

INTERNATIONAL BAR ASSOCIATION
RECENT DEVELOPMENTS IN TAXATION

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UKRAINE

IRYNA KALNYTSKA

Partner, Attorney at Law

GOLAW

i.kalnytska@golaw.ua

tel. +380 93 071 09 84

+380 44 581 12 20

GOLAW Law Firm
19 B Instytskaya Street, suit 30
01021, Kiev, Ukraine

I. INTERNATIONAL TAXATION

1.1. BEPS implementation in Ukraine

2018 has become the most fruitful year in the implementation of BEPS Action Plan in Ukraine. Real steps have been taken that will soon lead to real changes aimed at improving the efficiency of tax regulation and ensuring financial stability in Ukraine during the transition to the free movement of capital provided for by the new Law of Ukraine "On Currency and Currency Transactions", which provides for a significant liberalization of currency regulation.

Thus, on July 23, 2018, Ukraine signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (hereinafter referred to as the "MLI Convention"). On February 28, 2019, this convention was ratified by the Verkhovna Rada of Ukraine, which means that soon the MLI Convention will come into force for Ukraine, that is on the first day of the month after the expiration of the period of three calendar months, which begins with the date of the deposit by Ukraine of its the instrument of ratification. The MLI Convention has been ratified with certain reservations and notifications in accordance with Articles 28 and 29 of this Convention.

Therefore, having signed and ratified the MLI Convention, Ukraine will be able at the same time to amend a number of existing Double Taxation Conventions. Moreover, having signed and ratified the MLI Convention, Ukraine at the same time completes Action 15 of the BEPS Action Plan, as well as Action 6 "Prevent treaty abuse", and Action 14 "Make dispute resolution mechanisms more effective".

In addition, at the end of 2018, the Ministry of Finance of Ukraine and the National Bank of Ukraine issued the draft Law of Ukraine "On Amendments to the Tax Code of Ukraine to Prevent Base Erosion and Profit Shifting". This project has been widely discussed in business, as if it is adopted, it will significantly affect the conduct of business in Ukraine, in particular, the rules of transfer pricing and determination of the status of permanent establishment.

According to the explanations of the Ministry of Finance, this draft law is aimed at the implementation of eight of the most critical actions of the BEPS Action Plan for our country: Action 3 "Strengthen CFC rules "; Action 4 "Limit base erosion via interest deductions and other financial payments"; Action 6 " Prevent treaty abuse "; Action 7 "Prevent the artificial avoidance of PE status"; Action 8-10 "Assure that transfer pricing outcomes are in line with value creation"; Action 13 "Re-examine transfer-pricing documentation".

1.2. Transfer pricing

2018 also ended with the adoption of amendments concerning controlled operations, which entered into force on January 1, 2019, in particular:

- controlled transactions shall include not only business transactions carried out between a non-resident and its permanent establishment in Ukraine, but also internal economic transactions between them, if the scope of such business transactions determined in accordance with the accounting rules exceeds UAH 10 million (net of indirect taxes) for the corresponding tax (reporting) year;

- it is established that if the actual conditions of the performed controlled transaction do not correspond to the terms of the concluded (written) agreement and/or actual actions of the parties to the controlled transaction and the actual circumstances differ from the terms of such agreement, the commercial and/or financial characteristics of the controlled transaction for the purposes of transfer pricing shall be determined in accordance with the actual actions of the parties to the transaction and the actual conditions of its execution;

- it is established that if the controlled transaction is actually carried out but not documented (not confirmed), for the purpose of transfer pricing it should be regarded in accordance with the actual behavior of the parties to the transaction and the actual conditions of its execution, in particular, the functions actually performed by the parties to the transaction, assets, which were actually used, and the risks that each party actually took over and controlled shall be considered;

- the list of powers of the controlling body, which conducts audits on the taxpayer's compliance with the "arm's length" principle, is extended, in particular, the controlling body shall have the right to:

a) send requests for the provision of documents (information) concerning the controlled transaction to other taxpayers who are parties to the controlled transaction under audit or have been involved in the supply chain of goods (works, services, other civil rights objects) that constitutes the subject of a controlled transaction. In the case of failure to provide such documents (information) at the request of the controlling body and/or in the case of provision of incomplete information, the controlling body shall have the right to conduct the cross-audit of such taxpayers;

b) conduct a survey of officials and/or employees of taxpayers who are parties to the controlled transaction;

c) send requests to the competent authorities of foreign states regarding the subject matter and circumstances of the controlled transaction and/or the economic activity and the financial statements of the non-resident party to the controlled transaction;

d) hold meetings with the taxpayer (authorized persons) to discuss the methodology for determining compliance of conditions of controlled operations with the "arm's length" principle applied by the controlling body during the audit.

1.3. Double tax treaties

On February 28, 2019 the Agreement between the Government of Ukraine and the Government of the State of Qatar on Avoidance of Double Taxation and the Prevention of Tax Evasion with Respect to Taxes on Income dated March 20, 2018, was ratified by Verkhovna Rada of Ukraine. And on April 09, 2019 this Agreement entered into force.

The Agreement establishes following rates of withholding tax:

- dividends: 5 % of the total amount of dividends if the beneficial owner of the dividends is a company (which is not a partnership) who owns directly at least 10 % of the capital of the company paying the dividends, and 10 % in all other cases;

- interest: 10 %;

- royalty: 10 %.

II. DIRECT AND INDIRECT TAXES

2.1. Single tax for agricultural producers

A positive step towards stimulating agricultural development in Ukraine was the adoption in July 2018 of the Law of Ukraine "On Amendments to the Tax Code of Ukraine and Certain Laws of Ukraine on Stimulation of the Establishment and Activities of Family Farms", which came into force on August 15, 2018.

From now on, the fourth group of single tax payers - agricultural producers – also includes individual entrepreneurs who carry out their activities exclusively within a farm, registered in accordance with the Law of Ukraine "On Farm Business", subject to the fulfillment of a set of requirements.

The purpose of the adoption of this Law was to create legal, economic and social prerequisites for legalization of family farms with the acquisition of the status of individual entrepreneur - the producer of agricultural products, and, accordingly, to ensure their full participation in the social and economic life of the state with the establishment of preferential terms of payment of a single tax and of a single social contribution.