



Ukraine introduces e-residency and 5% single tax for non-resident individuals

On October 6, 2022, the Law of Ukraine No. 2654-IX "On Amendments to the Tax Code of Ukraine and some other laws of Ukraine regarding the taxation peculiarities of electronic residents' business activities" was adopted (the "**Law**"). It will enter into force on April 1, 2023. The Law introduces a special status for foreign individuals who are not Ukrainian tax residents allowing them to carry on business activities without the need to be present in Ukraine. For these purposes the e-resident will be able to open a bank account, obtain an electronic digital signature and register as a private entrepreneur remotely.

01

WHO CAN GET THE E-RESIDENT STATUS?

Only foreigners who have reached the age of 18 can get the e-resident status.

The list of countries whose citizens (subjects/residents/persons with permanent place of residence/stay/registration) are allowed to become e-residents in Ukraine is to be determined by the Ministry of Digital Transformation together with the Ministry of Finance of Ukraine under the procedure established by the Cabinet of Ministers of Ukraine (at the time of preparation of this newsletter not published).

✂ The following individuals will not be able to obtain the e-resident status:

- citizens of Ukraine;
- foreigners who have the right on permanent residence in Ukraine or who are the tax residents of Ukraine;
- stateless persons;
- citizens/residents of a country recognized as an aggressor state and/or an occupying state (Russian Federation);
- citizens/residents of the countries identified by the European Commission as the countries with weak regimes on preventing and counteracting to legalization (laundering) of the proceeds from crime, financing of terrorism and financing of proliferation of weapons of mass destruction;
These countries are Afghanistan, Barbados, Burkina Faso, Cambodia, Cayman Islands, Haiti, Jamaica, Jordan, Mali, Morocco, Myanmar, Nicaragua, Pakistan, Panama, Philippines, Senegal, South Sudan, Syria, Trinidad and Tobago, Uganda, Vanuatu, Yemen, Zimbabwe.
- citizens/residents of countries included in the FATF "black" and "grey" lists;

The FATF (The Financial Action Task Force) "black list" identifies countries that are considered inadequate in money laundering and counter-financing of terrorism regimes.

Among the countries included in the "black list" are Iran and North Korea.

The FATF's "grey list" comprises countries considered safe havens for supporting terror funding and money laundering.

Among the countries included in the "grey list" are Albania, Barbados, Burkina Faso, Cambodia, Cayman Islands, Democratic Republic of Congo, Gibraltar, Haiti, Jamaica, Jordan, Mali, Morocco, Mozambique, Panama, Philippines, Senegal, South Sudan, Syria, Tanzania, Turkey, Uganda, United Arab Emirates, Yemen.

- persons who receive income from the sources in Ukraine in return for provided goods, works, services (except for passive income).

According to the Tax Code of Ukraine (the "TCU"), the following items are recognized as passive income:

- interest on a current or deposit bank account, on a deposit in credit unions, other interest (including discount income);
- interest or discount income on a registered saving (deposit) certificate;
- fee (interest), which is distributed in accordance with the share contributions of the members of the credit union;
- income distributed by the company that manages assets of the investment fund, on the placed assets;
- income received from mortgage-backed securities (mortgage bonds and certificates);
- interest (discounts) received by the bond holder from their issuer in accordance with the law;
- income received on certificates issued by real estate operation fund and income received by the taxpayer as a result of the redemption (repayment) by the issuer of the real estate fund certificates in the order determined by the certificate emission prospectus;
- investment profit, including gains from operations with state securities and debt obligations of the National Bank of Ukraine, taking into account the exchange rate difference;
- royalties;
- dividends;
- insurance payments and compensations.

Accordingly, if a foreigner receives passive from the source in Ukraine, as listed above, (s)he will be able to obtain the status of the e-resident.

02

REGISTRATION IN CONTROLLING AUTHORITIES

Registration and tax registration of a foreign individual takes the following stages:

1. Status of the e-resident.

To obtain the status of the e-resident eligible foreigner has to submit an application online through the special information system "E-resident" which does not require the physical presence of a foreigner in Ukraine. The foreigner is undergoing the identification procedures, following which (s)he gets access to the qualified electronic trust services, which means that (s)he gets a qualified electronic signature ("QES"). The ID to be used for the identification purposes is a passport of a foreigner for traveling abroad.

The detailed procedure for obtaining the e-resident status, identification of the foreigners and providing them with access to the qualified electronic trust services is determined by the Cabinet of Ministers of Ukraine (to be adopted).

2. Status of a private entrepreneur and a single tax payer under the third group without paying VAT.

To register as a private entrepreneur an e-resident submits an application in electronic form which must be signed with QES via the Unified State Web Portal of Electronic Services in the manner determined by the Ministry of Justice of Ukraine and the Ministry of Digital Transformation.

An e-resident becomes automatically a single tax payer starting from the day of his/her state registration without the need to separately submit an application to become a single tax payer (which usually shall be submitted on a separate basis).

3. Tax registration.

Tax authorities will register an e-resident based on the information received from the "E-resident" information system. Therefore, there is no need to submit any applications to the tax authorities.

When a foreigner submits an application to obtain e-resident status (paragraph 1 above), this equals to submission of a taxpayer's registration card which is basically an application for the registration in the State Register of Individuals and obtaining a Ukrainian tax identification number.

Tax authorities will register e-residents as single tax payers under the third group within two working days following receipt from the state registrar of the information on the registration of the e-resident as private entrepreneur in accordance with the procedure established by the Law of Ukraine "On State Registration of Legal Entities, private entrepreneurs and public associations".

The tax address of an e-resident is the e-mail address specified by such person in the application for obtaining e-resident status. Correspondence between e-residents and tax authorities is carried out exclusively by means of electronic communication using QES.

4. Opening of a bank account.

An e-resident can only open a bank account through the "E-resident" information system after his/her successful registration. The system will contain a list of banks available for opening of a bank account.

03

ALLOWED ACTIVITIES AND LIMITATIONS

An e-resident is registered as a single tax payer under the third group and carries out economic activities via provision of services, production and/or sale of goods exclusively for the benefit of non-Ukrainian residents. That is, an e-resident can only work under export contracts.

The following limitations which would apply to ordinary single tax payers under the third group do not apply to e-residents:

- i. restrictions on carrying out certain types of activities (e.g., such as activities in the area of organization and conducting of gambling, lotteries; foreign currency exchange activities; export of excise goods; business management activities);
- ii. restrictions applicable to the area of land plots and/or (non)residential premises for lease;
- iii. restrictions on the cash form of payments. That is, e-residents will be permitted to receive not only cash or wire transfers in return for supplied goods/services, but also cryptocurrency, or they will be able to perform settlements via offset or barter, etc.

During the calendar year, the e-resident:

- must not employ citizens or residents of Ukraine;
- cannot receive income with a source of origin from Ukraine, except for passive income;
- cannot receive income exceeding 1,167 minimum wages as established by law on January 1 of the tax (reporting) year. As of now, it is UAH 7,585,500. (approx. USD 190,000). If this limit is exceeded, a higher tax rate is applied to the excess.

The question is what is the rationale behind obtaining the e-resident status and paying taxes in Ukraine if a foreigner's business activities are limited to the activities outside of Ukraine. It was announced in the beginning that the target audience of e-residency are IT specialists/freelancers who want to get competitive tax rate and access to e-services made available by the Ukrainian government. The Law expressly excludes obtaining of the e-resident status from the grounds for recognition of Ukrainian tax residency. Still, double taxation issue is important for e-residents, and the tax rates in countries of their tax residence must be factored in for particular individuals. Potentially, obtaining e-resident status may be interesting for the residents of those countries with territorial taxation which would tax only locally sourced income.

The object of taxation is the amount of funds credited to the bank account of the e-resident. It is not clear how income received in the forms other than cash will be subject to taxation (to remind – e-residents are not limited in the forms of settlements).

The tax rate is 5% applicable to the income received by the e-resident within the limits set by the TCU.

If the e-resident exceeds the established limit, the tax rate of 15% will apply to the income above the limit.

The tax (reporting) period for the e-resident is a calendar quarter.

For the period of martial law in Ukraine, single tax payers under the third group have been granted the right to switch to the special regime providing for a decreased 2% single tax rate. The Law does not provide for this possibility to be used by e-residents. We believe that the limited status of the e-resident does not allow to take advantage of this opportunity.

E-residents do not have to pay unified social contributions.

E-residents have no obligation to submit tax returns or other forms of reporting - this duty rests with the tax agent being the bank in which the e-resident opened his/her bank account.

A tax agent of an e-resident shall:

- send a notification to the tax authorities on the opening/closing of the e-resident's bank account;
- withhold tax from the amount of funds credited to the e-resident's bank account at each transfer under the relevant tax rate (5% or 15%) and transfer the tax amounts to the state budget no later than during the next two working days;
- submit tax returns showing the e-resident's income and taxes withheld from such income before the deadlines set for the quarterly reporting periods, but only if cash has been received on the e-resident's bank account in the corresponding quarter. Tax returns have to be submitted to the tax authority at the bank's main place of registration;
- submit other information on taxation of e-resident's income to the tax authorities.

E-residents have no right to claim repayment of taxes that have been mistakenly and/or excessively transferred by a tax agent, nor have they the right to offset their tax liabilities on single tax against other mandatory payments.

E-residents do not keep accounting records.

The e-resident's tax agent (the bank) is responsible for non-payment of taxes to the budget and failure to report.

Where the outcomes of the tax agent's audit show the violation of the rules of accrual, withholding and payment (transfer) of taxes to the relevant budgets, the tax agent will be subject to the following sanctions/penalties:

- for the failure to withhold and/or pay (transfer) and/or incomplete payment (transfer) of a single tax – fine in the amount of 10% of the tax due;
- for the same actions committed intentionally – fine in the amount of 25% of tax due;
- for the same actions committed repeatedly within 1095 calendar days - fine in the amount of 50% of the tax due;
- for the same actions committed for the third time or more during 1095 calendar days – fine in the amount of 75% of the tax due.

There are several grounds for cancellation of the e-resident status:

- 1) submission by an e-resident of an application to cancel the status at his/her own request;
- 2) annulment of e-resident status by the Ministry of Digital Transformation upon receipt of the information about the death of a person, recognition as missing, limitation of legal capacity/recognition as incapable, or about citizenship/residency of the person of the state from the restricted list;
- 3) expiration of the document on compliance with the QES tool if the e-resident does not receive the QES tool with a valid document on compliance within a month from the date of expiration of the document.

A foreigner loses the status of an e-resident from the day following the respective entry into the "E-resident" information system. Upon receipt of the information on e-resident status loss, the tax authorities will automatically deregister this person.



For more details, please contact our team



Illya Sverdlov
Partner, Head of Tax

illya.sverdlov@kinstellar.com



Maryna Shulyk
Senior Associate

maryna.shulyk@kinstellar.com

The information provided in this overview does not, and is not intended to, constitute legal advice; instead, all content is for general informational purposes only. The information in this overview is current as of the date of publishing and may not constitute the most up-to-date legal or other information. Should you wish to receive more detailed and up-to-date information, do not hesitate to contact us.