

# DOING BUSINESS IN UKRAINE



# THE MOST COMMON TYPES OF BUSINESS IN UKRAINE ARE



1

a limited liability company  
(LLC)

a representative office  
(RO)

2

3

a permanent establishment (PE)  
of a foreign company

# LIMITED LIABILITY COMPANY (LLC)

# 1.1

## THE KEY CHARACTERISTICS

- Is a separate legal entity;
- Is a subject to statutory registration upon which it allowed to start operate in the market;
- Acts independently on its own behalf through its governing bodies which must act in compliance with the constitutional documents of LLC;
- Has a legal capacity to enter into agreements or contracts, acquire rights and assume obligations, incur and pay debts, sue and be sued in its own right, and to be held liable for its actions;
- Bears a sole liability separately from its foreign parent company. LLC is not liable for obligations of the foreign parent company, as well as the company is not liable for obligations of LLC;
- Aim of LLC is to carry out commercial activities for the purpose of gaining profit on its own behalf;
- May be founded either by a sole member or a multiple founders (a company or a physical person). The number of members is not limited;
- The founders (members) may be both companies or physical persons;
- Operates based on its constitutional documents (charter or a foundation agreement). LLC members may make a contract between them (a corporate contract) regulating the way of exercising of their corporate rights and performance of obligations related to LLC.

# 1.2

## ESTABLISHMENT PROCEDURE

- Subject to registration with respective statutory authorities and is registered within 24 hours after submission of the documents required. However, the whole process of establishing LLC takes about two weeks, which entails registration with Ukrainian tax and statistic authorities, and opening a bank account;
- No registration fees are applied for LLC registration;
- Legal capacity is acquired upon statutory registration of the LLC;
- A physical person that is LLC's ultimate beneficial owner(s) (UBO(s) under Ukrainian law must be disclosed at the stage of submitting the documents for statutory registration of LLC.



# 1.3

## AUTHORIZED CAPITAL

- Authorized capital of LLC is divided into equity interests between its members. Each member holds an equity interest of a nominal value equivalent to its contribution to the authorized capital;
- There are no legal requirements for the amount of authorized capital. It may be formed by funds (including in foreign currency), property, securities, proprietary or nonproprietary rights and other items that have a material value;
- Authorized capital must be paid within first 6 months after LLC statutory registration unless other term is established by unanimous decision of its member(s) and specified in LLC charter;
- Authorized capital may be increased or reduced either by additional contribution of LLC member(s) or at the expense of LLC's undistributed profit.
- LLC may not issue shares (securities).



# 1.4

## MANAGEMENT

- The highest governing body of a LLC is a general meeting of the members, which is convened either annually (AGM) or per members' request (EGM);
- The executive body is a sole director or a board of directors appointed by AGM (EGM);
- To exert additional supervision over LLC's executive body a supervisory body may be established – the supervisory board. Physical persons-members of the foreign parent company may be elected to the supervisory board.

## 1.5

## TAXES

Corporate profit tax (CPT)	VAT	Comments
CPT payer on the common basis. Taxable base is a financial result before taxation adjusted for tax differences (e.g. interests, royalty, transactions with low tax jurisdictions, depreciation etc.) CPT rate is 18%.	VAT payer on common basis. VAT rate is 20%.	This is the most commonly used option.
	Non VAT payer (in case that sales turnover is less than UAH 1 million per year).	
<ul style="list-style-type: none"> <li>Non CPT payer, but unified tax payer – rates are: 5% on received cash;</li> <li>3% on received cash + VAT</li> </ul> In case that sales turnover is less than UAH 7 million per year.	Non VAT payer / VAT payer on common basis (VAT rate is 20%).	This option is limited by types of activities. This cannot be applied if non-resident company owns > 25% of LLC.
Non CPT payer - payer of agricultural tax. Taxable base depends on the agricultural land area.	Non VAT payer / VAT payer on common basis (VAT rate is 20%).	The company is entitled to apply this option in case that sales from its own agricultural production exceeds 75% of total annual sales turnover.

- Generally, LLC incorporated and operating under Ukrainian law is considered to be a resident of Ukraine for tax purposes;
- Is a subject to mandatory registration with local tax authorities prior to carrying out any business activities;
- VAT rate for import and supplies on the territory of Ukraine of certain medicines and medical equipment is 7%;
- Export of goods is carried out with 0% VAT rate;
- Accumulated VAT debit may be refunded from the State Budget;
- Corporate profit tax base is a financial result before taxation according to either Ukrainian Accounting Standards or IFRS, adjusted for tax differences, including but not limited to:

- I. Thin capitalization rules: if the amount of LLC's loan debt with non-residents exceeds the amount of LLC's equity more than 3.5 times, then accrued loan interest, which exceeds 30% of (taxable base + interest + tax depreciation) is non-deductible. Non-deductible interests in a current tax period may be carried forward;
- II. Expenses in the amount of 30% of the value of goods, non-current assets, works and services purchased from non-profit organizations is non-deductible;
- III. 30% of the value of goods, non-current assets, works and services purchased from/sold to non-residents registered in low-tax jurisdictions or non-residents incorporated as low-tax entities is non-deductible (this requirement does not apply to controlled transactions in respect of TP or in case if LLC prepares documentation

- proving that such transaction is in line with the "arm's length principle");
- IV. The amount of funds or value of goods, works or services gratuitously provided to non-profit organizations which exceeds 4 percent of taxable profit of the previous tax period is non-deductible;
  - V. Royalty paid in favor of a non-resident which exceeds the amount of income from royalties + 4% of net income from sales of goods, works or services for the previous year is non-deductible (this requirement does not apply to controlled transactions in respect of TP or in case if LLC prepares documentation proving that such transaction is in line with the "arm's length principle");
  - VI. The amount of expenses from fines and penalties, accrued in favor of non-CPT payers (except individuals) is non-deductible;

# 1.5

## TAXES

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- LLC, whose agricultural production exceeds 75% of the total amount of sales revenue may opt for a simplified tax regime (agricultural single tax). Agricultural single tax is to be paid on the basis of the land area used for agricultural production.
- An LLC that makes any payment to a non-resident, which treated as an income of non-residents sourced from business activities in Ukraine (except any payments for goods, works or services), is obligated to withhold and pay to the State Budget Withholding Tax (WHT) at the basic rate of 15%, if the Double Tax Treaty does not provide otherwise. The principal purpose test should be applied in order to reduce the tax rate according to the DTT.
- LLC is a subject to CFC rules since 2021.
- The amount of adjustments under TP rules are treated as dividends (constructive dividends).
- Transfer pricing rules: (i) if the annual income of an LLC exceeds UAH 150 million and (ii) the annual amount of transactions with related non-residents, non-residents registered in low-tax jurisdictions or non-residents incorporated as low-tax entities, exceeds UAH 10 million, then such transactions is treated as controlled in respect of transfer pricing rules and should be in line with the “arm's length principle”.



- Has a full legal capacity to carry out business activity and operate on its own behalf;
- Is independent of its parent foreign company, meaning LLC is not liable for the company's obligations, and the company is not liable for obligations of LLC. However, the company bears the risks of losses related to LLC's business operations in amount of its unpaid contribution to LLC' authorized capital;
- Generates its profit and assumes its own tax obligations. LLC's profit may be distributed between the members under their decision at any time of LLC's business activity;
- No legal requirements for the amount of authorized capital or for number of members;
- A sole founder (member) of LLC may be a foreign parent company that has one company member as a sole owner;
- LLC (or its corporate rights) may be sold under the members' unanimous decision;
- Can obtain licenses (permits) and do activities, which are subject to licensing in Ukraine;
- Simple and free of charge registration procedure;
- Officers of LLC have joint liability to LLC's members for the wrongdoings resulting in losses for LLC. Non-compete, non-disclosure and conflict of interest clauses are applied to them as well;
- Has the right to establish other legal entities in Ukraine.

PROST

- Is liable for its losses with all its property;
- In order to use the foreign parent company trade mark or a brand must execute respective contract, e.g. license contract and pay royalty as well as other mandatory state fees;
- Foreign parent company has a limited control over LLC operations;
- Limited options for financing by foreign parent company at the initial stages of LLC business operations;
- Complicated procedure for having foreign nationals employed in LLC (the work permit is required).

# CONS

# POTENTIAL RISKS

- The risks depend on the type of business transactions and compliance thereof with local regulations;
- LLC director or a managing director (if Board of directors is applicable) bears personal liability for any LLC' operations in the local market.

# REPRESENTATIVE OFFICE (RO)



## 2.1

### THE KEY CHARACTERISTICS

- Is not a legal entity but rather a division of the foreign parent company in Ukraine;
- Has a limited legal capacity: operates its activities, enters into contracts etc. on behalf of the foreign parent company;
- Cannot be a party to contracts (agreements), to sue or be sued in courts or to make any other operations on its own behalf;
- Commercial activity aimed at gaining profit is not allowed;
- The only allowed operations are representation of the foreign parent company and some type of preparatory and auxiliary services (operations) for the benefit of the foreign parent company, e.g. consulting, marketing, advisory services;
- May have a separate bank account of particular kind opened with any local bank. Specific regulations for its bank account may be established;
- No need to obtain work permits for foreign nationals employed at RO. The total number of foreign nationals employed at RO generally cannot exceed 3 to 5 persons;
- Operations may start only upon statutory registration with the Ministry of economics of Ukraine;
- The constitutional document of RO is a Regulation adopted by the foreign parent company. RO is allowed to operate within the authority limits defined by its constitutional document;
- Director of RO acts by virtue of the Power of Attorney issued by the foreign parent company. Has a limited authority as established in the Power of Attorney;
- In terms of taxation is treated as a separate legal entity (from its parent foreign company). Must be registered with local tax authorities;

# 2.2

## ESTABLISHMENT PROCEDURE

- Subject to mandatory statutory registration with state authorities before start of any operations;
- The registration procedure is carried out by the Ministry of economics of Ukraine, term of registration is up to 20 business days after submission of necessary documents, state fee for the registration is established in amount of the minimal cost of living in Ukraine established for the current year (around 2.000,00 UAH as of 2019);
- Subject to statutory registration with local tax authorities as a payer of personal income tax (PIT) and other social security payments if the staff is employed.

# 2.3

## AUTHORIZED CAPITAL

- Is directly funded by the foreign parent company;
- No legal requirements for the authorized capital or its amount are established.

# 2.4

## MANAGEMENT

- Carried out by the Head of RO who is responsible for operating its day-to-day activities;
- The Head of RO is appointed by the foreign parent company and acts by virtue of the Power of Attorney issued by the parent company with limited authority as established therein.

# 2.5

## TAXES

- In terms of taxation is treated as a separate legal entity (from its parent foreign company). Must be registered with local tax authorities;

Corporate profit tax (CPT)	Personal income tax (PIT)	VAT	Comments
Non CPT payer (if conducts preparatory or auxiliary activities for the parent company)	RO acts as a tax agent for the purposes of payment of PIT (if the staff is employed);	Non VAT payer	income received by a RO from VATable transactions does not exceed UAH 1 million
		VAT payer on common basis. VAT rate is 20%.	Not applicable in practice

# PROS

- Easy to establish and operate compared to other common forms of doing business;
- Is not a subject to the corporate income tax;
- Easy procedure for employment of foreign nationals (work permits are not required);
- May use a trade mark or a brand of the foreign parent company without the license contract or similar contracts for use thereof;
- Is directly controlled by the foreign parent company, including by way of establishing limitations for the type of RO's activities and authority of the Head thereof in its constitutional documents.



# CONS

- Is not a legal entity and cannot acquire rights or assume obligations, be a party to contracts, sue or be sued on its own behalf;
- Cannot carry out commercial activity and be aimed at generating profit;
- Is limited in its activities. May carry out the activities allowed by tax legislation in order to preserve a non-commercial status and exemption from CPT;
- Complicated procedure for transferring authority by the foreign parent company to RO;
- Cannot obtain licenses (permits) and/or carry out activities subject to licensing;
- Purchase of and any operations with foreign currency are allowed only for the list of legally allowed operations, e.g. operations aimed at maintenance of RO daily activities.



# POTENTIAL RISKS

- Additional CPT liabilities are possible if RO is treated by local tax authorities as carrying out commercial activities;
- Is limited to certain types of activities to preserve a non-commercial status (preparatory or auxiliary activities for the parent company). Carrying out any other activities not allowed by local tax laws results in additional tax liabilities and fines imposed by tax authorities;
- May be liquidated in the case of violation of local laws under court's decision;
- Personal liability of the Head of RO as its operating manager is applicable in the case if violations of local laws are to be found, including administrative and/or criminal liability for violations of tax laws or tax evasion.

# PERMANENT ESTABLISHMENT OF FOREIGN COMPANY (PE)

## 3.1

### THE KEY CHARACTERISTICS

- 
- Is not a legal entity but a division of the parent foreign company through which the parent foreign company carries out commercial activities in the market;
  - Carries out commercial activities and generates profit on behalf and in favor of the parent foreign company;
  - In the market operates with limited authority for commercial activities as established by the foreign parent company in the constitutional documents of PE;
  - Has no legal capacity and is not an independent party to civil relationships;
  - Exercises the rights and assumes obligations for the parent foreign company;
  - Subject to mandatory registration with local tax authorities as a corporate income tax payer and other taxes applicable.
  - Enters into contract (agreements) on behalf of the parent foreign company;

# 3.2

## ESTABLISHMENT PROCEDURE

- Subject to mandatory statutory registration with the Ministry of economics of Ukraine before start of operations in the market;
- The registration procedure is carried out by the Ministry of economics of Ukraine, term of the registration is up to 20 business days after submission of necessary documents, and state fee for the registration is established in the amount of a minimal cost of living in Ukraine for the current year (around 2.000,00 UAH as of 2019);
- Subject to statutory tax registration as a corporate income tax payer and a payer of other taxes applicable.



# 3.3

## AUTHORIZED CAPITAL

- No legal requirements are established for the formation of the authorized capital or for the amount thereof;
- Is directly funded by the foreign parent company.



# 3.4

## MANAGEMENT

- Carried out by the Head of PE responsible for operating its day-to-day operations;
- The Head is appointed by the foreign parent company and acts by virtue of the Power of Attorney issued by the foreign parent company within established authority limitations;
- The Head is personally liable for any wrongdoings in managing PE's operations.



# 3.5

## TAXES

- In terms of taxation is treated as a separate legal entity (from its foreign parent company);

Corporate profit tax (CPT)	Personal income tax (PIT)	VAT	Comments to CPT
CPT payer on the common basis. Taxable base is financial result before taxation adjusted for differences. CPT rate is 18% (in case of providing business activity (generating income from sales)	PE acts as a tax agent for the purposes of payment of PIT (if the staff is employed)	Non VAT payer (in case that sales turnover is less than UAH 1 million per year).	In practice, this option is applicable in case of providing business activity (generating income from sales).
CPT payer on the common basis. CPT rate is 18%. Effective CPT rate is 5.4% of income (30%*18%).		VAT payer on common basis. VAT rate is 20%.	

- Transfer pricing rules: if the annual amount of business transactions of a PE with a related parties exceeds UAH 10 million, then such transactions is treated as controlled in respect of transfer pricing rules and should be in line with the “arm’s length principle”.
- The tax rates for other taxes applied to PE are the same as to LLC.

# PROS

- Easy to establish and operate;
- Direct control of the foreign parent company over PE's operations;
- Carries out commercial activities on behalf of the foreign parent company. Generates taxable profit for the company;
- Easy procedure for employment of foreign nationals (no work permits required);
- May use a trade mark or a brand of the foreign parent company without the license contract or similar contracts for use thereof;



# CONS

- Is not a legal entity and cannot acquire rights or assume obligations, be a party to contracts, sue or be sued on its own behalf;
- Cannot be a founder of other legal entities in Ukraine;
- Cannot be sold but only liquidated by decision of the foreign parent company;
- Is limited in the type of its activities as established in its constitutional document;
- Complicated procedure for transferring authority by the foreign parent company to PE;
- The foreign parent company remains fully liable for PE's activities in the market;
- Cannot obtain licenses (permits) and/or carry out activities subject to licensing;
- Purchase of or any operations with foreign currency are allowed for particular operations specified by law.

# POTENTIAL RISKS



- The risks depend on the type of commercial activity and compliance thereof with local regulations;
- May be liquidated in the case of violation of local laws under court's decision;
- Personal liability of the Head of the PE as an operating manager in the case if violations of local laws are to be found, including administrative and/or criminal liability for violations of tax laws or tax evasion;
- Is limited with the types of activities specified in its constitutional documents.



**13 A, Universytetska str.  
03110, Kyiv, Ukraine**

**tel: +38 044 249 79 05**

**fax: +38 044 249 79 06**

**[www.ebskiev.com](http://www.ebskiev.com)**

**[info@ebskiev.com](mailto:info@ebskiev.com)**