

# KPMG Ukraine infomiert

## Overview of new laws in the IT industry

**29 May 2012**

On 24 May 2012, the Verkhovna Rada of Ukraine adopted two Laws on the state support of IT industry development in Ukraine which, inter alia, introduce additional specific tax benefits for IT industry.

### **1. The Law on tax benefits (Draft Law No. 9744)**

On 24 May 2012, the Verkhovna Rada of Ukraine adopted the The Law of Ukraine “On Amendment of Chapter XX “Transitional Provisions” of the Tax Code of Ukraine concerning peculiarities of taxation of entities of IT industry” (hereinafter – “**the Law**”).

#### **Tax benefits:**

The Law stipulates the following tax benefits for entities operating in the software industry (IT industry entities):

- profits received from certain types of economic activities (hereinafter – the “**IT industry**”) will be subject to the respective tax benefits and will be subject to Corporate Tax at a rate of 5%;
- supplies of software products, developed in the course of IT industry activities, will be exempt from VAT.

The Law also envisages benefits for employees of IT industry entities, namely:

- personal income tax rate will be 5% and will be applied to salaries and other remuneration under employment agreements (contracts) of employees of IT industry entities, whose positions will be included in the appropriate list approved by the Cabinet of Ministers of Ukraine. If an amount of personal income tax, calculated by the application of the 5% tax rate, is less than the amount of tax calculated by application of a rate of 15% to 2 minimal wages (as of 1 January of the reporting tax year), then the applicable personal income tax rate will be determined according to an established formula (*Comment: in brief, such 5% tax rate is applicable, provided that the respective income is not less than 6 minimal wages, established as of 1 January of the reporting tax year (as of 1 January 2012 this sum amounts to UAH 6 438)*). *In our opinion, the formula of calculation of the tax rate, laid down in the Law, is not fully correct.*

Respective tax benefits will be effective for the period from 1 January 2013 until 1 January 2023.

#### **Who is entitled to the tax benefits?**

An IT industry entity, which during the previous year (for newly created entities, carrying out activities within at least two full reporting (tax) quarters, - for the period of their actual activity) meets the following criteria, will be eligible for the tax benefits:

- not less than 70% of income is derived from the supply of goods / works/ services of IT industry activities
- the historic value of fixed assets and/or intangible assets exceeds 50 minimal wages established as of 1 January of the reporting year (as of 01 January 2012 this sum amounts to UAH 53 650)
- an IT industry entity has no tax debt
- absence of a resolution which recognizes the IT industry entity as bankrupt.

#### **Which activities are subject to the tax benefits?**

The exhaustive list and detailed description of the IT industry activities subject to the abovementioned tax benefits are envisaged by The Law (Draft Law No.9744), including inter alia:

- software development;
- computer programming;
- IT consulting;
- IT hardware management;
- development and implementation of IT complexes, systems and networks;
- data processing, placement of data on web-sites and ancillary activity.

To be eligible for the respective benefits, an IT entity should be included into the register of IT industry entities and receive a certificate of registration confirming such entity as one which is entitled to apply the peculiarities of taxation in the IT industry.

## **2. The Law on IT industry support (Draft Law No. 8267)**

On 24 May 2012 the Verkhovna Rada of Ukraine also adopted the Law of Ukraine “On State Support of IT Industry Development” (hereinafter – “**The Law on IT industry support**”). The Law on IT industry support provides for the state support of IT industry development. In particular, in addition to the tax benefits, specified in The Law (Draft Law No.9744), The Law on IT industry support also provides for a reduction of the fiscal burden on payroll fund obligations of IT industry entities, by way of a decrease in unified social tax contributions. The Law on IT industry support envisages a special mechanism for the calculation of the unified social tax contributions for IT industry entities. In substance, this mechanism provides that the remuneration of employees taxable under unified social contribution (both for the employer and employees) will be capped at 2 minimal wages (currently, this sum amounts to UAH 2 188) per each such an employee. The respective unified social contribution benefits will be effective within the period from 1 January 2013 until 31 December 2022. *(Comments: given the rather significant payroll expenses burden in the cost of services provided by IT entities, the reduction of the fiscal contributions on payroll fund obligations will, in our view, be an important benefit for IT industry entities).*

*Overall Comment: In our view, the two legislative amendments for IT industry entities, described above, may lead to restructuring of the relationship between IT industry entities and IT specialists, in the case of those IT entities who currently operate through individual entrepreneurs. The new laws should also be attractive to those IT industry entities who currently engage IT specialists under employment contracts. The abovementioned legislative amendments should encourage further investment in the IT industry of Ukraine.*

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If the President of Ukraine signs The Law on tax benefits (Draft Law No. 9744) and The Law on IT industry support (Draft Law No. 8267), the respective tax and unified social tax benefits will become effective from 1 January 2013.

Please note that the final texts of the abovementioned laws adopted by the Verkhovna Rada of Ukraine, have not yet been published in the official press. Therefore, there may be certain changes in the final texts of such laws.

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