

BUSINESS SET UP IN UKRAINE

This short guide provides a general information on the main legal requirements connected with and to be considered when setting up a business in Ukraine. The main form of doing business is limited liability companies. Representative offices are also often used to start or promote business. These are described below.

Such form of business as joint stock companies is more complicate to establish and additional statutory reporting is required. They are not addressed herein. Sole entrepreneurship (sole traders) is usual form for small businesses but it can be established only by Ukrainian residents.

1. Limited Liability Companies

Limited liability companies (LLC) are the most widespread form of commercial companies in Ukraine. LLC can be incorporated by the only person. However, the only legal person cannot incorporate LLC if it is also owned by the only shareholder.

Shareholders' liability is limited by their shares.

Capital requirements

There is no minimum requirement for authorized capital of LLC. Nevertheless, the question of initial business financing (until the profit is obtained) should be considered when decision is made concerning the amount of the authorized capital.

The authorized capital in the amount of UAH 300,000 entitles the company to apply for a VAT payer's registration as indicated below.

Formation

The procedure of registration includes filing the application to the State registrar and registration with the tax and pension authorities. It normally takes 2-3 weeks since the moment all documents are available.

Requirements for registration:

- Registered address in Ukraine
- The minimum management requirement is a director

No national requirements but foreigners need to obtain work permit, which can be done only after the company is registered. Therefore, there should be a Ukrainian director appointed on the initial stage of registration of LLC.

Documents required to incorporate LLC:

- Resolution of shareholders to incorporate a company (usually in the form of minutes of meeting)
- Evidence of identity of shareholders (extracts from the trade register and documents which enable to identify beneficial owners of shareholders)
- Application to register a company

Upon the decision of shareholders Articles of Association of LLC can be approved. In this case notarized original Articles of Association is submitted to the State registrar. Otherwise, the shareholders can make a decision to use model Articles of Association, that should be stated in their decision to incorporate the company.

Out of pocket cost of registration depends on the amount of documents which are to be translated and notarized. State duty for company registration totals UAH 170.

Statutory reporting

Limited liability companies are required to submit month, quarter and annual tax returns and returns on social contributions, quarter and annual financial statements and annual confirmation of registration information.

Financing of the activity

Except for the income received under the services or supply contracts, activity of a LLC can be financed by means of a loan granted by the parent company (an individual license of the National Bank of Ukraine is required) or by means of additional contributions to the authorized capital (registration of amendments to the Articles of Association is necessary).

2. Representative offices

Representative office is not a separate legal entity and, accordingly, the headquarters legally shall be liable by its funds for the activity and obligations of its representative office due to its creditors and state authorities of Ukraine.

Representative offices in Ukraine exist in two forms – as non-commercial and commercial representative offices. This classification is of great importance as the taxation benefits are concerned. Only commercial representative offices are allowed to conduct any business activity to gain profit. Non-commercial representative offices represent headquarters, but cannot conduct any business activity (sale of goods, provision of services, marketing, etc)

Formation

Representative offices are registered in the Ministry of Economics. The term of consideration of documents is 60 working days since the moment when the state duty for registration is paid. Then, in order to start business activity and become a commercial representative office, a representative office is to be registered in the tax authorities.

Requirements for registration of the representative office:

- Extract from the trade register of the headquarter and the statement from its bank
- Power of attorney to the head of the representative office
- Application for registration (the registered address is to be indicated)

The amount of state duty for the registration totals to USD 2,500¹.

Foreigners employed by the representative office do not need to obtain employment permits in Ukraine. When RO is registered, the Ministry of Economics is to be informed about the number of foreigners who will be employed by the representative office. On the basis of a certificate on registration of the representative office, foreign employees of the representative office are issued work cards for the period up to three years.

Statutory reporting

Commercial representative offices are required to submit month, quarter and annual tax returns.

Financing of the activity

When a representative office is established, the authorized capital is not formed. In case of non-commercial representative offices, no gain can be received from the business activity. Funding can be made by the headquarter by means of money transfer; however in this case if the money are

¹ As of 1 December 2011.

used in the business activity they can be recognized as the taxable income of a representative office.

3. Taxation

Corporate Profit Tax

Limited liability companies are payers of the corporate profit tax at the rate of 23%².

Alternatively, small and medium sized LLC, except for those companies directly indicated by the law, can choose the unified tax system³, provided that their annual turnover is not higher than the equivalent of UAH 5,000,000 and the amount of employees does not exceed 50 person. The rate of the unified tax is 3% of the turnover for companies which are VAT payers and 5% for those which are not.

However, the unified tax system cannot be used by the companies whose shareholders-legal entities, which own more than 25% of the authorized capital, are not payers of the unified tax. Accordingly, if a non-resident company owns more than 25% of the authorized capital of the LLC this tax regime will not be available for LLC. Nevertheless, it can be applied for the LLC incorporated by physical persons.

Instead of paying the corporate profit tax, companies – agricultural producers can enjoy the beneficial tax regime of Flat agricultural tax, which is a fixed percent rate of the cadastre value of land in use, provided that they have agricultural land in ownership or use (lease) and that the scope of the agricultural production for the previous year exceeds 75%.

Dividends

To pay dividends to shareholders the company shall make an advance payment for the purpose of the corporate profit tax in the amount of tax rate accrued for the sum of the dividends. This requirement is not applied to the agricultural companies – payers of the flat agricultural tax and in cases when the dividends are paid to physical persons.

In case when dividends are paid to non-residents the corresponding Double Tax Treaty will be applied to determine whether the income is taxable in Ukraine or in the country of residency.

Representative Offices

Non-commercial representative offices enjoy tax benefits as they are not payers of the corporate profit tax. However, as soon as it is identified that a non-commercial representative office conducts any business, it is to be registered with the tax authorities and the corporate profit tax is to be accrued.

For the purpose of taxation commercial representative offices are considered as resident legal entities. They are payers of the corporate profit tax on ordinary terms.

Value Added Tax

The rate of Value Added Tax (VAT) is 20%⁴.

Registration as a VAT payer is obligatory as soon as the entity's scope of sales of goods and/or services for the previous 12 months exceeds the amount of UAH 300,000.

Registration can be done also on a voluntary basis provided that certain criteria are met. Thus, LLC with the authorized capital in the amount of UAH 300,000 is entitled to apply for a VAT payer's registration. Otherwise, voluntary registration as a VAT payer can be done after 12 months of the entity's activity provided that the amounts and scope of sales of goods and/or services to other VAT payers for this period are not less than 50% of the total scope of sales.

Entities which are not registered as VAT payers and import goods onto the territory of Ukraine, shall pay VAT during custom clearance along with custom duty without registration for the purpose of VAT.

2 In 2012 the rate will be 21%, in 2013 – 19% and since 1 January 2014 – 16%.

3 Since 1 January 2012.

4 Since 1 January 2014 the rate of VAT will be 17%.

Personal Income Tax and Unified Social Contribution

All entities which have employees shall withhold personal income tax from their salaries (progressive tax rate 15% and 17%) and the unified social contribution (3,6%). Besides, they shall pay the unified social contribution (in the amount of 36,76 – 49,7% depending on the level of a professional risk of entity's business activity) accrued on the total sum of salary and benefits paid to employees.

Karpov & Stifutin Attorneys at law, November 2011

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