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TAX RESIDENCE IN THE CONDITIONS OF MARTIAL LAW

According to the UN, the full-scale invasion of Ukraine by the Russian Federation has led to the largest migration crisis since World War II – there are currently about 7.4 million refugees in Europe alone and 9 million people outside Ukraine. The majority of displaced persons are women with children, about 70 percent of adults have higher education, and two-thirds were employed. Forced to stay outside Ukraine, IDPs can receive income in the form of social benefits from the recipient country; salary from a Ukrainian employer; business activities, being registered as a business entity in Ukraine; salary from an employer operating in the host country; business activities with registration in the host country. Some of these types of income may be taxed in two countries simultaneously, both in Ukraine and in the host country.

The purpose of the study is to summarise the peculiarities of income taxation of Ukrainians who were forced to move abroad due to the military aggression of the Russian Federation, as well as to identify the risks for the Ukrainian economy associated with the acquisition of the status of "tax residents" of other countries by its citizens. To achieve this goal, the study will be presented in the following areas: 1) taxation of income of Ukrainian citizens working from abroad for a Ukrainian company; 2) taxation of income of citizens registered in Ukraine as individual entrepreneurs and continuing to work outside Ukraine.

In the case of Ukrainians who have left Ukraine due to the hostilities, they are covered by temporary protection, the duration of which, by Directive 2001/55/EC and the Implementing Decision of the Council of the EU of 04.03.2022, should be 1 year and which may subsequently be extended for six-month periods for a maximum of 1 year. Following the Directive, "temporary protection" is an exceptional procedure to ensure the protection of displaced persons from third countries who are unable to return to their country of origin in the event of a massive or imminent mass influx. Tax residency is a status that implies the obligation to pay taxes on all income in that country. According to the legislation of most European countries, after 183 days of stay in the recipient country, Ukrainians acquire the status of a "tax resident" of that country. However, some countries

consider Ukrainians to be tax residents from the first day (Estonia) or after two months of stay in the country (Cyprus).

A tax resident is a person who is subject to taxation in a particular country under the laws of that country based on residence, permanent place of residence, place of registration, or other similar criteria. Tax residency is a sign that indicates the closest possible contact between a person and the country to which he or she pays taxes. There are many criteria for determining the tax residence status, and all of them are set out in Article 14 of the Tax Code of Ukraine, tax laws of other countries, and double taxation conventions. As a rule, the main criterion is the duration of stay in the country; in addition to the place of residence, an important criterion is the presence of the center of vital interests in the country.

It is noteworthy that by obtaining the status of "tax resident" in the host country, Ukrainians do not automatically lose the status of "tax residency" in Ukraine. Such an approach is logical, as Ukraine is not interested in reducing the number of taxpayers, and given that the departure of a significant number of citizens for such long periods is the first time in the history of independent Ukraine, there is simply no sufficient number of legal acts regulating this process at the legislative level. The statuses of "tax resident of a certain country" and "resident of a certain country" also differ. If Ukrainians stay outside Ukraine for more than 183 days, they do not acquire the status of "resident of the country of stay", so they must continue to pay taxes in Ukraine unless there are signs that the person is not a "tax resident" in Ukraine. A person is a taxpayer only in Ukraine if he or she meets the following requirements: does not have economic or personal interests in another country; receives funds from any country to be paid only to the accounts of Ukrainian banks; does not have his or her own office or place of work in the country of temporary residence. A certificate of Ukrainian tax residency status can be obtained online through the Diia public service portal or the Taxpayer's Electronic Account. If a person pays taxes in another country, there is no double taxation in Ukraine. According to clause 13.4 of the Tax Code of Ukraine, the amounts of taxes and duties paid outside Ukraine are credited when calculating taxes and duties in Ukraine. To be eligible for offsetting taxes and duties paid outside Ukraine, a taxpayer must obtain a certificate from the state authority of the country where such income (profit) is received, authorized to levy such tax, on the amount of tax and duty paid, as well as on the tax base and/or object of taxation. Each country has its peculiarities of recognition of persons as tax residents, which should be studied based on the requirements of the legislation of the recipient country and the life circumstances of displaced persons. In addition, Ukraine has double taxation conventions and treaties in force with 72 countries. If a double taxation treaty is signed and ratified between the states, the main

taxation models may be as follows: 1) income is taxed only in one country; 2) income is taxed in both countries, but in the second country the amount of tax is reduced by the amount of tax paid in the first country. In this case, which country is the first and which is the second is determined in the relevant article of the agreement between the countries; 3) income is taxed in both countries, but in the second country the tax rate cannot exceed a certain rate; 4) income is taxed in both countries. Interstate treaties include the concept of a "center of vital interests". For example, the agreement between Ukraine and Poland stipulates that: if a person has a residence in two countries, he/she is considered a resident of the country where he/she has closer life or economic ties; if a person does not have a residence in both countries, he/she is a resident of the country where he/she lives the most; citizenship becomes the main feature of tax residence if it cannot be determined in which of the two countries a person lives or does not live the most.

An individual entrepreneur (IE) is a common legal form of doing business in Ukraine. While outside Ukraine, many entrepreneurs continued their business activities, receiving income from the accounts of Ukrainian banks. In this case, they are tax residents of Ukraine and are obliged to file reports and pay taxes within the timeframe established by the applicable law. If no business activity was carried out after moving outside Ukraine, the individual entrepreneur must either terminate his/her registration or continue to file reports and accrue and pay taxes. A registered sole proprietorship whose activities have not been terminated by the procedure established by law is a sign of tax residence in Ukraine. A sole proprietorship registered in Ukraine may be a reason for refusing to pay social assistance or provide housing on favorable terms in the host country. If a sole proprietor pays taxes on business activities in the host country, the amounts paid will not be credited towards the payment of the single tax in Ukraine. If the business activity is conducted in the host country, the consumers of services are citizens of that country, and payment for services is made to the accounts of banks in the host country, the business activity must be registered in the recipient country. Taxes will be calculated and paid following the laws of the host country.

Concerning legal entities, the laws of other countries often contain a requirement for mandatory registration and payment of taxes for a company if its office is located in such a particular country, or if the business is controlled and managed or carried out from the territory of that country. There are also usually requirements to register a separate company or its permanent establishment as a prerequisite for conducting business. For example, such requirements may arise for a company that has temporarily moved to an EU country, rented an office, and placed employees there. In such a case, the requirement to re-register in an EU country may

come from the tax authorities of the relevant country. This creates legal uncertainty, which encourages businesses to set up new legal entities in the host country (or in other EU countries), renegotiate contracts on their behalf, and transfer payments abroad. The above confirms that each country is interested in increasing the number of tax residents. Countries that have assisted Ukrainian migrants are no exception. To retain its tax residents, the Ukrainian authorities are taking several measures aimed at returning Ukrainians to Ukraine and preserving the status of tax residents of Ukraine in the countries of their temporary residence. The Cabinet of Ministers of Ukraine has sent an appeal to the tax authorities of the countries hosting Ukrainian refugees with a request not to appoint Ukrainians as tax residents of their countries based on the "covid precedent". The "covid precedent" is a joint decision of the EU countries in 2020, which means that EU countries do not recognize citizens of other countries as their tax residents if they have been forced to stay in the country for more than 183 days. However, official letters to governments cannot replace intergovernmental agreements and influence the taxation system in a particular country.

Ukraine's top leadership also needs to call on foreign countries to exclude the obligation to pay taxes if the income is still received in Ukraine, as well as to exempt the income of Ukrainian companies from taxation if such income is received on the accounts of Ukrainian banks. There are opinions that double taxation of income may be one of the reasons for Ukrainians to return to Ukraine, but most economists emphasize that it is more likely that they will give up their Ukrainian tax residence in favor of the tax residence of the host country. This situation may apply to both employees and employers.