Setting up your Business in Ukraine
Issues to consider

As the largest country wholly in Europe, Ukraine occupies a strategic position between European Union countries and the Commonwealth of Independent States, and has the potential to be one of the richest countries in all of Europe, based on their wealth of natural and human resources. In fact, Ukraine has 5% of all the world’s natural resources and 25% of the world’s fertile black soil.

However there are a number of issues which you must consider when you are looking to set up your business in Ukraine. This document takes you through some of the common questions we come across and gives you practical information about the issues you need to consider.

What type of Business Structure should we use?

There are advantages and disadvantages to all of them, and there is no one correct answer, it’s all dependent on your specific business circumstances and needs. A brief overview of the main structures is below:

Establishment (a branch of your overseas business)
- Not a separate legal entity but an extension of the overseas parent company
- Can perform all or part of the parent company's functions, including (but not limited to) representation
- Because of the wide scope of their powers, branches are considered to engage in commercial activities for taxation purposes and are thus subject to profit tax
- Must file an annual report on the foreign entity’s activities as well as a tax return

Open joint stock company — OJSC

- The minimum charter capital may not be less than 1250 minimum wages at the time of creation (registration) of a joint-stock company (in 2017 - UAH 4,000,000 approximately USD 154,437).

- If, at the end of the second and each subsequent financial year, the value of the net assets of the joint-stock company will be less than the authorized capital, the company must declare a reduction of its authorized capital and register the relevant changes to the statute in the prescribed manner. If the net asset value of the entity becomes less than the minimum statutory capital fixed by law, the company is subjected to liquidation.
The founders of a joint stock company are recognized by the state in the name of a body authorized to manage state property, a territorial community represented by a body authorized to manage communal property, as well as natural and/or legal persons that have decided to establish it.

- The number of shareholders is unlimited. The founders of a joint-stock company may be one, two or more persons.

- A shareholder may alienate his shares without the consent of the shareholders or the company.
- The Company may place shares publicly and privately. Shares may be distributed through an open subscription and stock exchange purchase.
- It is also necessary to pass the listing procedure.
- Annual financial statements are subjected to mandatory audit by an independent auditor.

- Decisions are made by a simple majority of those present at the shareholders' meeting (except for matters where a qualified majority is required by law).

- Shareholders are responsible for the obligations of the company only within the limits of their shares.

- In cases provided for by the charter, shareholders who have not fully paid up shares are liable for the obligations of the company also within the amount not paid.

Closed joint stock company — CJSC

- The minimum charter capital may not be less than 1250 minimum wages at the time of creation (registration) of a joint-stock company (in 2017 - UAH 4,000,000 approximately USD 154,437).

- If, at the end of the second and each subsequent financial year, the value of the net assets of the joint-stock company will be less than the authorized capital, the company must declare a reduction of its authorized capital and register the relevant changes to the statute in the prescribed manner. If the net asset value of the entity becomes less than the minimum statutory capital fixed by law, the company is subjected to liquidation.

- The founders of a joint stock company are recognized by the state in the name of a body authorized to manage state property, a territorial community represented by a body authorized to manage communal property, as well as natural and / or legal persons that have decided to establish it.

- The number of shareholders is unlimited. The founders of a joint-stock company may be one, two or more persons.
• The Company can only conduct a private placement of shares.

• Shares of the company cannot be sold and bought on the stock exchange.

• The company is not obliged to disclose its financial activities on the stock market.

• Shareholders are responsible for the obligations of the company only within the limits of their shares.

• In cases stipulated by the statute, shareholders who have not fully paid up shares are liable for the obligations of the company also within the amount of unpaid.

Limited liability company — LLC

• Does not issue shares

• A limited liability company is a company with a share capital, divided into shares, the size of which is determined by constituent documents.

• The maximum number of participants in a limited liability company can reach 100 people.

• Members of the partnership are liable within their contributions.

• Participants who have not fully deposited a joint liability are jointly and severally liable for their obligations within the value of the non-contributed portion of the contribution of each participant.

• Contribution to the authorized (compounded) capital of an economic partnership may be money, securities, other things or property or other alienated rights having a monetary valuation, unless otherwise provided by law.

• The authorized capital of a limited liability company is payable by the members of the partnership before the end of the first year from the date of the state registration of the company.

• If the participants before the end of the first year from the date of the state registration of the company have not (not fully) paid their contributions, the general meeting of participants takes one of such decisions:

  • the exclusion from the partnership of those participants who have not (not fully) paid their contributions and the determination of the procedure for redistribution of shares in the authorized capital;

  • reduction of the authorized capital and determination of the order of redistribution of shares in the authorized capital;
- Liquidation of the company.

- Compulsory auditing of annual financial statements of companies will depend on turnover.

**Partnership:**

- Minimum 2 partners

- Two types: a full partnership (the partners bear full liability for the partnership’s obligations; a participant in a full partnership may not be a full partner in any other partnership) and a limited partnership (has both full partners and partners whose liability is limited to their contributions; a full partner in a limited partnership may not be a full partner in another partnership, and its liability is the same as for full partners as described above)

**Joint Activity Agreement**

- Participants in joint activities can be both individuals and business entities. Participants in joint activities may also be non-residents.

- Agreements on joint activities can be both bilateral and multilateral, that is, without limiting the number of participants in joint activities.

- Agreements on joint activity, depending on the term of validity, are divided into non-term, time-limited, for the achievement of the goal specified in the contract as a cancellation condition

- Joint activity can be carried out in two forms: by combining the contributions of participants (a simple partnership) or without a pool of deposits

- Contribution of the participant is all that he brings into joint activity (joint property), including funds, other property, professional and other knowledge, skills, as well as business reputation and business relations

**How much Corporation Tax will the business pay?**

Current Corporation Tax rate in Ukraine is 18%. Taxable profit is calculated as income minus expenses.

(NB: rates are for the tax year to 31/12/2017)
Foreign legal entities (FLE) are liable for profits tax on their business income only if their business activities create a permanent establishment (PE). Permanent establishments of non-residents who receive income from a source of origin from Ukraine or perform agency (representative) and other functions related to such non-residents or their founders belong to corporate tax payers.

If it is impossible to determine with direct calculation of the profit received by non-residents with a source of its origin from Ukraine, the taxable profit is determined by the controlling body as the difference between income and expenses determined by applying the coefficient 0.7 to the amount of received income.

What if we use Ukraine to set up our holding company?

Tax rates for dividend income are:

<table>
<thead>
<tr>
<th>Rate</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>5%</td>
<td>for dividends paid by the payer of corporation tax</td>
</tr>
<tr>
<td>9%</td>
<td>for non-residents, co-investment institutions, business entities that are not payers of corporation tax (legal entities).</td>
</tr>
<tr>
<td>18%</td>
<td>for dividends paid by other taxpayers, other than payers of corporation tax (in particular, single tax payers, non-residents)</td>
</tr>
</tbody>
</table>

If, however, Ukraine and the country of a non-resident have a treaty on avoidance of double taxation, the tax rate on dividends is determined by this agreement.

What if we make cross-border transactions between group companies?

Transfer pricing rules in Ukraine are generally based on the OECD transfer pricing guidelines. The rules apply to taxpayers with annual revenue (less indirect taxes) exceeding UAH 150 million that engage in controlled transactions exceeding UAH 10 million with one counterparty. Controlled transactions include:

1. transactions with nonresident related parties;
2. sales or purchases of goods and services under commission agreements with nonresidents;
3. transactions between related parties (one of which is a nonresident) through one or more unrelated intermediaries that do not perform significant functions;
4. transactions with nonresidents registered in the low-tax jurisdictions included in the list issued by the Cabinet of Ministries of Ukraine (CMU);
5. transactions with nonresidents in specified legal forms (to be included on a list that will be issued by the CMU) that do not pay corporate tax or are not tax residents of the country where they are registered.

The CMU list of low-tax jurisdictions includes:

1. countries with a corporate income tax rate at least five percentage points lower than the Ukrainian rate;
2. countries that have not concluded agreements with an information exchange provision with Ukraine.

The transfer pricing rules provide five permissible transfer pricing methods:

- comparable uncontrolled price method
- resale price method
- cost-plus method
- transactional net margin method; and
- profit-split method.

Special regulations are anticipated for cross-border sales of goods, which are traded on a commodity exchange, with residents in the jurisdictions included in the CMU list.

Taxpayers are required to submit a report of controlled transactions by 1 October and other transfer pricing documentation within one month of a request by the tax authorities.

What Employment Taxes and Social Security will need to be paid?

Under Ukrainian legislation, residents of Ukraine pay taxes in Ukraine on their worldwide income, whereas non-residents are subjected to taxation only in respect of their Ukrainian-source income. However, in cases, when applicable double tax agreement (DTA) determines other rules, the DTA has priority over Ukrainian national legislation.

Among main taxes, which apply to income of individual include income tax, temporary military tax and property tax (the latter is paid annually for owned real-estate, passenger vehicles, and land).

Current Personal Income Tax rates in Ukraine are:

<table>
<thead>
<tr>
<th>Rate</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.5%</td>
<td>temporary military tax</td>
</tr>
<tr>
<td>18%</td>
<td>tax on salaries and income from services under civil agreements</td>
</tr>
<tr>
<td>9%</td>
<td>dividends from: legal entities on Simplified Tax Scheme, legal entities, registered overseas; dividends from investment funds</td>
</tr>
<tr>
<td>18%</td>
<td>other passive income (such as deposit interest, other investment income)</td>
</tr>
<tr>
<td>18%</td>
<td>prizes, lottery winning, and royalty</td>
</tr>
</tbody>
</table>

(NB: rates are for the tax year to 31/12/2017)
Rate of social security taxation in Ukraine, which is called single social contribution, is 22%. Employers are obliged to pay it from the salary of each employee.

There is maximum base for the accrual of single social contribution in 2017:

<table>
<thead>
<tr>
<th>Date</th>
<th>size of the maximum amount of income (UAH)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Since 01.01.2017</td>
<td>40 000</td>
</tr>
<tr>
<td>Since 01.05.2017</td>
<td>42 100</td>
</tr>
<tr>
<td>Since 01.12.2017</td>
<td>44 050</td>
</tr>
</tbody>
</table>

NB: (rates are for the tax year to 31/12/2017)

What is Value Added Tax (VAT) and should the business be registered?

According to legislation of Ukraine:

1) a business entity is obliged to register as a VAT payer in case when in the last 12 months the amount received in the process of selling goods, performing works and providing services exceeds UAH 1 million in total.

2) a business entity may voluntarily register as a VAT payer.

Ukrainian legislation provides three types of VAT rates:

- Rate of 20%, which is applied by default to all types of transactions that are subjected to taxation.
- 0% rate applies to transactions that are expressly provided for by law, for example, a zero rate applies to the export of goods.
- Rate of 7% is applied in cases established by the Tax Code (for example, trade in medications)

Can we provide Share option plans to our staff?

Many companies see Share Option plans as being an important way of attracting, motivating and retaining key staff. However this is a very technically complex area and careful planning needs to be undertaken.

The process of setting up an incentive scheme in the form of a share-option plan in Ukraine brings to light certain difficulties relating to Ukrainian securities regulation.

As a matter of practice, share-option plans in Ukraine are structured through the acquisition of foreign securities. However, Ukrainian law prevents offering foreign securities (unless they...
are listed in Ukraine) to non-qualified investors, which employees generally are. A further difficulty is that Ukrainian labour law does not recognize share-option plans. As a result, share-option plans are usually deemed to constitute bonus payments. This leads to the imposition of certain restrictions upon payments made pursuant to share-option plans.

**How else can we compensate our employees?**
Ukraine has a very comprehensive range of compensation and benefit options available for companies to offer their employees. Pensions, private medical insurance, life and disability cover are now commonplace benefits provided by many Ukrainian businesses to their workforce.

To discuss your requirements please contact the International Office on +44 (0) 1245 449266 or email us directly.

Kreston International Limited is a global network of independent accounting firms that combine expertise with empathy to provide compliance and advisory services that help individuals and their organisations to achieve their professional goals. Founded in 1971 and currently the 12th largest accounting network in the world, Kreston has a presence in over 100 countries, providing a resource of over 23,000 professional and support staff. As a single, seamless network, it provides a consistently exceptional service to clients all over the world.

As long-term advisers and mentors to todays wealth creators and guardians, Kreston enables individuals and organisations to thrive and helps to secure long-term business sustainability for future generations. As trusted, long-term counsellors, our members are always on hand with the fresh thinking and personalised advice our clients need often before they even know it.

**Kreston. Knowing you.**

This information is provided for guidance only and is not a substitute for professional advice. Neither Kreston International Limited nor its member firms accept any liability for any loss arising as a result of actions taken or not taken based on the information contained in this document. The information in this document was prepared as 1st August 2017.