

# Law №466: main amendments to the Tax Code of Ukraine

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*The Law of Ukraine №466 «On amendments to the Tax Code of Ukraine on improving tax administration, removing technical and logical mismatches in the tax legislation» was signed by the President on May 21, 2020. The law came into force on May 23, 2020, except for certain provisions, the date of entry into force of which is explicitly stipulated in the Tax Code of Ukraine.*

## The «Principal Purpose Test» has been introduced as a prerequisite for the application of the double tax treaty

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Tax benefits in the form of an exemption from taxation or application of a reduced tax rate provided by an international agreement are not granted in respect of the relevant type of income or profit **if the main or primary purpose of the relevant business transaction of a non - resident with a resident of Ukraine was to directly or indirectly obtain the benefits** provided by the double tax treaty in the form of an exemption from taxation or applying a reduced tax rate.

## The definition of the «permanent establishment» has been expanded

The total duration of works related to the construction site, object or activity, the excess of which leads to the emergence of a permanent establishment of a non-resident in Ukraine, **has been increased from 6 months to 12 months.**

The presence of a person's actual authority to carry out activities in the interests of a non-resident, which contains features of the permanent establishment, may indicate (the list is not exhaustive):

- **provision of mandatory instructions** by a non-resident and their implementation;
- **use of corporate e-mail of a non-resident and/or of his related parties** for communication with a non-resident, third parties with whom the non-resident will enter into agreements;
- realization by a person of **the right to own or dispose of assets/inventories** of a non-resident in Ukraine on the basis of relevant instructions of a non-resident;
- **the person has premises, leased premises for storage of non-resident property** or property to be transferred to third parties on the instructions of a non-resident.

The deadline for voluntary registration for tax purposes of existing (but not yet registered) permanent establishments is the 1<sup>st</sup> October 2020. The powers of tax authorities in respect of unregistered permanent establishments of non-residents were extended and include forced tax registration, unscheduled tax audits, tax accruals, tax seizure of property etc.

Amendments that came into force on May 23, 2020

## The definition of the «beneficial owner of income» has been expanded

Beneficial (actual) recipient (owner) of income for the purposes of applying a reduced tax rate ... **(if the relevant requirement is provided for by the international treaty)** is considered a person who has the right to receive such income and **is the beneficiary of it (has the right to actually dispose of such income).**

A person who is an agent, nominal holder or performs only intermediary functions in relation to such income is not a beneficial (actual) recipient (owner) of income, which, in particular, **may be evidenced by the following features:**

- **does not have sufficient authority to use and dispose of such income, and/or**
- **transfers the received income** or the overwhelming part of it **to the benefit of another person,** and
- **does not perform essential functions,** does not use significant assets and does not bear significant risks in the operation of such transfer, and/or
- **does not have the appropriate resources (qualified personnel, fixed assets in possession or use, sufficient equity capital, etc.);**
- use of assets and **risk management** that are associated with obtaining the corresponding type of income, **which only formally rely on the specified person** in connection with the operation of such a transfer.

Amendments that came into force on May 23, 2020

## The rules for calculating the income/losses from investment asset have been changed (PIT)

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In case of sale or purchase by the taxpayer of investment assets to/from non-residents - related parties or non-residents registered in low-tax jurisdictions, profit and expenses on such transactions are to be determined at the usual (market) price.

Amendments that came into force on July 01, 2020

## Other amendments provided by Law №466

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Non-residents (foreign legal entities, organizations) that operate in Ukraine through separate divisions or permanent establishment, or purchase real estate or open accounts in Ukrainian banks **are required to register with supervisory authorities.**

## **The procedure for taxation of profits from the sale of Ukrainian investment assets between non-residents has been established**

The list of **income from the source of its origin** from Ukraine includes:

- **income from the sale or other alienation of shares/corporate rights or other similar rights of foreign legal entities**, if the value of such rights by 50 percent or more is formed from the value of shares/corporate rights of a Ukrainian legal entity whose shares/corporate rights derived their value by 50 and more percent from the value of the immovable property located in Ukraine.
- **income from the sale or other alienation of shares/corporate rights or other similar rights of Ukrainian legal entities by foreign legal entities**, if such rights derived their value by 50 and more percent from the value of the immovable property located in Ukraine.

**A non-resident who acquires ownership of an investment asset** (shares/corporate rights) from another non-resident, and does not have a registered permanent establishment in Ukraine, must:

- withhold tax on profits from the alienation of such an investment asset;
- transfer the tax to the budget at the time of such payment;
- no later than the date of the first payment for the acquired investment asset to be registered with the supervisory authority at the location of such Ukrainian legal entity.

## The definition of the «dividends» has been expanded

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For tax purposes, dividends are equated to the amount of income paid to related parties - non-residents, non-residents from low-tax jurisdictions and the List of organizational and legal forms provided by the Cabinet of Ministers of Ukraine in controlled transactions more than the amount that corresponds to the principle of «arm's length», in particular:

- amounts of income in the form of payments for securities (corporate rights);
- the cost of goods (works, services) purchased from a non-resident;
- the amount of understatement of goods (works, services) sold to a non-resident.

In addition, dividends are also equated to payment in favor of a participant/founder - a non-resident of Ukraine, which leads to a decrease in retained profit of the legal entity (withdrawal of the participant from the company, reduction of authorized capital, etc.).

Amendments that will come into force on January 01, 2021

## Rules for taxation of profits of controlled foreign companies («CFC») have been introduced

**A foreign company is recognized as controlled** if a natural/legal person - a resident of Ukraine:

- holds a share in a foreign legal entity **> 50%**; or
- holds a share of **> 10%**, provided that several individuals/legal entities - residents of Ukraine hold shares in a foreign legal entity in total **≥ 50%**; or
- separately or together with other related parties - residents of Ukraine **exercise actual control over a foreign legal entity.**

The CFC's profit calculated under the new rules will be included in the tax base of the Ukrainian controller regardless of its actual payment to the controller. The tax rate is 18% and for dividends received by CFCs directly or indirectly from Ukrainian companies at rates of 5%/9% (excluding the military tax of 1.5%).

In addition, there are conditions under which the adjusted income of CFC **is not subject to taxation**, including the efficiency of the rate, the size of the share of passive income, the level of business presence, the presence of a tax convention.

Controllers are required **to report the CFC to the supervisory authority** at the same time as **the submission of the annual declaration of property and income or tax declaration on corporate income tax** for the relevant calendar year.



## Amendments related to transfer pricing (TP)

### Preparation and submission of reports for tax control

Along with the report on controlled transactions, taxpayers are required to **file a notice of participation in an international group of companies** by October 1 of the year following the reporting year.

### Transfer pricing reporting

Three-level reporting has been introduced for companies belonging to an international group of companies and is required to be submitted at the request of the supervisory authority, and namely:

- **TP documentation (local file);**
- **global TP documentation (master file)**, if the total consolidated income of the international group of companies for the financial year preceding the reporting year is **≥ 50 million euros**.
- **Country-by-country report**, if the total consolidated income of the international group of companies **≥ 750 million euros** and in the presence of one of the circumstances provided for in paragraph 39.4.10 of the TCU.

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