax haven deductibility” restriction only 85% of the sum transferred by the taxpayer to foreign entity located in a tax haven jurisdiction is deductible.

4.3 Taxation of Foreign Entities

The *Corporate Income Tax Law* establishes the following general principles with respect to the taxation of foreign legal entities:

- foreign legal entities will be taxed in Ukraine on their profits derived from their commercial activities undertaken on the territory of Ukraine through a permanent establishment; and
- income derived from sources within the territory of Ukraine by foreign entities which are not engaged in commercial activities on the territory of Ukraine through a permanent establishment will be taxed at the time of the remittance of such income to such foreign entities or their authorized representatives, and such taxes will be withheld from the sums remitted.

The *Corporate Income Tax Law* provides that a foreign entity is liable for the payment of corporate income tax with respect to all “Ukrainian-source” income. Article 13.1 of the *Corporate Income Tax Law* provides for a non-exhaustive list of the types of income, which are, *per se*, deemed to constitute Ukrainian source income, including, *inter alia*: interest payments, dividends, royalties, lease payments, proceeds from real estate sales on the territory of Ukraine, profits from securities transactions, profits from joint activity agreements or long-term agreements, broker or agency fees, and other kinds of income derived by a foreign entity from its business activity on the territory of Ukraine.

However, the *Corporate Income Tax Law* provides that the income of a foreign entity received in the form of a payment or other kind of compensation for the value of goods (works or services supplied from abroad by a foreign entity (or its permanent establishment) to a resident shall not constitute Ukrainian-source income.

The *Corporate Income Tax Law* provides for a withholding tax rate of 15% to be withheld by a resident entity or by the permanent establishment of a foreign entity from the amount of any Ukrainian-source income, if and when such foreign entity’s Ukrainian-source income is remitted to such foreign entity or its authorized

representative by a resident taxpayer or by the permanent establishment of such foreign entity unless an applicable bilateral double taxation treaty provides relief with respect to such withholding.

Dividends received by a foreign entity shareholder/owner of corporate rights from its shareholding/ownership rights in a resident legal entity are subject to withholding tax at the rate of 15%, unless a bilateral double taxation treaty provides otherwise.

4.4 Double Taxation Treaties

Ukraine is a party to more than 60 bilateral double taxation treaties with the following countries as of January 2009:

Table 1: Double Taxation Treaties

Country:	Signature Date:	Ratification Date:	Date of Entry Into Force
Algeria	4 Dec 2002	5 Jun 2003	1 Jul 2004
Armenia	14 May 1996	13 Sep 1996	19 Nov 1996
Austria	16 Oct 1997	17 Mar 1999	20 May 1999
Azerbaijan	30 July 1999	2 Mar 2000	3 July 2000
Belarus	24 Dec 1993	20 Dec 1994	30 Jan 1995
Belgium	20 May 1996	29 Oct 1996	25 Feb 1999
Brazil	16 Jan 2002	4 Jul 2002	24 Apr 2006
Bulgaria	20 Nov 1995	23 Apr 1996	3 Oct 1997
Canada	4 Mar 1996	12 Jul 1996	22 Aug 1996
China	14 Dec 1995	12 Jul 1996	18 Oct 1996
Croatia	10 Sep 1996	17 Mar 1999	1 Jun 1999
The Czech Republic	30 Jun 1997	17 Mar 1999	20 Apr 1999
Cuba	27 Mar 2003	20 Nov 2003	
Cyprus*	29 Oct 1982	26 Aug 1983	26 Aug 1983
Denmark	5 Mar 1996	12 Jul 1996	21 Aug 1996
Egypt	29 Mar 1997	17 Mar 1999	27 Feb 2002
Estonia	10 May 1996	13 Sep 1996	24 Dec 1996

Country:	Signature Date:	Ratification Date:	Date of Entry Into Force
Finland	14 Oct 1994	6 Oct 1995	14 Feb 1998
France	30 Jan 1997	3 Mar 1998	1 Nov 1999
Georgia	14 Feb 1997	17 Mar 1999	1 Apr 1999
Germany	3 Jul 1995	22 Nov 1995	4 Oct 1996
Greece	6 Nov 2000	29 May 2001	26 Sep 2003
Hungary	19 May 1995	23 Apr 1996	24 Jun 1996
Iceland	8 Nov 2006	03 Sep 2008	03 Sep 2008
India	7 Apr 1999	20 Sep 2001	31 Oct 2001
Indonesia	11 Apr 1996	29 Oct 1996	9 Nov 1998
Iran	22 May 1996	6 Dec 1996	21 Jul 2001
Israel	20 Nov 2003	16 Mar 2006	20 Apr 2006
Italy	26 Feb 1997	17 Mar 1999	25 Feb 2003
Japan*	18 Jan 1986	14 Mar 1988	14 Jun 1988
Jordan	30 Nov 2005	03 Sep 2008	23 Oct 2008
Kazakhstan	9 Jul 1996	15 Nov 1996	14 Apr 1997
Korea	29 Sept 1999	2 Feb 2002	19 Mar 2002
Kuwait	20 Jan 2003	19 Jun 2003	22 Feb 2004
Kyrgyzstan	16 Oct 1997	17 Mar 1997	1 May 1999
Latvia	21 Nov 1995	12 Jul 1996	21 Nov 1996
Lebanon	22 Apr 2002	19 Jun 2003	9 Sep 2003
Lithuania	23 Sep 1996	9 Dec 1997	25 Dec 1997
Luxembourg	6 Sep 1996		
Macedonia	2 Mar 1998	5 Nov 1998	23 Nov 1998
Malaysia*	31 Jul 1987	1 Jul 1988	1 Jul 1988
Moldova	29 Aug 1995	23 Apr 1996	27 May 1996
Mongolia*	19 May 1978	1 Jan 1979	1 Jan 1979
Mongolia	1 Jul 2002	6 Mar 2003	
The Netherlands	24 Oct 1995	12 Jul 1996	2 Nov 1996
Norway	7 Mar 1996	12 Jun 1996	18 Sep 1996
Poland	12 Jan 1993	24 Mar 1994	24 Mar 1994
Portugal	9 Feb 2000	22 Mar 2001	11 Mar 2002
Romania	29 Mar 1996	21 Oct 1997	17 Nov 1997
The Russian Federation	8 Feb 1995	16 Oct 1995	3 Aug 1999
The Slovak Republic	23 Jan 1996	12 Jun 1996	22 Nov 1996
Slovenia	23 Apr 2003	21 Mar 2007	25 Apr 2007

Country:	Signature Date:	Ratification Date:	Date of Entry Into Force:
South Africa	28 Aug 2003	4 Feb 2004	23 Dec 2004
Spain*	1 Mar 1985	7 Aug 1986	7 Aug 1986
Sweden	15 Aug 1995	23 Apr 1996	4 Jun 1996
Switzerland	30 Oct 2000	10 Jan 2001	26 Feb 2002
Syria	5 Jun 2003	4 Feb 2004	4 May 2004
Thailand	10 Mar 2004	23 Sep 2004	24 Nov 2004
Tajikistan	7 Sep 2002	5 May 2003	1 Jun 2003
Turkey	27 Nov 1996	16 Jan 1998	29 Apr 1998
Turkmenistan	29 Jan 1998	17 Mar 1999	21 Oct 1999
The United Arab Emirates	22 Jan 2003	19 Jun 2003	9 Mar 2004
The United Kingdom	10 Feb 1993	10 Aug 1993	11 Aug 1993
The United States of America	4 Mar 1994	26 May 1995	5 Jun 2000
Uzbekistan	10 Nov 1994	2 Jun 1995	25 Jul 1995
Vietnam	8 Apr 1996	29 Oct 1996	19 Nov 1996
Yugoslavia (Serbia and Montenegro)	22 Mar 2001	4 Oct 2001	29 Nov 2001

*Treaties of the former Soviet Union, to which Ukraine is a party as a legal successor. Treaties with Cyprus, Libya and Pakistan are expected to be signed in 2009.

4.5 Taxation of Permanent Establishments

As mentioned above, for the purposes of the *Corporate Income Tax Law*, permanent establishments of foreign entities are deemed to be independent (of such foreign entities) as taxpayers in Ukraine. Under Article 1.17 of the *Corporate Income Tax Law*, a “permanent establishment of a foreign entity” in Ukraine is created (i) through a fixed place of business through which the business activities of such foreign entity are either fully or partially conducted in Ukraine or (ii) through an agent, commissioner or other resident entity acting in a similar capacity. The concept of a “permanent establishment” under the *Corporate Income Tax Law* is similar to the definition adopted in the majority of the bilateral double taxation treaties to which Ukraine is a party, although the definition under the *Corporate Income Tax Law* is somewhat broader.

The *Corporate Income Tax Law* provides that income derived by a foreign entity which conducts its business activities in Ukraine through a permanent establishment, is subject to taxation at the general tax rate, which is currently 25%.

4.6 Value Added Tax

The *Law of Ukraine “On the Value Added Tax”*, as amended (the *VAT Law*), is the principal law governing VAT in Ukraine. In accordance with Article 2 of the *VAT Law*, any Ukrainian or non-Ukrainian legal entity will be required to pay VAT, if, *inter alia*, that entity:

- has sold goods (or provided works or services) subject to VAT during the last 12 calendar months with an aggregate value in excess of UAH300,000 (approximately US\$38,961);
- imports (ships) goods and concomitant services into the customs territory of Ukraine; or
- supplies goods (services) on the customs territory of Ukraine via global or local computer networks.

The *VAT Law* identifies a list of transactions subject to VAT, which includes, *inter alia*, the following:

- the sale of goods (or the provision of services) on and within the customs territory of Ukraine;
- the import of goods into the customs territory of Ukraine;
- the export of goods outside the customs territory of Ukraine; and
- the provision of services by foreign persons to VAT registered payers.

Transactions, which do not constitute taxable events subject to VAT, include, *inter alia*:

- the issuance, placement, and cash sale of securities;
- the interest or commission element of lease payments pursuant to a financial lease agreement in a maximum amount which is not more than double the refinancing rate of the NBU;
- the transfer of pledged property pursuant to a loan agreement and its return to the pledgor after the expiry of such agreement; and
- the provision of insurance and re-insurance services.

The *VAT Law* provides for a tax rate of 20% of the contractual value of the relevant goods (services), but not less than the arm's length value thereof (which value, in connection with the importation of goods into Ukraine, includes any excise duty, import duty, and other tax or payment required by the applicable Ukrainian legislation). A 0% tax rate is provided by the *VAT Law* for the export of goods and concomitant services.

4.7 Personal Income Tax

4.7.1 Introduction

Issues of personal income taxation are principally regulated by the *Law of Ukraine "On Tax On Profits of Individuals"* (the *PIT Law*), dated 22 May 2003, as amended. The *PIT Law* became effective from 1 January 2004, and has replaced the Decree of the Cabinet of Ministers of Ukraine "*On the Personal Income Tax*," which remained the paramount legislative act in the field of personal income taxation for more than ten years. The *PIT Law* has introduced a number of significant changes and amendments to the taxation of individuals, including tax rates; rules and principles of tax residency qualification and taxable income determination; tax administration; favorable tax credit rules; and others.

4.7.2 Tax Rates

Effective from 1 January 2007, the 15% flat tax rate applies to almost all income received by a resident individual in Ukraine, regardless of the source of income. Special rules, however, are applied or will be applied to the taxation of, *inter alia*, bank deposits (which will become subject to income tax at the rate of 5% commencing 1 January 2010); prizes (except for the state lottery), which are subject to income tax at the double rate, *i.e.*, 30%; real estate (subject to tax at a rate of 0%, 1%, or 5% of the appraisal value of the real estate depending on the size of the real estate and the number of real estate sale transactions over a year); and Ukrainian source income received by foreign individuals (subject to tax at the double rate, *i.e.*, 30%, with the exception of certain types of Ukrainian source income, namely, interest, dividends, and royalties).

Special rules of taxation are established for transactions with immovable and movable property, inherited property, securities, and other specific items.

4.7.3 Tax Residency

The concept of the determination of tax residency, which is incorporated into the *PIT Law*, is now very similar to that of most bilateral double taxation treaties drafted on the basis of the *OECD Model Tax Convention*.

Specifically, unlike the prior Ukrainian legislation, which linked the taxable status of a foreign individual solely to his/her physical presence in Ukraine during more than 183 days in a tax (calendar) year, the *PIT Law* lays down a number of other conditions (*e.g.*, domicile, center of vital interests, citizenship, *etc.*), under which a foreign individual may be treated as a tax resident in Ukraine.

To be more precise, pursuant to the *PIT Law*, the following criteria are used to determine the resident status of a person:

- a tax resident of Ukraine is an individual who has a permanent residence in Ukraine;
- if an individual has a permanent residence in more than one country, he/she will be a tax resident in that country, with which he/she has closer personal or economic ties (*e.g.*, his/her center of vital interests). The *PIT Law* specifically outlines that the place of the permanent residence of the members of an individual's family or the place of an individual's registration as a business entity (as a subject of entrepreneurial activity) will be a sufficient (but not an exclusive) condition for determining the location of the center of vital interests of such individual;
- if it is impossible to determine the country in which the individual has his/her center of vital interests, or if the individual does not have a permanent residence in any country, then the individual will be considered a Ukrainian tax resident if he/she is present in Ukraine for at least 183 days of the tax period (including days of arrival and departure);
- if it is impossible to determine tax residency on the basis of the above provisions, then the individual will be a tax resident of Ukraine if he/she is a Ukrainian citizen;
- the *PIT Law* stipulates that an individual's own identification of his/her principal place of residence on the territory of Ukraine according to the

procedure established by the *PIT Law*, or the registration of an individual as a self-employed person in Ukraine, will constitute a sufficient basis for identifying such individual as a tax resident of Ukraine; and

- a person who fails to qualify as a Ukrainian tax resident will be considered a “non-resident” for purposes of the *PIT Law*.

The latter criterion of “one’s own identification,” as well as the variety of the criteria in and of themselves, combined with the absence of clear guidance, might create situations where an individual is treated as being a tax resident in several jurisdictions simultaneously. Moreover, the above set of criteria makes it difficult in practice to identify the solely correct criterion when several of them can be easily applied. The latter circumstances can also raise a conflict between two residences. Certainly, in the majority of cases, the rules of the effective double tax treaties may be applied to solve such residency conflicts.

4.7.4 Taxable Income

Ukrainian residents are taxed on their aggregate worldwide income. Non-resident individuals are taxed only on all income derived from sources within Ukraine, non-resident individuals are not eligible for certain exemptions or deductions available to residents.

The *PIT Law* provides for a list of items specifically included in the gross income of either a resident or a non-resident individual. These include, *inter alia*: gifts; insurance payments and premiums; rental income; fringe benefits (including the cost of received property, food, assistance of home servants, expense reimbursements, amounts of financial aid, *etc.*); amounts of punitive (*vs.* actual) damages received; forgiven debts and obligations; interest and dividend income; investment income; and inheritances.

At the same time, a number of items are specifically excluded from the taxable income of both residents and non-resident individuals. Apart from such excluded items, the *PIT Law* allows an individual resident taxpayer to claim as non-taxable deductions certain expenses made during the taxable year, provided that such expenses can be confirmed by the relevant documents. In particular, an individual resident taxpayer will be able to claim a deduction for, *inter alia*, the following: a part of the interest payments made under a loan secured by a mortgage, provided that the loan is used to finance the purchase or construction of the taxpayer’s

principal home (pending); charitable contributions of not less than 2%, but not more than 5%, of the taxpayer's annual taxable income; a certain amount of expenses paid to educational institutions for receiving professional or higher education; and a certain amount of expenses paid to health institutions for personal medical needs.

The *PIT Law* also allows certain categories of taxpayers to reduce their respective incomes by an amount of the so-called "social tax benefit."

Taxes paid by a resident taxpayer outside Ukraine may be taken as credits against Ukrainian taxes due, in the event that the taxpayer provides a written acknowledgment from the foreign tax authority that such foreign taxes have, in fact, been paid. However, the total of such foreign tax credits may not exceed the amount of the Ukrainian personal income tax due.

4.7.5 Tax Administration

The general rule of the *PIT Law* is that it is the duty of the payer of source income *i.e.*, "tax agents" in the parlance of the *PIT Law*, to charge, collect, and remit personal income tax to the Government. Thus, employers are deemed to be tax agents with respect to the personal income tax due on the wages and salaries payable to their employees.

If income is received from payers who are not regarded by the *PIT Law* as tax agents, then the recipients will be obligated to file an annual tax return for the year in which such income is received. A tax return may also be filed voluntarily if a tax resident, otherwise not required to file a tax return, wishes to claim the applicable tax credits.

Sums due for personal income taxes must be paid within 30 calendar days after the issuance of the relevant tax invoice by the taxpayer's local tax office. Personal income taxes are payable in the local Ukrainian currency.

4.8 Payroll Taxes

Employees in Ukraine (who are deemed insured by virtue of their employment) are guaranteed social security and pension benefits. Employers are liable by law to make the relevant mandatory payroll-based contributions in respect of insured employees to the appropriate state funds. Such contributions are not deducted from the employees' salaries, but must be paid by the employer in addition to their salaries.

The following mandatory payroll taxes, payable at the following percentages of the employees' salaries, are generally applicable to all entities (employers) in respect of their insured employees at such general rates:

Pension Insurance	33.2%
Temporary Disability, Birth, and Burial Insurance	1.4%
Unemployment Insurance	1.6%
Industrial Accident and Professional Disease Disability Insurance	From 0.56% to 13.5%*
Total:	From 36.76% to 49.7%

*The actual rate depends on the “trauma risk level” of the industry sector in which the employer operates.

The taxable basis for the above payroll taxes is set to be fifteen times the statutory “cost of living for a labor-capable person”. In turn, the statutory cost of living for such persons is UAH669 as of 1 January 2009.

As a result, effective as of 1 January 2009, the “maximum” taxable base is UAH10,035 (approximately US\$1,303). Any portion of the taxable base in excess of the “maximum” taxable base is exempt from taxation for the purposes of mandatory state social insurance. All payroll taxes must be paid by wire transfer to the appropriate accounts at the same time as the employer withdraws funds from a bank to pay salaries to its employees.

In addition, the employer is required to withhold the following payroll taxes from the employee’s salary:

Pension Insurance	2.0%
Temporary Disability, Birth, and Burial Insurance	0.5% or 1.0%*
Unemployment Insurance	0.6% **
Total:	From 3.1% to 3.6%

* 0.5% will apply if the employee’s monthly salary does not exceed the “cost of living for a labor-capable person” in the relevant period, and 1.0% will apply if the employee’s monthly salary exceeds this threshold;

** Does not apply with respect to foreign employees who are temporarily employed in Ukraine.

Regardless of its organizational form, each company is required to hire “handicapped,” *i.e.*, disabled, individuals. The number of such handicapped persons must constitute at least 4% of the total work force of the company. In cases where the organization employs between 8 and 25 individuals, at least one handicapped person must be employed. Employers failing to comply with the above rules are liable for annual penalties. The penalty is calculated as the average annual salary of the employees of that company multiplied by the number of disabled persons that should have been hired.

4.9 Land Tax

The *Law of Ukraine “On the Payment for Land”*, as amended (the *Land Tax Law*), was adopted in 1992. Pursuant to the *Land Tax Law*, payments for land are established in the form of a land tax or a land lease payment, which is determined on the basis of an assessment of the value of the land. The owner of the land (other than the state) is required to pay the land tax. Under a land lease agreement, the lessee must pay a rent payment, but is not responsible for the payment of the land tax.

Under the *Land Tax Law*, for example, the land tax for the land within the cities is established at the level of 1 per cent per annum of the “pecuniary (monetary) valuation” of land. This tax is paid on a monthly basis at 1/12 of the annual tax.

The pecuniary valuation of land is carried out by the State Committee of Ukraine on Land Resources in accordance with the method adopted by the Cabinet of Ministers of Ukraine. This method accounts for various factors including, but not limited to, the location of a particular plot of land, the purpose for which the land is to be used *etc.*

The pecuniary valuation of a particular plot of land is carried out only once. For each of the following years the original valuation is adjusted by a coefficient of indexation, which is established for the relevant year in accordance with the procedure adopted by the Cabinet of Ministers of Ukraine.

4.10 Excise Duty

The excise duty is an indirect tax on some goods (products), which are defined by law as being excisable. The excise duty is included in the value of the excisable goods and is payable by:

- subjects of entrepreneurial activity, their branches, divisions, or other separate units, which are: the producers of goods (products) on the customs territory of Ukraine (including those produced in accordance with tolling mechanisms), which are subject to the excise duty at “fixed” excise duty rates; and customers, on whose instructions a third party produces goods (products) in accordance with a tolling mechanism, which goods (products) are subject to the excise duty at the rates fixed as a percentage of the turnover of such goods (products);
- non-residents producing excisable goods (products) on the customs territory of Ukraine, either directly or through a permanent establishment;
- any other subject of entrepreneurial activity and any other legal entities, their branches, divisions, or other separate units, which import excisable goods into the customs territory of Ukraine;
- individuals (both Ukrainian and foreign), who transport excisable goods (products) into, or who ship excisable goods (products) from outside of, the customs territory of Ukraine; and
- legal entities and individuals, which acquire excisable goods (products) (or the right to possess, use, or dispose of them) from a tax agent (which is defined as an enterprise with foreign investment, whose rights to exemption from certain taxes are confirmed by a (commercial) court, and who is responsible for computing and levying the excise duty on excise duty payors).

The list of goods (products) subject to the excise duty is established by the Verkhovna Rada. The rates of excise duty on such excisable goods (products) are primarily established as a fixed rate per item. The list of excisable goods (products) includes, *inter alia*, alcoholic beverages, beer, tobacco and tobacco products, cars, and petrol and diesel fuel.

The excise duty is calculated on the basis of the following: a fixed rate applied to the sales turnover; and a firm price per item sold. Goods exported for foreign currency are not subject to the excise duty.

4.11 Tax Controversies

Under the applicable Ukrainian legislation, a tax audit may be carried out in the form of either: a chamber audit, a scheduled on-site audit, or an unscheduled on-site audit. The chamber tax audit is conducted by the tax auditors in the tax office on the basis of the tax returns and other mandatory filings of the taxpayer related to the computation of the latter's tax liability. A "scheduled" on-site tax audit of a taxpayer is carried out only if and when such audit is scheduled in the so-called "plan of works" of the relevant tax office. An "unscheduled" on-site tax audit, in contrast to a "scheduled" one, is not pre-planned and is conducted upon the occurrence of any of the statutory defined events e.g., where the taxpayer fails to file a tax return.

The expected periodicity, *i.e.*, frequency of tax audits, depends on the type of the tax audit in question. A chamber tax audit may be carried out by the Ukrainian tax authorities on a discretionary basis. A "scheduled" on-site tax audit may not be carried out more often than once during the course of a calendar year. An "un-scheduled" on-site tax audit may be conducted only upon the occurrence of one or more of the statutory defined events. In any eventuality, each taxpayer is likely to be audited at least once every three years, which corresponds to the applicable statute of limitations.

The general rule is that the Ukrainian tax authorities can exercise their authority to issue an assessment of a taxpayer's liability with respect to a tax return only within a period of 1,095 days following: (a) the final statutory date for filing for the tax return, or (b) the date of the actual filing, of the tax return, whichever is later. After the expiration of this period of limitations, the taxpayer may not be assessed additional taxes, tax penalties, or late payment interest with respect to such past due tax liability.

A tax audit starts with a review of the correctness of the tax returns filed by the taxpayer and how they reconcile with the taxpayer's tax ledgers. Based on their findings, the tax auditors usually proceed with an in-depth study of the taxpayer's commercial documentation. As a matter of law, a taxpayer may be denied otherwise deductible expenditures if they have not been properly documented.

For the purposes of inquiring into a tax return, the auditing tax officer may require the taxpayer to produce documents or information, which are in the taxpayer's possession or within its power to secure, and which may be reasonably required to

establish whether the tax return is incorrect or incomplete. The applicable tax law does not expressly extend the Ukrainian tax authorities' rights of access to information which is stored electronically, rather than in documentary form. Ukrainian tax authorities in certain circumstances may conduct an unscheduled on-site tax audit of a taxpayer on the basis of information obtained from a third party. Among the exceptions is the information subject to legal privilege.

Ukrainian tax authorities may also address foreign tax authorities with a request to assist in obtaining of documents and information from third parties located in their own foreign jurisdiction. Such documents and information may be requested from foreign tax authorities pursuant to an applicable double tax treaty.

Penalties for the failure of a taxpayer (a) to file, or to file timely, a tax return; (b) to pay, or pay timely, taxes; (c) to comply with other tax obligations, can be generally divided into two broad categories: tax (administrative) penalties and criminal penalties. Tax penalties are imposed by the Ukrainian tax authorities and may be appealed by a taxpayer either: (a) to a higher level tax office in accordance with the administrative appeal procedure; or (b) to an administrative court in the course of tax litigation. Criminal penalties are imposed by the criminal courts in cases of tax evasion in "significant" amounts.

Under the applicable Ukrainian law, the Ukrainian tax authorities may not enforce collection of outstanding taxes, tax penalties, and/or penalty interest omitting preliminary procedure of agreeing tax obligations with a tax payer, without a court decision.

5. CURRENCY REGULATIONS

5.1 General

The principal act of legislation in Ukraine in the area of currency regulation is the Decree of the Cabinet of Ministers of Ukraine "*On the System of Currency Regulation and Currency Control*" (the *Currency Decree*), dated 19 February 1993. In its implementation of the *Currency Decree*, the National Bank of Ukraine (the NBU) has adopted a large number of regulations and instructions.