

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.

5.2 Status of National Currency

The Ukrainian national currency is Hryvnia (UAH), introduced in September 1996. The *Currency Decree* provides that UAH is the only lawful means of payment on the territory of Ukraine, and that it is acceptable without any limitations in the settlement of any obligations.

5.3 Use of Foreign Currency within Ukraine

The *Currency Decree* sets forth the general rule that any use of foreign currency on the territory of Ukraine, as a means of payment or as an object of a pledge, may legally be carried out only pursuant to an individual license of the NBU.

The foregoing rule does not apply to foreign currency transfers performed within Ukraine by a Ukrainian commercial bank or financial institution possessing a general license of the NBU for the carrying out of currency transactions.

5.4 Transfer of Foreign Currency from Ukraine Abroad

The *Currency Decree* sets forth the general rule that any transfer abroad of foreign currency from Ukraine requires an individual license of the NBU, subject to an exhaustive list of exemptions provided in the *Currency Decree*. Such exemptions include:

- transfer of foreign currency abroad by a Ukrainian resident individual within the limit determined by the NBU;
- transfer of foreign currency abroad by a Ukrainian resident or non-resident individual, within the limit of the amount previously imported into Ukraine by such resident or non-resident on a legal basis;
- payment in foreign currency abroad by a Ukrainian resident (legal entity or individual) in discharge of a contractual obligation in such foreign currency to a non-resident in settlement for goods, services, works, intellectual property rights, or other property rights acquired or received by such resident from such non-resident (*N.B.*: an acquisition of securities or other “currency valuables” does not fall within this exemption);

- payment of interest under a loan or income earned (*e.g.*, dividends) from a foreign investment in foreign currency abroad;
- repatriation from Ukraine abroad of the amount of a foreign investment in foreign currency previously made in Ukraine upon the termination of the relevant investment activity; and
- payment in foreign currency abroad to the European Organization for the Safety of Air Navigation as a fee for the services on aircraft navigation.

5.5 Other Licensable Transactions

Under the *Currency Decree*, an individual license of the NBU is required, *inter alia*, for:

- repatriation and transfer of funds in Hryvnia into Ukraine, if in excess of the amounts in Hryvnia which have been transferred abroad on legal grounds;
- depositing funds in foreign currency and other “currency valuables” (*e.g.*, securities, banking metals, *etc.*) in an account or on deposit outside Ukraine (except, *inter alia*, the opening by a duly licensed Ukrainian commercial bank of a correspondent account with a foreign bank, and the opening by a Ukrainian resident individual of a bank account with a foreign bank for the duration of such individual’s stay abroad); and
- investing abroad, including transferring foreign currency abroad in connection with acquisition of assets and securities.

In addition, receipt of a foreign currency loan by a Ukrainian resident (including a Ukrainian commercial bank) from a non-resident is subject to the registration of such loan with the NBU.

Finally, under Ukrainian law resident legal entities and individual entrepreneurs are required, upon opening a foreign bank account, to notify the NBU regarding such an account within three days from the date on which such account is opened. This requirement does not extend to the opening of correspondent accounts by Ukrainian banks, opening of a foreign bank account by a Ukrainian resident individual for the duration of its stay abroad and by the entities which enjoy diplomatic immunity and privileges.

5.6 Settlements under Export and Import Contracts

Ukrainian legislation requires that a Ukrainian resident's proceeds in foreign currency under an export contract must be collected on such resident's own bank account within 180 days from the date of the customs clearance of the exported goods. Similarly, the current Ukrainian legislation requires that goods prepaid by a Ukrainian resident, pursuant to an import contract concluded with a non-resident, must be imported and cleared through the Ukrainian customs within same 180-day term from the date on which such resident's prepayment was made.

This 180-day period may be prolonged only pursuant to a conclusion issued by the Ministry of Economy of Ukraine.

A resident's failure to comply with this 180-day requirement may result in the imposition on such resident of a 0.3% fine of the amount due under the contract for each day of delay in receiving the foreign currency proceeds or the imported goods. Under Ukrainian legislation, the total amount of the accrued fine is limited to the amount of the non-received proceeds or the value of the non-delivered goods, as the case may be. Finally, the calculation of such 180-day period is suspended if the resident files a claim in court or arbitral tribunal for the collection of overdue foreign currency proceeds from a non-resident party or delivery of goods.

5.7 Purchase of Foreign Currency

A resident Ukrainian legal entity or individual entrepreneur may acquire non-cash foreign currency in Ukraine only through a duly licensed Ukrainian commercial bank or non-bank financial institution which received a general license from the NBU, and only in a limited number of cases and subject to its submission to such bank or non-bank financial institution of various documents confirming the legitimacy of the purchase. Instances in which such a purchase will be permitted include, *inter alia*, the need for such resident to discharge its payment obligation to a non-resident in connection with:

- purchase of goods or services from such non-resident;
- repayment of a loan extended by such non-resident and/or the payment of interest thereon;
- payment of dividends or other income earned as a result of such non-resident's investment; and

- any currency transaction, for which the NBU has issued an individual license.

5.8 Trade in Foreign Currency

Trade in foreign currency on the territory of Ukraine may be carried out only by or through Ukrainian commercial banks and licensed financial institutions, and only on the inter-bank currency market of Ukraine.

5.9 Payments for Services Rendered by Non-Residents

On 30 December 2003, the NBU adopted Resolution No. 597 “*On the Remittance of Funds in National and Foreign Currency to Non-Residents under Certain Operations*” (the *Remittance Resolution*). The *Remittance Resolution* is aimed at restricting the remittance of funds from Ukraine as, *inter alia*, payment for works and/or services provided by non-residents on “commercially unreasonable” terms and at making such a remittance of funds more transparent.

If the aggregate amount of such service payments as specified in the preceding paragraph would exceed, in respect of each respective agreement or each foreign payee, EUR100,000 or its equivalent, the payer would be required to obtain, prior to the making of any such payment, either (a) an act of price evaluation (the Price Evaluation Act) issued by the State Information and Analytical Center for the Monitoring of the External Commodities Markets (the External Markets Monitoring Center), confirming that such payment does not exceed the “fair market price” for such works or services, or (b) an individual approval of the NBU for the making of such payment, if the External Markets Monitoring Center has refused to issue the Price Evaluation Act. The NBU approval cannot be issued if a Price Evaluation Act has been obtained in respect of the payment and indicates that the amount of such payment exceeds the applicable “fair market price.”

The *Remittance Resolution* does not apply to, *inter alia*, financial, transport and communications services rendered by a non-resident service provider, as long as the resident-recipient possesses a license allowing it to engage in the relevant business activity, and the payments made under the loan registration certificates and individual licenses issued by the NBU.