

Legal Alert

9 June 2020

De-shadowisation of agricultural production: introduction of the imposed tax liability

The existence of a shadow agricultural land leasing market negatively impacts on the economic situation of Ukraine due to the underpayment of taxes.

The Draft Law of Ukraine “On Amendments to the Tax Code of Ukraine and Other Legislative Acts of Ukraine on De-Shadowisation of Agricultural Production” No. 3131 dated 27.02.2020 (hereinafter – the Draft Law No. 3131) proposes the introduction of the effective mechanism – a minimum estimated tax (imposed tax liability), which, according to the authors of Draft Law No. 3131, will prevent the concealment of income from and evasion of taxes on agricultural land leases and the sale of agricultural products. This will help to create fairer competition between agricultural businesses.

It is expected that the introduction of the imposed tax liability mechanism will help to bring the agricultural land leases and agricultural production out of the shadows, in particular, will lead to the increased tax revenues for the national budget due to such de-shadowisation.

KEY ISSUES:

- The imposed tax liability and the total tax liability
- How is the imposed tax liability calculated?
- For which subjects of taxation is the calculation of the imposed tax liabilities mandatory?
- What is the form and content of the application/attachment for the total tax liability calculation?
- Who determines the total imposed tax liabilities of the subjects of taxation?
- What are the deadlines for accrual of imposed tax liabilities by the responsible body?
- What if the subject of taxation disputes the calculations of the supervisory authority?
- What is the procedure for calculating the imposed tax liability in case of transfer of ownership rights or acquisition of rights to use the land plot?

We have analyzed Draft Law No. 3131, and below have highlighted the main issues regarding tax liabilities.

1. The imposed tax liability and the total tax liability in accordance with the Draft Law No 3131

- **The imposed tax liability** – the minimum tax liability of an individual or legal entity – owner, permanent user, user on other terms, tenant (including emphyteusis) of the agricultural land plots (except for non-agricultural land plots), land shares (units), both allocated and not allocated in kind, except for the exceptions provided by the Code;
- **The total imposed tax liability** – the amount of tax liabilities calculated for each of the land plots owned by one owner and/or used by him on a lease (emphyteusis) or other use.

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2. How is the imposed tax liability calculated for the tax (reporting) year?

The tax liabilities are calculated by the formula:

$$ITL = NMV \times S \times 0,05 \times M / 12$$

where:

ITL – imposed tax liabilities

NMV – normative monetary value of the land plot (1 ha);

S – area of the land plot (ha);

M – number of full calendar months for which tax liabilities are calculated for the land plot.

3. For which subjects of taxation is the calculation of the imposed tax liabilities mandatory?

- Entities – owners
- Permanent users
- Tenants (emphyteusis lessee) of land

They are obliged **to submit annually**, together with their annual tax return, an application / attachment with the calculation of the total tax liability.

4. What is the form and content of the application/attachment for the total tax liability calculation?

The attachment form containing the calculation of the total imposed tax liability (hereinafter referred to as the Attachment) is approved by the central executive body, which ensures the formation and implementation of state financial policy, which in this case is the Ministry of Finance of Ukraine.

The following shall be indicated in the Attachment:

- The normative monetary valuation of the land plots and their area;
- The total amount of imposed tax liabilities;
- The amount of taxes and other payments, related to the production and sale of its own agricultural products and/or lease of land plots, paid by the taxpayer for the tax (reporting) year;
- The difference between the amount of the total imposed tax liabilities and the paid taxes and other payments of the taxpayer;
- The cadastral numbers of the land plots based on which the tax liabilities are imposed.

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In case of errors in the calculation of the tax liability amount, the supervisory authority is obliged to cancel the tax notice-decision and send to the taxpayer a new tax notice within 10 days of the audit being completed.

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5. Who determines the total imposed tax liabilities of the subjects of taxation?

- The Supervisory authority, if the income from the sale of agricultural products is obtained exclusively from taxpaying entities;
- The Supervisory authority, if the taxpayer receives income from the sale of his own agricultural products from persons who are not taxpaying entities, and the annual tax return is not submitted within the prescribed time frame;
- Individual taxpayers shall **independently** determine in their attachment to the annual tax return if the incomes from the sale of their own agricultural products are received by them from persons who are not taxpaying entities.

6. What are the deadlines for accrual of imposed tax liabilities by the responsible body? How will one be notified of such accruals?

The tax liabilities of individuals are accrued **until July 1** of the year following the reporting year.

A tax notice (decision) on the payment of annual tax liabilities for personal income tax will be sent to the subject of taxation. It will be calculated by taking into account the total imposed tax liabilities, and should be paid within the time period specified by the Tax Code of Ukraine.

7. What if the subject of taxation disputes the calculations of the supervisory authority?

Until August 15, 2020, the subject of taxation has to apply to the supervisory authority in order to verify the data used to calculate the amount of personal income tax, taking into account the total imposed tax liability.

In case of errors in the calculation of the tax liability amount, the supervisory authority is obliged to cancel (revoke) the tax notice-decision and send (provide) to the taxpayer a new tax notice **within 10 days of the audit being completed**.

8. What is the procedure for calculating the imposed tax liability in case of transfer of ownership rights or acquisition of rights to use the land plot?

- For the previous owner or user during the calendar year
The imposed tax liabilities for the land plots shall be calculated **for the period from January 1 of that year to the beginning of the month in which the ownership rights to such land plots ceased, or in which such land plots are transferred for use (lease, emphyteusis, sublease).**
- For a new owner or user
The imposed tax liability for the land plots shall be calculated **beginning from the month in which he acquired the rights of ownership or use** and shall be accounted for as part of the total imposed tax liabilities for each of these owners or users.

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