



**The Business & Law Readers Digest**

# **Registration of Representative Offices of Foreign Companies**

Banking and Finance // Beverages Industry // Corporate // Corporate Dispute Resolution // Due Diligence // Employment // Financial Services // Insurance // Investments // Kyoto Protocol Implementation // Logistics // Mergers and Acquisitions // Natural Resources // Oil and Gas // **Representative Office** // Land // Ukraine and the WTO // Ukraine and Russia // Tourism



## Contents

State registration . . . . .	3
Registration with the Tax Administration . . . . .	4
Registration as VAT payer . . . . .	5
Registration with the Statistic Committee . . . . .	6
Registration with the Customs Department . . . . .	6
Registration with Social Insurance Funds . . . . .	7
Opening bank accounts . . . . .	7
Liquidation . . . . .	9



Registration of foreign Representative Offices ("ROs") in Ukraine is one of the most contradictive subjects in Ukrainian law. It is not explicitly regulated, and is therefore complicated even for experienced lawyers. The complication is caused by the fact that Ukrainian legisla-

tion regulating this sphere is so frequently amended. In this article we shall discuss the problems that occur during the registration of foreign ROs in Ukraine, taking into consideration the latest legislative changes.

## State registration

Initially, the necessity for state registration of foreign ROs and the specific procedure for such registration were stated in Article 5 of the Law on Foreign Economic Activity of 1991, according to which foreign businesses acting in Ukraine are entitled to open ROs in Ukraine. Under the Law on Foreign Economic Activity of 1991 the Ministry of Economy was authorised to register such ROs.

According to Article 5 of the Law on Foreign Economic Activity of 1991, with the purpose of regulating the registration of foreign ROs, the Ministry of Economy developed the Instruction on Registration of Foreign ROs in Ukraine, approved by Order No. 30 of the Ministry of Economy on 18 January 1996.

Instruction No. 30 was revised and amended on 15 June 2007 resulting in the following significant changes:

(a) Instruction No. 30 is applied to ROs with no intention to carry out business activities in Ukraine (it used to be applied to all ROs in Ukraine);

(b) obligation to obtain work permits for foreign employees of ROs is cancelled (the Ministry issues special service cards to the foreign employees of ROs);

(c) obligation to register with the Tax Administration is cancelled, provided that the RO does not intend to carry out any business activities in Ukraine (previously the ROs were obliged to register with the Tax Administration within a month of registration with the Ministry of Economy);

(d) obligation to register with the Statistic Committee is cancelled (previously the ROs were obliged to register with the Statistic Committee within a month of registration with the Ministry of Economy);

(e) the notice period for any changes to a foreign company and/or its RO is extended to one month (instead of 7 days). Howe-



ver, the notice period of 7 days was not amended in Article 5 of the Law on Foreign Economic Activity of 1991.

In fact, any foreign ROs after the registration with the Ministry of Economy must register both with the Tax Administration and the Statistic Committee according to the regulations of these authorities within 10 days of registration with the Ministry of Economy.

Other provisions in Regulation No. 30 remain unamended, including payment of an official registration fee of USD 2,500 and registration with the Ministry

within 60 working days after the payment of the said fee.

However, revising Instruction No. 30 has neither clarified nor solved the problem of actual obligation for foreign ROs in Ukraine to be registered with the Ministry of Economy. In fact, all foreign ROs - in spite of their business activities (or lack of them) in Ukraine - are forced to register both with the Ministry of Economy and the Tax Administration in spite of the obvious discrepancy in Article 22.20 of the Law on Corporate Income Tax 1994 (last revised and amended on 1 January 2008), which shall be discussed hereinafter.

## Registration with the Tax Administration

The Law on Corporate Income Tax of 1994 distinguishes between foreign ROs which carry out business activities in Ukraine (the permanent ROs) and those which do not carry out business activities in Ukraine.

Under Article 2.5 of the Law on Corporate Income Tax of 1994, the permanent ROs before starting up their business in Ukraine must be registered with the Tax Administration. According to Article 22.20 of the Law on Corporate Income Tax of 1994, in view of obligatory registration of the permanent ROs with the Tax Administration, the state registration of the permanent

ROs with the Ministry of Economy and other government authorities is not required.

Notwithstanding the above, Article 5 of the Law on Foreign Economic Activity of 1991 provides for the obligatory state registration of all foreign ROs in Ukraine with the Ministry of Economy. Consequently, the provisions of the Law on Foreign Economic Activity of 1991 and the Law on Corporate Income Tax of 1994 are currently effective, although they contradict each other.

The registration of permanent ROs as tax payers is governed by the Regulation on



Registration of Permanent ROs as Tax Payers approved by Order No. 293 of the Tax Administration on 12 August, 1997 (last revised and amended on 24 July 2006). Unfortunately, the above Regulation does not contribute to the creation of a definite registration procedure for foreign ROs in Ukraine. Regulation No. 293 provides for the registration of foreign ROs as tax payers irrespective of whether or not they are registered with the Ministry of Economy under Regulation No. 30. In other words, the obligation of double registration of foreign ROs exists and is required in Ukraine.

In fact, under Article 1.3 of Regulation No. 293 this Regulation shall not be applied to those foreign ROs which do not carry out business activities in Ukraine. Nevertheless, the Tax Administration has stated in several letters of interpreta-

tion that Article 1.3 of Regulation No. 293 refers to the ROs which have diplomatic status under respective international treaties, and that any other ROs are subject to registration with the Tax Administration.

However, foreign ROs with diplomatic status, primarily foreign embassies and consulates, may be registered with the Tax Administration as tax payers too. It may be done by application provided that diplomatic ROs are considered to be tax agents for the payment of personal income tax and also in the event of VAT refund to such ROs.

The ROs of foreign banks in Ukraine must be registered twice: firstly with the National Bank of Ukraine (to obtain a bank license), and secondly with the Tax Administration.

## Registration as VAT payer

The registration of foreign ROs as VAT payers is governed by the Regulation on Registration of VAT payers, approved by Order No. 79 of the Tax Administration on 1 March 2000 (last revised and amended on 24 July 2006).

For a long time the Law on VAT of 1997 did not determine the foreign ROs as VAT payers in Ukraine. The situation only improved in 2005 when the Law on VAT of 1997 was amended, and foreign

ROs were included into the list of persons which may be registered as VAT payers.

In spite of its actual contradiction to the Law on VAT of 1997, the Tax Administration has included the permanent foreign ROs as potential VAT payers into Regulation No. 79 and registered the permanent foreign ROs as VAT payers in Ukraine. After the Law on VAT was amended in 2005, the Tax Administration



has amended Regulation No. 79 too, and now any foreign ROs in Ukraine - including diplomatic missions - may be registered as VAT payers.

The only restrictions existing in respect of the registration as a VAT payer are the following:

(a) the foreign RO must have previously registered with the Tax Administration as a tax payer under Regulation No. 293;

(b) since 1 June 2006 all foreign ROs must register with the Statistic Committee of Ukraine and have an EDRPOU identification number.

## Registration with the Statistic Committee

The registration of legal entities in Ukraine with statistic authorities is done by filing information with the Unified State Register of Enterprises and Organisations of Ukraine (the "EDRPOU"), approved by the Resolution of the Cabinet of Ministers No. 188 on 22 January 1996 (last revised and amended on 22 June 2005).

Since 22 June 2005 according to the amended section 13 of Regulation No.

188 foreign ROs must file the information with the EDRPOU register within 10 days after the registration in Ukraine and obtain a EDRPOU registration certificate.

However, Regulation No. 188 does not stipulate whether this shall be applied to all foreign ROs in Ukraine or only to permanent ROs which carry out business here.

## Registration with the Customs Department

Foreign ROs as subjects of foreign economic activity under Ukrainian law must be registered with the Customs Department of Ukraine. Registration enables foreign ROs to facilitate the customs clearance of goods. The registration with Customs is done according to

the Regulation of Registration of Subjects of Foreign Economic Activity approved by the Order of the State Customs Committee of Ukraine No. 273 on 31 May 1996. However, from a legal point of view Regulation No. 273 may not be applied for registration with Customs



because the Ministry of Justice of Ukraine cancelled the state registration of Regulation No. 273 in September 2005. But the Customs Department has not yet revoked Regulation No. 273, and in practice it continues to apply Regulation No. 273 for registration.

The ambiguous issue of the state registration of foreign ROs with both the Ministry of Economy and the Tax Department as mentioned above has caused problems for the registration of foreign ROs with the Customs Depart-

ment. In spite of the fact that the registration with Customs must be done on the basis of a Certificate of State Registration issued by the Ministry of Economy and the Tax Registration, the Certificate is not included in the list of documents required for the registration of foreign ROs with Customs. Under Regulation No. 273, the Customs Department has stipulated in several letters of interpretation that foreign ROs may be registered only on the basis of their Tax Registration Certificates.

## Registration with Social Insurance Funds

Upon analysis of effective Ukrainian law on obligatory social insurance, it may be concluded that foreign ROs are obliged to be registered with the respective state social insurance funds only if they employ Ukrainian residents.

But in contrast to Ukrainian legal entities, which are registered with social insurance funds automatically on the basis of information filed with the state registrars of legal entities, foreign ROs must undergo registration on their own within 10 days after their state registration.

## Opening bank accounts

Under the Law on Payment Systems and Money Transfer in Ukraine No. 2346 dated 5 April 2001 (last revised and amended on 27 April 2007) foreign ROs are entitled to open bank accounts with any banks in Ukraine. The procedure for opening bank accounts is gov-

erned by the Instruction on Opening, Use and Closing of Accounts in Ukrainian and Foreign Currencies approved by the Resolution of the National Bank of Ukraine No. 492 on 12 November 2003 (last revised and amended on 8 January 2008).



According to Instruction No. 492, foreign ROs may open the following types of accounts in Ukrainian currency:

(a) an "N" type current account should be opened by official (diplomatic) foreign ROs in Ukraine as well as by foreign ROs which do not carry out any business activities in Ukraine;

(b) a "P" type current account should be opened by permanent foreign ROs in Ukraine as well as by foreign ROs which do not carry out any business activities in Ukraine;

Foreign ROs are entitled to open current and deposit accounts in any foreign currency.

According to section 11.10 of Instruction No. 492, the funds in an "N" type account may be applied for the following transactions:

(a) costs for maintenance of the RO, including salary, rent, vehicles, insurance, repair works, and for representative functions;

(b) charitable actions and payments;

(c) cash withdrawal for reimbursement of costs for business trips to employed Ukrainian residents;

(d) payment of costs as determined

by Statutes of international organisations;

(e) transfer to deposit accounts;

(f) purchase of foreign currency for transfer abroad or to a current account opened in foreign currency.

In an "N" type account transactions which relate to settlements in connection with business and commercial activities are prohibited.

According to section 12.3 of Instruction No. 492, the funds in "P" type accounts may be applied by foreign ROs for the same transactions as by Ukrainian legal entities, except for the purchase of foreign currency. The funds in "P" type accounts may be used for the purchase of foreign currency only with the following purposes:

(a) transfer abroad of income received as a result of the business activities of foreign ROs in Ukraine;

(b) transfer abroad of interest received in deposit accounts;

(c) transfer abroad of the demand balance in the event of liquidation of foreign ROs;

(d) transfer to current account opened in foreign currency for salary payment to non-resident employees, reimbursement of costs



for business trips abroad, and participation in international conferences, exhibitions and other events.

Further, it shall be mentioned that according to the Regulation on Licensing of Settlements between Residents and Non-Residents in the Ukrainian currency approved by the Reso-

lution of the National Bank of Ukraine No. 484 on 14 October 2004 (last revised and amended on 21 September 2007), any settlements between Ukrainian residents and foreign ROs in Ukraine in both types of accounts shall be done in Ukrainian currency and without the special license of the National Bank.

## Liquidation

The procedure of liquidating foreign ROs in Ukraine is regulated under Instruction No. 30. According to its section 15, foreign ROs in Ukraine may be liquidated in the following circumstances:

- (a) liquidation of a foreign legal entity which has established an RO;
- (b) resolution of a foreign legal entity on liquidation of an RO;
- (c) termination of an agreement with a foreign country provided that the RO was established on the basis of such an agreement;
- (d) court judgment provided that the RO does not comply with the requirements of Ukrainian law.

In the event of liquidation, foreign ROs are obliged to deliver a notice of liquidation and respective reports to the Tax Department and social insurance

funds (if registered therewith) within 10 days.

Summarising the peculiarities of the registration of foreign ROs in Ukraine based on the last amendments to the respective Ukrainian laws and regulations, the following conclusions can be made:

1. The registration of foreign ROs in Ukraine may be done by the Ministry of Economy and the Tax Department independently. While the Ministry of Economy is authorised to register foreign ROs which do not carry out any business activities in Ukraine, the Tax Department must register those permanent foreign ROs which do carry out business. In practice, in spite of their status in Ukraine, all foreign ROs are forced to register both with the Ministry of Economy and the Tax Department. Otherwise, problems may occur during registration with



the Statistic Committee or social insurance funds, or when opening bank accounts.

2. Due to Ukraine's accession to the World Trade Organisation on 16 May 2008, foreign banks are now entitled to establish ROs in Ukraine which obtain a bank license with the

National Bank, enabling them to carry out bank activities.

3. Since 1 June 2006 foreign ROs must have previously registered with the Statistic Committee and obtained their EDRPOU identification number in order to be registered as a VAT payer.



**Volkov Koziakov & Partners  
Law Firm**

72a, Chervonoarmiyska Street  
Olimpiysky Business Center, Suite 124  
Kyiv 03150 Ukraine

tel. +380 (44) 207 0270 fax +380 (44) 207 0272  
e-mail [office@vk-partners.com](mailto:office@vk-partners.com) <http://www.vk-partners.com>