

Tax Alert

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Current and projected tax preferences in the aftermath of the war in Ukraine

Donations made to be considered tax deductible costs

A possibility of including donations made for purposes of counteracting consequences of warfare in Ukraine into tax deductible costs.

Act of 12 March 2022 on the aid to Ukrainian citizens in the aftermath of the military conflict in Ukraine ("Special Act")¹ provides for a possibility to taxpayers to include in tax deductible costs the expenses for manufacture, or a price of purchase of things and rights used for purposes relating to counteracting consequences of warfare in Ukraine, i.e., donations made **to specific entities**, namely:

- non-governmental organizations and public purpose organizations,
- local government units,
- the Government Strategic Reserves Agency,
- entities which carry out medical care activities or provide emergency medical services in the territory of the Republic of Poland or Ukraine.

The Special Act provides for a possibility for taxpayers to include in tax deductible costs the donations in the amount of 100% only, in spite of the fact that in the case of the fight against COVID 19 pandemic a similar relief allowed the taxpayers to include donations in the amount of 200%. The preference in question is intended to apply **from 24 February to 31 December 2022**.

The sole possibility, that has existed to date, for taxpayers to include their aid in the tax deductible costs arises from Art. 18 Sec. 1 Subsec. 1) of the CIT Act and Art. 26 Sec. 1 Subsec. 9) of the PIT Act. The said provisions make it possible for taxpayers to deduct from the taxable basis the donations made in favor of public purpose activities (maximum: up to 10% of income of CIT payers and up to 6% of income of PIT payers).

Zero-rated VAT for purposes relating to the aid to war victims in Ukraine

Any and all donations and gratuitous performances made in favor of/rendered to aid the war victims in Ukraine are subject to zero-rated VAT.

The Minister of Finance has issued the Regulation², whereby **zero-rated VAT** has been introduced for gratuitous supplies of goods or provision of services for purposes relating to the aid provided to the war victims in Ukraine. The said rate however applies only to donations and gratuitous performances made in favor of/rendered **to specific entities**, i.e.:

- the Government Strategic Reserves Agency;
- medical care entities;
- local government units.

It is worth noting that the subject-matter (*ratione materiae*) scope of the preferences is open, and so it encompasses any and all donations and gratuitous performances. It should be emphasized however that the zero-rated VAT may apply on condition that an **agreement** between a taxpayer (donor) and one of the aforesaid entities (donee) is entered into. The preference will apply **from 24 February to 30 June 2022**.

¹ Act of 12 March 2022 on the aid to Ukrainian citizens in the aftermath of the military conflict in Ukraine, Journal of Laws of 2022, Item 583

² the Minister of Finance Regulation of 3 March 2022 amending the regulation on goods and services for which the goods and services tax rate is reduced, and conditions for application of reduced rates, Journal of Laws of 2022, Item 531

Tax exemptions and return relief

Originally projected solutions regarding exemption of Ukrainian citizens from inheritance and donation tax (the solutions also called for by experts) are missing in the final wording of the Special Act. It means that the donations received by Ukrainian citizens are subject to taxation under general terms. Accordingly, the received donations are free of the inheritance and donations tax up to the aggregate amount of PLN 4902 (in case the donee is unrelated to the donor). The said cap pertains to donations from the same donor, received within a period of 5 years. For as long as the tax-free allowance is not exceeded, there is no obligation to report the donation to tax authorities or to file an inheritance and donations tax return. If, however, the tax-free allowance cap is exceeded, such obligations will rest with the donee.

Ukrainian citizens are PIT-exempt as regards aid received.

The Special Act however provides for exemption of Ukrainian citizens from PIT as regards the aid received. Namely, it pertains to such gratuitous performances as getting access to an apartment, meals or medical assistance and treatment. Meanwhile, as far as PIT on Ukrainian citizen's labor taken up in Poland is concerned, rules of settlements in force in this respect will differ depending on whether such a person is employed under an employment or mandate agreement, as well as on the length of his/her stay in Poland (this issue has been discussed in greater detail in our alert concerning tax residence of people coming from Ukraine).

In this context, one should call for a possibility for Ukrainian citizens to be subject to the so called return relief. It is the tax preference introduced under the Polish Deal making it possible to exempt from PIT the revenues derived, inter alia, from employment and mandate agreements (up to PLN 85 528 annually) for 4 years. The said preference however can be enjoyed only by returning Polish expats, by persons who have a Pole's Card, citizens of the EU, EEA or Swiss Confederation or by persons that have their domicile in the states referred to in Art. 21 Sec. 43 Subsec. 3) letter b) of the PIT Act. Ukraine however has not been mentioned there. If therefore a Ukrainian refugee has the Pole's Card, he/she will be eligible for the return relief. Otherwise, such a relief will not be available. It would be therefore advisable that in view of the current crisis the legislator supplements the aforementioned list of the states and makes it possible for Ukrainian citizens to enjoy the relief in question.

Naturally, the new regulations crucially affect settlements made by Polish employers as regards employees who are Ukrainian citizens. We will also continue monitoring any upcoming legislative solutions and will be providing you on a current basis with updates as regards all the key issues.



You are welcome to contact

Jarosław Bieroński

Senior Partner, attorney-at-law,
tax advisor

☎ +48 602 105 255

✉ jaroslaw.bieronski@skslegal.pl



Maciej Krawiel

Associate, attorney-at-law

☎ +48 538 574 166

✉ maciej.krawiel@skslegal.pl



Radosław Kobrzyński

Associate

☎ +48 882 784 740

✉ radoslaw.kobrzynski@skslegal.pl