

LAW OF UKRAINE

On amending the Tax Code of Ukraine on taxing business entities implementing investment projects with significant investments in Ukraine

(The Bulletin of the Verkhovna Rada of Ukraine, 2021, no. 21, Article 193)

Verkhona Rada of Ukraine **resolves:**

I. To amend the [Tax Code of Ukraine](#) (The Bulletin of the Verkhovna Rada of Ukraine, 2011, no. 13-17, Article 112) as follows:

1. Replace the words “home affairs” with “the National Police of Ukraine” in Prov. 61.3 of Art. 61.

2. Delete the words “home affairs departments” from Par. 1 of Prov. 70.6, Art. 70.

3. In paragraph 165.1 of Article 165:

1) add the words “police officers” after the words “family members of military servants’ in subparagraph ‘a’, subparagraph 165.1.1.;

2) in subparagraph 165.1.54:

Add the words “police officers and employees of the National Police of Ukraine” after the words “military formations” in paragraph 2, subparagraph ‘a’;

Add the words “the National Police of Ukraine” after the words “the Ministry of Home Affairs of Ukraine” in subparagraph ‘b’.

4. Replace the words “reception center of the system of the Ministry of home affairs of Ukraine” with “juvenile reception center of the department of the National Police of Ukraine” in Subparagraph ‘b’ of subparagraph 170.4.4, paragraph 170.7, Article 170.

5. Replace the words “bodies of home affairs” with “the National Police of Ukraine, the State Border Service of Ukraine, the State Service of Ukraine on emergency situations, the National Guard of Ukraine” in Paragraph 2 of Subparagraph 213.3.4, Paragraph 213.3 Art. 213.

6. Replace the words “bodies of home affairs” with “bodies performing state registration of vehicles” in paragraph 1 of subparagraph 267.6.3, paragraph 267.6, Article 267.

7. In Section XX “Transitional paragraphs”:

1) add paragraph 76 to Subsection 2 stating that:

“76. Transaction related to importing to the customs territory of Ukraine new machinery (equipment) and components to it, defined in subparagraph 15 of paragraph 4, Section XXI “Final and transitional paragraphs of the Customs Code of Ukraine” as imported by an investor with significant investments exclusively for implementation of an investment project with significant investments to perform a special investment agreement, will be relieved from value added tax by January 1, 2035 as a temporary measure.

Unofficial Translation

The value added tax relief envisaged in paragraph 1 of this paragraph, is applied within the implementation period of an investment project with significant investments and within the total amount of state support defined in a special investment agreement and unused at the moment of customs clearance of goods, with account of the investment projects with significant investments register data regarding the value of such support and the date and time of entering such information in the register.

Value added tax relief envisaged in paragraph 1 of this paragraph, is not considered a tax law infringement and is not subject to value added tax obligation and / or penalty until the controlling authority receives information about reaching / exceeding the total amount of state support or about termination of such support.

The value added tax amount unpaid to the budget due to application of value added tax relief, envisaged in paragraph 1 of this paragraph, until the date when the controlling authority receives information about reaching / exceeding the total amount of state support or about termination of such support based on the investment projects with significant investments register, are to be reimbursed by the tax-payer – investor with significant investments in the order envisaged in the law and the relevant special investment agreement, and the provisions of this Code regarding settlement of outstanding tax liabilities are not applicable.

If the machinery (equipment) and components to it imported to the customs territory of Ukraine in the order defined in this paragraph, are alienated earlier than 5 years after they are imported to the customs territory of Ukraine, or in case of their improper use or in case of early termination of a special investment agreement (excluding cases when early termination of a special investment agreement is caused by the government’s failure to fulfill its commitment to provide state support in line with a special investment agreement or in case of force-majeure circumstances (irresistible force situations)) a tax-payer – an investor with significant investments will pay the tax liabilities for the taxation period in which such alienation, improper use or early termination of a special investment agreement took place, in the amount equal to the amount of the value added tax to be paid at the moment of importing the goods to the customs territory of Ukraine, and will pay penalty according to this Code, calculated from the date of importing such goods to the customs territory of Ukraine until the date of increasing the tax liabilities. With that, the prescription periods set forth in Article 102 of this Code, do not apply.

The terms “investor with significant investments”, “investment project with significant investments”, “special investment agreement” are used in the meaning specified in the Law of Ukraine “On State Support of Investment Projects with Significant Investments in Ukraine”.

The paragraphs herein are not applicable to goods originating from a country recognized as an occupant state by law and/or an aggressor state towards Ukraine by legislature, or are imported from the territory of an occupant (aggressor) state and/or from occupied territory of Ukraine defined as such by the law”;

2) Add paragraph 55 to subsection 4 stating that:

“55. Special taxation regime is applied as a temporary measure until January 1, 2035 to the revenues of an enterprise – an investor with significant investments (excluding those implementing investment projects in the field of extraction for the purpose of further processing and/or enrichment of natural resources), which acts as a party in a special investment agreement concluded in accordance with the Law of Ukraine “On State Support of Investment Projects with

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Significant Investments in Ukraine” if such revenue is obtained as a result of such special investment agreement performance.

The terms “investor with significant investments”, “investment project with significant investments”, “special investment agreement” are used in the meaning specified in the Law of Ukraine “On State Support of Investment Projects with Significant Investments in Ukraine”.

For payers defined in this paragraph, the taxation (reporting) periods are calendar periods: a quarter, six months, three quarters, a year, based on the accrued total tax amount. The tax payers defined in this paragraph, cannot apply exclusively yearly tax (reporting) period.

The revenue of an enterprise – an investor with significant investments referred to in paragraph 1 of this paragraph, is relieved from corporate revenue tax during five consecutive years starting from the first day of the first month of the calendar quarter defined by a tax payer – an investor with significant investments in an application to exercise the right for tax relief envisaged in this paragraph submitted in free form to the controlling authority at the place of registration of such tax payer, but no earlier than on the date of submitting such application and the date of completing the liabilities of a special investment agreement by an investor with significant investments regarding making significant investments in the investment site and beginning of operation of such investment objects in the framework of an investment project with significant investments implementation and given that a taxpayer – an investor with significant investments has completed its liabilities under a special investment agreement. With that, the period of applying such tax relief must not exceed the duration of a special investment agreement.

The application is considered accepted unless the controlling authority refuses to apply the tax relief envisaged in this paragraph, within 10 days from the date of receiving the application. The taxpayer submits the application in the order defined in Paragraph 42.4 of Art. 42 of this Code. The controlling authority notifies the taxpayer about the refusal to grant tax relief in the order defined in Paragraph 42.4 of Art. 42 of this Code.

The total amount relieved from taxing (the amount of tax not paid to the budget and remaining in the taxpayer’s disposal) is counted towards the total amount of state support of an investment project with significant investments envisaged in a special investment agreement, provided according to the Law of Ukraine “On State Support of Investment Projects with Significant Investments in Ukraine.”

If it is defined according to the law, that the amount of state support received by a taxpayer – an investor with significant investments according to the Law of Ukraine “On State Support of Investment Projects with Significant Investments in Ukraine” has reached / exceeded the total limit of state support to be provided to investment projects with significant investments, set forth by this Law, a taxpayer will report and pay corporate income tax in the general order, starting with the first day of the first month of the calendar quarter in the taxation (reporting) period.

Despite of the special taxation regime defined in this paragraph, if a taxpayer – an investor with significant investments performs controlled operations under an investment project with significant investments implementation as defined in Article 39 of this Code, the corporate income taxation object to which the basic (main) tax rate is applied, is defined individually at the level:

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the price defined by the arm's length principle exceeds the contract value (the value referred to in the accounting or financial reporting according to the national accounting paragraphs (standards) or international financial reporting standards) of the sold goods (works, services);

the contract value (the value referred to in the accounting or financial reporting according to the national accounting paragraphs (standards) or international financial reporting standards) of procured goods (works, services) exceeds the price defined by the arm's length principle.

If a taxpayer – an investor with significant investments is a controlling entity, a separate subject of corporate income tax application at basic (main) rate, an adjusted revenue of the controlled foreign company defined according to Article 39² of this Code, applies.

The taxation objects defined in paragraphs 8 and 11 of this paragraph, are not subject to tax exemption and are subject to taxation in the general order.

In case of early termination of the special investment agreement, a taxpayer is deprived of the right to use the taxation regime set forth in this paragraph. Given that, a taxpayer must report and pay corporate income tax liability at the end of the taxation (reporting) quarter in which early termination of the special investment agreement had place (in the general order).

For all the previous periods in which corporate income tax relief was applied in accordance with this paragraph, a taxpayer must submit a verification corporate income tax declaration, report and pay the outstanding liabilities on corporate income tax, penalty and sanctions as envisaged in the present Code, in the term defined or the quarterly taxation (reporting) period starting on the first day of the month following the month of early special investment agreement termination. The paragraphs of this paragraph are not applicable to cases of early special investment agreement termination caused by violation of support commitments by the government or emerging force-majeure circumstances (irresistible force situation).

With that, the prescription terms set forth in Article 102 of this Code, are not applied”;

3) Add paragraph 11 to Subsection 6 stating that:

“11. On temporary basis, until January 1, 2035, in terms of payment for land and land plots with normative valuation conducted, used in the framework of an investment project with significant investments implementation (excluding investment projects in the field of extraction for the purpose of further processing and/or enrichment of natural resources), according to the Law of Ukraine “On State Support of Investment Projects with Significant Investments in Ukraine”, local self-governments are empowered to:

Set land tax rates and land lease charges for the lands of state or communal property lower than the land tax rate set forth by the decision of relevant local self-government body for the certain category of lands, to be paid on the relevant territory;

Exempt from land tax payment.

Requirements of subparagraph 4.1.9 of paragraph 4.1 and paragraph 4.5 of Article 4, Subparagraphs 12.3.3, 12.3.4 and 12.3.7 of paragraph 12.3, subparagraph 12.4.3 of paragraph 12.5 and paragraph 12.5 of Article 12 of this Code and the Law of Ukraine “On the basic principles of state regulatory policy in economic operations” are not applicable to such resolutions of local self-government bodies and/or decisions to amend such resolutions.

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The total amount of tax-exempt funds (amounts of tax not paid to the budget and remaining at the disposal of a taxpayer – an investor with significant investments) is counted towards the total amount of state support and investment projects with significant investments envisaged in a special investment agreement and provided under the Law of Ukraine “On State Support of Investment Projects with Significant Investments in Ukraine”.

If the total amount of state support for an investment project with significant investments is reached, a taxpayer - an investor with significant investments loses the right for the benefit specified in this paragraph, starting from the calendar month in which the specified total value is reached.

Upon reaching the total amount of state support for an investment project with significant investments during the reporting (tax) period, a taxpayer – an investor with significant investments is obliged to submit a clarifying tax return for such reporting (tax) period with increased land tax liabilities for the period from the calendar month in which the total amount of state support for an investment project with significant investments is reached, within 20 calendar days from the date the relevant information is entered into the investment projects with significant investments register.

In this case, prior to the date of amending the land lease agreements used for implementation of investment projects with significant investments, due to reaching the total amount of state support for an investment project with significant investments, the lease amount used for accrual of tax liabilities on rent is determined in accordance with the rules specified in paragraph 288.5 of Article 288 of this Code.

Penalties and penalties imposed by this Code for understatement of tax liability for land, for the period from the date of reaching the total amount of state support for investment projects with significant investments to the date of entering the information on reaching the total value of such support in investment projects with significant investments register, do not apply.

Local self-governments make decisions on limiting the total amount of state support provided to investment projects with significant investments and the paragraphs of relevant special investment agreements concluded in line with the Law of Ukraine “On State Support of Investment Projects with Significant Investments in Ukraine”, in accordance with the first paragraph of this paragraph based the requirements of the Law of Ukraine “On State Support of Investment Projects with Significant Investments in Ukraine”;

4) Add Paragraph 63 to Subsection 10 stating that:

“63. The central executive authority implementing the state customs policy, the central executive authority implementing the state taxation policy, and the central executive authority ensuring state investment policy design and implementation, perform automatic exchange of information entered / to be entered in the investment projects with significant investments register, including the information about value added tax relief granted in accordance to paragraph 76 of subsection 2 of this Section, in the amount and in the order determined by the central executive authority ensuring state finance policy design and implementation, upon approval of the central executive authority ensuring state investment policy design and implementation.”

II. Final paragraphs

Unofficial Translation

1. This Law comes into force on the day following the day of its publication but no sooner than on the day the Law of Ukraine “On State Support of Investment Projects with Significant Investments in Ukraine” coming into force.

2. Within 6 months after this Law comes into force, the Cabinet of Ministers will:

Adopt the regulations necessary for implementation of this Law;

Align its regulations with this Law;

Ensure that other ministries and central executive authorities revise their regulations and harmonize them with this Law.

3. The Cabinet of Ministers of Ukraine shall include information about the progress of this Law implementation to the report on the progress and the results of implementing the agenda of the Cabinet of Ministers for the relevant year.

The President of Ukraine

V. ZELENSKYI

**Kyiv
March 2, 2021
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