



TO: Clients and Friends of the Firm

FR: Frishberg & Partners

RE: Import Taxes: Value Added Tax, Excise Tax, Customs Duties, Labels and Certification

## **I. Introduction**

As in other European countries, Ukrainian import-export operations are subject to various taxes, including, customs duties and value added tax. Further, depending on the specific product, excise tax and other official costs associated with obtaining licenses or necessary product labels may be applicable. The Cabinet of Ministers also has a licensing system to import certain goods, such as chemical substances, fertilizers, pharmaceuticals, cosmetics and veterinary items.

The various taxes associated with standard import operations are summarized below.

## **II. Import Taxes**

### **A. Value Added Tax**

Ever since December 26, 1992, when the Cabinet of Ministers executed its Decree No. 14-92 “On Value Added Tax,” the legislation governing value added tax (“VAT”) has changed frequently, angering many companies, foreign and local, large and small.

Staying true to its reputation for constantly amending key legislation, on April 3, 1997, the Parliament approved a new and improved VAT law, which became effective on October 1, 1997 (as lastly amended on April 13, 2007). Subsequently, the Cabinet of Ministers passed Resolution No. 540, dated June 9, 1997, implementing a new VAT payment procedure.

Generally, the law applies a 20% tax for all businesses and other legal entities (such as funds) providing goods and services on the territory of Ukraine, but the calculation mechanism has been liberalized somewhat. The law finally closed one of the last loopholes by canceling tax holidays for non-profit “Chernobyl-type” organizations, preserving the exemptions for underprivileged children and the disabled, (e.g., children’s food products, magazines and newspapers, etc.). The law also implemented a new mechanism for effectuating the payment of value added tax: the importer simply posted a promissory note instead of effectuating a cash payment.

Under the current rules regulating the import of goods into Ukraine, registered VAT-payers (importers) may, at their own discretion, provide to the customs authorities a promissory note for the amount of the tax obligation with a settlement term of 30 calendar days, provided that the proper customs declaration is executed. However, this rule does not apply to temporary, incomplete, periodical or preliminary customs declarations. One copy of the promissory note remains with the customs authorities, a second copy is sent by the customs authorities to the state tax authority at the place of registration of the VAT-payer, and a third copy remains with the importer.

Promissory notes are subject to mandatory confirmation by commercial banks by way of aval (bank guarantee placed at the bottom of the promissory note). If the VAT-payer fails to settle the promissory note on time, the guaranteeing commercial bank must make payment on the promissory note.

Note that obligations to settle promissory notes may not be transferred to other parties, promissory notes are not subject to endorsement and interest or other types of payment for the use of promissory notes are not calculated. Finally, promissory notes may not be posted with respect to excise goods and goods in classes 1-24 of the Ukrainian Classification of Goods of Foreign Economic Activity (i.e., live animals, produce made from animals, crop produce, certain prepared food products, sugar, candy, cocoa, tea, coffee, alcoholic and non-alcoholic beverages, cigarettes, etc.) and, in 2007, these rules are suspended in relation to oil gas and associated gases.

Ukrainian VAT legislation sets up a two-tier structure that effectively protects its domestic market from foreign imports. For that reason, below we describe each of the two VAT structures separately.

#### 1. Import VAT

The VAT rate is 20%, as levied against taxable turnover, which does not include VAT. Taxable turnover for import VAT is calculated as the customs value of the goods, including customs duties and any applicable excise taxes. This import VAT is due and payable at the same time customs duties are being assessed (with a potential thirty-day extension made at the discretion of the customs office).

#### 2. VAT on Retail Sale in Ukraine

Regrettably, VAT is levied on all products and services manufactured and sold in Ukraine. Costs associated with obtaining/maintaining equipment that are reflected in the final price of the goods also are subject to VAT.

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