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Investment Update

Tax

5 March 2021 | International

Ukraine Adopts Tax and Customs Reliefs for Large Investments

On 2 March 2021, the Ukrainian parliament adopted a Draft Law No. 3761 and a Draft Law No. 3762 introducing tax and customs reliefs, respectively, and effective until 2035, to entities investing in Ukraine pursuant to Law No. 1116-IX Securing State Support for Large Investment Projects in Ukraine (the "Law 1116-IX"). Both draft laws amend the applicable legislation and take effect following their promulgation date.

The reliefs come essential as part of the “perks package” that the country offers to domestic and overseas investors and seek to incentivise their interest in large investment opportunities. As pointed out in the previous update, **the designated state support may not exceed 30% of the total investment**, whilst the Law:

(1) treats domestic and international investors equally; (2) will partly apply after 6 months of its effect date, following the adoption by the Ukrainian government of the relevant secondary laws; and (3) will have its “on” mode in full, starting 1 January 2022.

This update covers key takeaways in relation to the reliefs at hand, with the adopted laws pending their entry into force.

Tax reliefs

The granted tax reliefs apply to: (i) import VAT, (ii) corporate profit tax (the "CPT"), and (iii) land tax, subject to certain terms and conditions.

Separately, the Ukrainian public bodies, namely the State Customs Authority, the State Tax Authority, and the Ministry of Economy would exchange information regarding the large investment projects as held in a relevant register, including on import VAT reliefs.

(i) Import VAT relief

The relief applies to imports of new equipment and its components required to execute a large investment project under an investment contract.

The execution timeline for large investment projects is set to be 5 years from the time of conclusion of an investment contract. Importantly, the relief, prior to receipt by Ukrainian controlling authorities of information regarding its use within the cap of the state support, should not be deemed a breach of tax laws, nor entail any tax liabilities and penalties.

However, a large investor would need to pay the accrued VAT and late fees, without the statute of limitations, where:

- the imported equipment and its components have been sold or otherwise disposed of earlier than 5 years since their imports into Ukraine or have been misused, or
- the investment contract has been terminated, save for where the termination is due to default of the state thereunder or in the event of force majeure.

(ii) CPT relief

The relief applies to corporate profit of large investors under an investment contract, save for entities running investment projects on extraction of minerals for their further processing.

Accordingly, large investors would not be required to pay CPT during 5 subsequent years starting on the first date of the first month of calendar quarter. In this case, the starting quarter is determined by an investor in the application seeking the CPT relief, which is submitted with the controlling authority in the place of the investor's incorporation in Ukraine.

Importantly, the relief may not be granted earlier than the date of the application and the date of investment into facilities and their commencement of operations, subject to completion by an investor of conditions precedent under the investment contract.

In cases where the state support cap has been exceeded, CPT must be paid starting on the first date of the first month of calendar quarter of a taxable period when the surplus has occurred.

In cases of controlled transactions, the CPT taxed at the basic rate is to be determined separately, as follows:

- by the price surplus, as determined under the arm's length standard, over the contractual price of delivered goods (works, services);
- by surplus of the contractual price for purchased goods (works, services) over the price as determined under the arm's length standard.

Where the large investor is a controlled entity, a separate tax base for CPT would be an adjusted profit of a non-resident company.

In case of an early termination of the investment contract, the investor would no longer be entitled to the above rules and would be required to determine CPT for the taxable period when the termination has occurred, under the general procedure.

The investor would also need to timely report on all previous tax-free periods. To this end, it would be necessary to file an amended tax declaration with clarifications, calculate and pay CPT, penalties and late fees, save for where the termination is due to default of the state under the investment contract or in the event of force majeure.

(iii) Land tax relief

Generally, it is established that for purposes of large investment projects, municipal authorities may (a) apply reduced land tax to designated land plots held by the state and municipalities, or (b) offer investors a tax exemption.

In cases where the state support cap has been exceeded, the investor would no longer be entitled to the relief.

Within 20 calendar days from the date of entry of updated information to the register of large investment projects, the investor would need to submit an amended tax declaration with clarifications. The declaration would include updated and increased tax liabilities due for the period starting the calendar month when the state support surplus has occurred. Notably, no penalties and late fees would apply for understatement of land tax liabilities for the period starting the date of state support surplus until the entry of updated information to the register.

Customs reliefs

The relief envisages that customs duty would temporarily not apply to new equipment and its components imported for purposes of large investment projects. The tax exemption is granted during a project execution period subject to the available state support remaining unused by an investor at the time of the goods' customs clearance.

The above is the case where imported items (a) have been manufactured not earlier than 3 years prior to their imports, (b) have not been in use, and (c) are assigned with certain codes under the Ukrainian Classification of Goods for Foreign Economic Activity (UCGFEA).

Also, no customs liabilities and late fees would apply where the relief has been granted until the customs authorities receive information on the surplus of the state support or on the termination of the support from the register of large investment projects.

Practical observations

The introduced amendments come very timely in bringing understanding of practical aspects of investing into Ukraine and further incentivising the deal-making in the country.

Although there remain certain provisions that require further clarification, including the criteria for granting partial or full land tax reliefs for large investors, overall, the adopted laws well contribute to setting Ukraine internationally as a destination with favourable investment environment.

Key contact:

Should you be interested in pursuing opportunities in relation to large investments and require any further details, to this end, or in case of any related or other queries, please reach out to Serhiy or your alternative contact at BOULDERS.

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