
Ukrainian market entry





Covid 19 implications in business in Ukraine

Covid implications for non residents in Ukraine



Travels may be limited



Vaccination certificates may be required in order to enter Ukraine and to travel within different regions or to visit stores / restaurants



Covid implications for business



1. Influence on establishment process

- It takes longer to prepare all necessary documents abroad
- Foreigners can be limited in visits to Ukraine (regulations may be changed any day)
- Different limitations can be established in different regions of Ukraine (transport connection between regions and even cities may be restricted or vaccination certificate / negative COVID test can be required, work of registration authorities / notaries can be restricted)
- Bank identification can take longer
- Registration of Representative office can take longer than it is established (legally established: 20 working days for certificate obtaining, up to 5 working days for tax registration, up to 10 working days for registration at statistics authorities)
- Companies are actively reducing physical office space, which may influence rental business



Covid implications for business



2. Influence on activity performance

- Temporary restrictions may be established for different types of activity (clothes stores, gyms, restaurants etc.)
- State financial assistance may be provided for companies, whose main activity suffered from restrictions (assistance may be provided only to cover part of salaries)
- Company shall be in downtime, pay salaries and taxes in order to have a chance to get state financial assistance
- For separate spheres, there may be a requirement of mandatory employees vaccination (for now – teachers and state authorities)
- New rules regulating remote work have been established

Covid implications for physical persons affecting business



For separate spheres, there may be a requirement of mandatory employees vaccination (for now – teachers and state authorities)



Employees can take vacations without pay for an unlimited period during quarantine (at the moment, the quarantine in Ukraine has been extended until the end of the year)





Ways to make entry smoother



Drivers for creation an establishment presence in Ukraine



Recruitment of local staff



Engagement in complex projects



Permanent establishment self-assessment



Options of minimum establishment available



Hiring a contractor – physical person, out staffing selected candidate from an out staffing agency as a short term solution.



Set up of representative office



Set up of and LLC with virtual office and minimum activities




Operation of regular LLC with regular business activities



Issues to be considered



- Financial monitoring procedures
- Compliance requirements on payroll and tax start from day 1.
- Accounting records, supporting documents and overall document flow must be executed in Ukrainian, so the function needs to be arranged locally
- VAT administration is rather complicated, is carried out through nationwide electronic system where every single VAT invoice must be registered in line with strict deadlines and document execution requirements
- Customs brokers normally do customs clearance, however, for more complicated deals/products legal advice can improve import duties and other cost
- Withholding tax applies in Ukraine
- Transfer pricing regulation apply in Ukraine, specific attention should be paid to transfer pricing rules for representative offices



**Key specifics you need to
know before starting doing
business in Ukraine**



If Ukrainian LLC will be established by foreigner / foreigners, such foreign shareholders must obtain Ukrainian Tax ID (code) before registration of LLC.



Documents for registration (by-laws, minutes, application) must be in Ukrainian, or bilingual, or translated into Ukrainian. Statutory documents must be notarized and (for majority of countries) apostilled.



Documents are to be submitted only in physical form. Electronic documents will not be accepted.



Personal visit of shareholder representative to registration authorities / notary is required.



There is a possibility to issue Power of Attorney (Proxy) for Ukrainian resident, who will fully represent the shareholder / shareholders in Ukraine.



Physical address is a must and shall be confirmed by rental agreement. All official correspondence will be sent there.



In case of LLC establishment – initially a Ukrainian resident shall be appointed as director. Such director is entitled for salary from day 1 of LLC establishment regardless whether LLC performs activity or not. Foreigner may be appointed as director once work permit is obtained.



In case of Representative office – foreigner may be appointed as Head of Representative office from day 1. Salary issues depends on the type of Representative office. Work permit is not required.

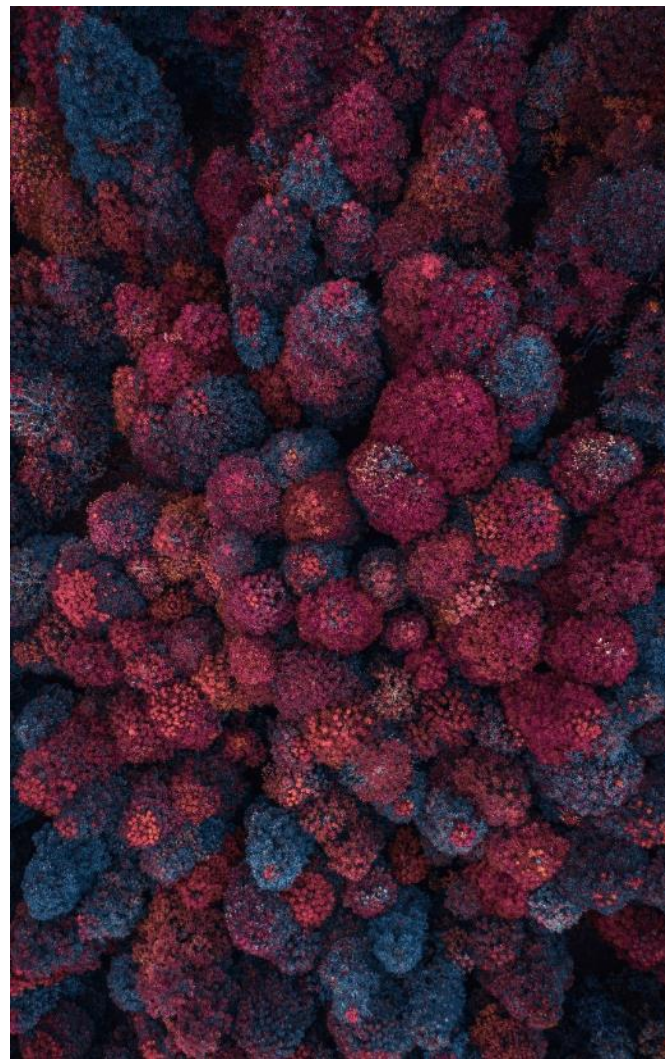



**Permanent
establishment
definition and criteria**

In accordance with the provisions of paragraph 14.1.193 of the Tax Code

A PERMANENT REPRESENTATIVE OFFICE

is a permanent place (fixed place of business), where a non-resident carries out its business activity either fully or partially, namely, a management place, filiation, office, manufactory, workshop room, installation or construction for exploration of natural resources, mine, career or any other place of extraction of natural resources, warehouse or premises used to deliver goods, server.





**For tax purposes,
the term
«permanent
representative
office» includes:**



- a) construction site, construction, assembly or installation facility or related supervisory activities, the total duration of work associated with such a site, facility or activity (within the framework of one project or related projects) exceeds 12 months and is carried out by a non-resident's employees or other personnel hired by the representative office for such purposes;
- b) services provision by a non-resident (except for outstaffing), including consulting services, provided by the employees hired by the representative office for such purposes, if such activity is carried out (within the framework of one project or a project that is associated with it) in Ukraine during a period or periods, with a total duration more than 183 days in any twelve-month period;
- c) persons, who have and exercise the authority to negotiate the essential terms of transactions/ agreements/ contracts, on the basis of the agreement or any other deal, and as a result of such persons' activities, the non-resident concludes agreements (contracts) without substantially changing such conditions and/or concludes agreements (contracts) on behalf of the non-resident in the event if the specified activity is carried out by a person in the interests, at the expense and/or in favor of only one non-resident and/or non-resident related persons;
- d) persons who have and exercise the authority to maintain (store) stocks (goods) that belong to a non-resident, from which supplies of stocks (goods) are made on behalf of a non-resident, except for residents that hold a temporary storage warehouse or customs warehouse, on the basis of a contract or other transaction;



In order to apply subparagraphs «a» and «b» when calculating the total period during which a non-resident carries out activities in Ukraine, the complete consecutive or inconsistent calendar months of the duration of the project (or related projects), the performance of work or the provision of services by a non-resident in Ukraine shall include:



non-resident activity duration in Ukraine, which is carried out for several consecutive or inconsistent periods, which are separately less than a full calendar month, but in total exceed 30 days, and

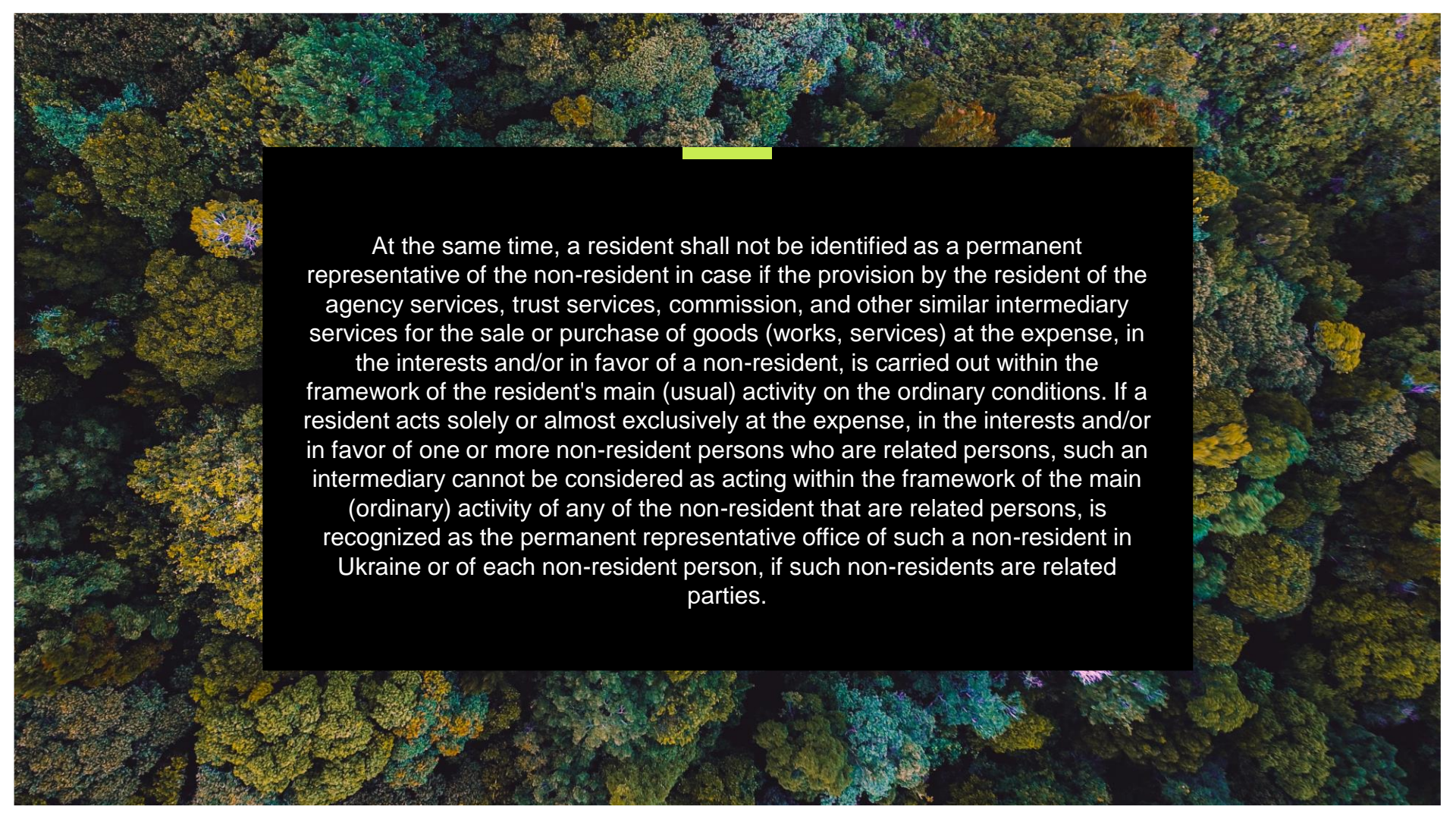


duration of activities of this non-resident's related persons in Ukraine, if such activity is closely related to the activities of a non-resident defined in subparagraphs «a» and «b» and is carried out for several consecutive or inconsistent periods that are equal to the full calendar month or which separately constitute less than a full calendar month, but in total exceed 30 days.




For the purpose of application of subparagraphs «c» and «d» the following signs may indicate that a person has actual powers to carry out activities in the interests, at the expense of and/or in favor of a non-resident, and can be recognized as a permanent establishment:

- the provision of binding instructions by a non-resident (including electronic communication or transferring the information using an electronic media) and their execution by a person;
- existence and use of the corporate email address of the non-resident and/or its related parties for communication with the non-resident and/or third parties, who the non-resident has already concluded or will continue to conclude contracts or other transactions with;
- the realization of the right, to own or dispose of stocks (goods) or other assets of a non-resident in Ukraine or their significant share on the basis of relevant instructions of a non-resident;
- the person has premises rented on his / her own name for storing property, which is purchased at the expense of a non-resident or is owned by a non-resident or third parties, and is to be transferred to the third parties at the instruction of the non-resident, or for other purposes determined by the non-resident.



At the same time, a resident shall not be identified as a permanent representative of the non-resident in case if the provision by the resident of the agency services, trust services, commission, and other similar intermediary services for the sale or purchase of goods (works, services) at the expense, in the interests and/or in favor of a non-resident, is carried out within the framework of the resident's main (usual) activity on the ordinary conditions. If a resident acts solely or almost exclusively at the expense, in the interests and/or in favor of one or more non-resident persons who are related persons, such an intermediary cannot be considered as acting within the framework of the main (ordinary) activity of any of the non-resident that are related persons, is recognized as the permanent representative office of such a non-resident in Ukraine or of each non-resident person, if such non-residents are related parties.



**Case studies of foreign
companies entering
Ukrainian market**

- Company has direct juice concentrate supply agreements with dealers and/or end customers in Ukraine, however competitive environment requires local presence of dedicated staff for sales support, customer support, local business development.
- When considering options of engagement of selected candidate(s), and set up appropriate infrastructure for their operations (home office or minimum office facilities, car, telecom, business trip expenses, customer presents and promotions, etc.).
- To cover needs above it was decided to create a representative office (set up of a legal entity was restricted by internal group policies).



- Company producer of agrimachinery decided to increase presence on market.
- Sales to end customers are arranged through official dealer.
- However local market specifics requires local presence for direct communications with end customers (mostly farmers with land bank from 3000 acres and medium agri holdings), which normally is related to mainly field work and can be supported by dealer.
- After assessment of local market potential decision to set up an LLC was made



- Company trading chemicals set up a local trading unit.
- Due to wide range of goods and diversity of customers and big quantity of sales it was decided to set an LLC engaged in importing and trading activities with outsourced warehouse and other non core processes.



- Company engaged in fulfilment of municipal infrastructural project, partly financed by international financial institution had to set up a representative office as this was needed to participate in tender.
- Supply of components required for project fulfilment is carried out by non resident of Ukraine, engineering, technical supervision services are provided by representative office.



An aerial photograph of a lush green agricultural field, showing distinct rows of crops. A large black rectangle is superimposed in the center of the image, containing the word "Questions?" in a bright green, bold, sans-serif font.

Questions?