



LAW OFFICES OF **OMP**

Legal Consultants for Investment

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Law Offices of OMP is one of the most dynamically developing law firms in Ukraine. The firm that was founded in 2007 currently employs about 45 internationally trained and locally experienced professionals (lawyers, auditors and accountants) boasting thorough legal knowledge, broad expertise and profound understanding of the Ukrainian market. **Our team is well known on the Ukrainian and CIS legal markets as the full service Law Firm.**

We specialize on complex support of investment, as well as legal support to the businesses acquired as a result of our clients' investment decisions.



Over the last 7 years we provided services for more than 100 companies which business activity has been connected with the investment. Among our **recent projects** are:

- Start-up of the companies from the structuring of the model of work to its practical implementation (registration, drafting of contracts, resolving of labor issues etc.);
- Legal support of the mergers/acquisition of the companies by international brands;
- Legal and tax audits of the companies;
- Structuring of the cross-border transactions as well as transactions within Ukraine;
- On-going legal support



Our Clients represent various business spheres, including banking, insurance and leasing, investment funds, IT, construction and real estate, FMCG, agriculture, metallurgy, pharmaceutical and chemical industry, as well as charitable organizations.

- **We have provided services to:** Interpipe Group and Ferrexpo Group, Metinvest, Glencore Ukraine, SAP, Ericsson, LEGO, EFES, Adamed, Johnson & Johnson, Hoffman La-Roche, TEVA, Fishman Group, DSV, RedStone Group, Renault Ukraine, Scania Ukraine, Hansgrohe, MAN Diesel & Turbo, Sanitec and Kolo, BF & GH Travel Retail, Concorde Capital, Dragon Capital, NOVUS Ukraine, Yandex, etc



Investment incentives in Ukraine

Current structure:

- (1) Corporate profit tax (general rate 18%) – tax incentive for various industries (IP, agriculture, energy generation, etc). Additionally incentives due to investment projects, approved by government. The vehicles – either less tax rate (for example 5 per cent for IT) or full exemption from CPT for certain period of time.
- (2) Additionally – full exemption for the profit generated by the Ukrainian investment funds, until they distribute dividends. In combination with the exemptions for certain DTT it may result in zero tax burden upon the investment in Ukraine.



Current situation

Personal Income Tax – 5% rate for dividends obtained by individuals;

VAT (20%) – no exemption for VAT, except transfer of assets in course of reorganization and acquisition of shares.

Customs duty – full exemption for the transfer of assets to the charter capital of a Ukrainian entity



Summing up the above, lately (and to a certain extent – nowadays) the Ukrainian system of taxation allowed to generate a negative value of corporate profit tax (i.e. tax losses, that may be carried forward with certain restrictions) and VAT refund against the contributed investment.

Plus the use of investment funds jointly with their foreign shareholders allows to minimize the effective CPT taxation in future, where all tax losses are utilized by generated profits.



Flaws of the current tax system:

- Too large tax burden gap between general regime of CPT taxation and the alternatives, where tax exemptions are used – aggressive tax planning;
- No VAT exemption upon the acquisition/ sale of totality of assets (article 19 of EU Directive #1996/112);
- Complicated legislation; a lot of legal and practical restrictions for deductibility of certain expenses, VAT refund, losses carry forward



Tax reform is launched by the efforts of Ministry of Economy, Ministry of Finance and President of Ukraine with the active participation of professionals.

Currently two draft laws are under discussion.

The main points are:

1. Corporate profit tax
2. Social Contributions made by employees



3. On the other hand: taxation of passive income of individuals
4. Taxation of real estate (including commercial and industrial)
5. Taxation of acquisition of foreign currency
6. Cancellation of the most of the preferential and special tax regimes



Main points of the Tax Reform proposed by the Cabinet of Ministers –

1. Corporate profit tax

- The taxable base for the corporate profit tax purposes shall be calculated on the basis of the bookkeeping data by means of corrections of the financial result before taxation; there shall be provided limitations for depreciation, royalty, interest (thin capitalization rules – ratio 3,5 between own capital and debt capital), payments to the low-tax jurisdictions.
- Cancellation of the most of the preferential and special tax regimes.
- Tax restrictions for investment funds (i.e. no deductibility of interest paid in favor of investment funds)



Main points of the Tax Reform proposed by the Cabinet of Ministers –

2. Social Contributions made by employees

- Reform of the Social Contribution remittances provides for the introduction of the decreasing ratio of 0,4 to the general rate (that currently averages to 41 per cent)
- Minor rate in the average will amount to 15%, starting from the salary of 145 EUR (exchange rate as at Sept. 30, 2014).



Main points of the Tax Reform proposed by the Cabinet of Ministers – 3. Taxation of passive income of individuals

- PIT shall be applied at the rate of 15-25% to the passive income of the individuals (interest, investment/capital gains etc.) Dividends taxation of individuals will stay at the rate of 5%



Main points of the Tax Reform proposed by the Cabinet of Ministers –

4. Taxation of real estate (including commercial and industrial)

- The taxable base of the real estate tax shall be broadened by means of taxation of the commercial (non-residential) real estate.



Main points of the Tax Reform proposed by the Cabinet of Ministers – 5. Taxation of acquisition of foreign currency

- The duty on purchase of the foreign currency shall be increased up to 2% from the operations



Resume

1. The goal to decrease the Social contribution rate should be set – it will increase the cash-flow of employers;
2. Additionally, unification of taxation and bookkeeping will support the transparency of Ukrainian business for foreign investors;
3. Although a lot of tax differences look unreasonable, some of them double each other;
4. On the background of cancelation of majority of special schemes, we consider that more decisive steps should be made in order to attract foreign investors, such as full tax exemption for the re-invested (not distributed) profit.

We continue the dialogue with the government in order to agree upon a better taxation model





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