



**Tetyana Prokopchuk**

**Tetyana Prokopchuk**, Vice President of the American Chamber of Commerce in Ukraine. Her areas of competence include, in particular, strategic B2G direction of the AmCham activities, policy, and advocacy of member companies' interests at the highest level. She has been a part of AmCham Ukraine team for more than ten years.

## Doing Business in Wartime Ukraine

The American Chamber of Commerce is Ukraine's leading international business association that has been serving 600+ members in Ukraine since 1992, delivering the shared voice of best-in-class US, international, and Ukrainian companies, who invested over \$50 billion in Ukraine and remain committed to the country.

Companies operating on the ground are true business heroes – brave, united, and resilient. They continue to pay taxes, create jobs, invest, rebuild communities, support the humanitarian drive, and deliver essential modern services.

According to our latest survey conducted jointly with Citi Ukraine – 84% of members are fully operational after 1.5 years of Russia's full-scale war in Ukraine. 72% of businesses will achieve planned financial results in 2023.

At the same time, as Russia continues to bomb residential buildings, schools, hospitals, and Ukraine's civilian infrastructure, the safety and security of staff remain the number one priority for businesses operating on the ground in Ukraine. 49% of companies' plants and facilities have been damaged.

Despite these horrors, the mood on the ground in Ukraine remains remarkably resilient, and the spirit of business is undaunted. Since the beginning of the full-scale war, 133 new members have joined AmCham Ukraine. Companies are building upbeat plans for Ukraine's rebuilding: 74% plan to create jobs for Ukrainians in existing projects, and 63% plan to invest in new projects or plants. Members see opportunities in such spheres as security and defense, infrastructure and construction, agriculture, IT and technologies, energy and renewables, and high-tech production.

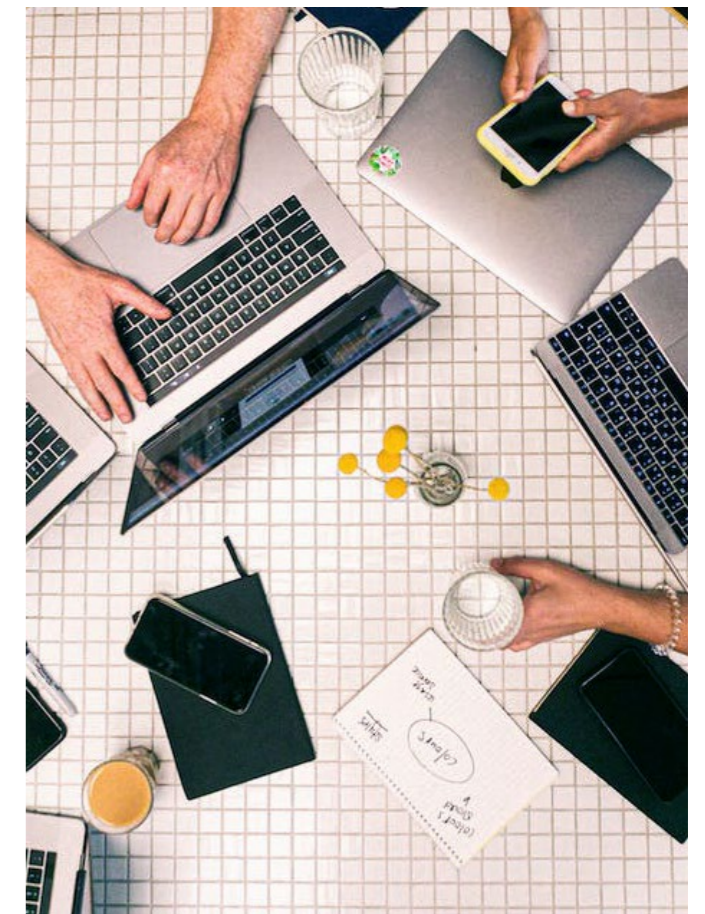
From day one of Russia's full-scale invasion of Ukraine, the AmCham team has been providing support to member companies, escalating pressing issues to the top of the Ukrainian Government, and working together with international partners. AmCham B2G platform, represented by 24 policy committees, covers almost all sectors of Ukraine's economy. Our Legal Committee is one of the most active and, to date, unites over 1,000 top-class lawyers who are actively engaged in legislative initiatives. The Tax Committee is one of the oldest within AmCham and advocates for a predictable and attractive tax regime for bona fide investors.

As Ukraine's recovery is on top of our agenda, AmCham developed 10 priorities for Ukraine's economic recovery – key strategic policy milestones for economic transformation, ease of doing business, and attracting investors. The team works closely with the President, Parliament, and Government to move the reform agenda forward, contributing to Ukraine's economic resilience as well as recovery and transformation.

On a separate note, we have an active dialogue with the US International Development Finance Corporation (DFC), the Multilateral Investment

Guarantee Agency, which is a part of the World Bank Group, and other key stakeholders on a broad political (including war) risk insurance coverage and other financial opportunities available for investors. For instance, earlier this month, the Ministry of Economy of Ukraine informed that DFC approved five new projects in Ukraine in the last quarter of the US Government's 2023 fiscal year, spanning from July 1 to September 30, 2023, with a total value of more than \$380 million USD to support food security, small businesses, health systems, and international trade.

Our message is clear – Ukraine is open for business. It is risky to invest in Ukraine right now, but it's riskier not to invest. We have many examples of companies that successfully operate in Ukraine. It's a risk-and-reward model in action during the largest rebuild since World War II.







### **Sergiy Grebenyuk**

**Sergiy Grebenyuk**, Co-Chair of the Legal Committee at the American Chamber of Commerce in Ukraine, Partner, Criminal Law, Asters. He focuses on representing clients facing criminal cases and court procedures. He also has extensive experience in legal security for businesses, internal corporate investigations of possible violations, anti-corruption and compliance issues.



### **Mykhailo Poliakov**

**Mykhailo Poliakov**, Co-Chair of the Tax Committee at the American Chamber of Commerce in Ukraine, Deputy Director for Corporate Affairs at Philip Morris Ukraine. He is an expert on Tax policy with more than 20 years' experience working for the Government and international business. Co-Chair of the AmCham Ukraine Tax Committee since 2019.

#### **Legal and Taxation Aspects in Spotlight**

The legal industry has shown remarkable resilience by supporting businesses that needed immediate action and professional advice. Ukraine managed to maintain a relatively stable operation of law enforcement and judicial authorities on controlled territories.

The full-scale invasion partially hindered the activities of the law enforcement and judicial authorities at the beginning. For instance, the activity of Kyiv courts dropped significantly in March-April 2022 as the latter handled only urgent cases, but the normal mode of work was gradually resumed after Russian troops withdrew from the suburbs of Kyiv. The courts on territories not directly endangered by the close

presence of Russian forces did not interrupt their work at all or promptly resumed it.

Despite the overwhelming workload due to piling up investigations related to war, the law enforcement authorities keep adjusting to the ongoing armed aggression and addressing challenges triggered by it via amendments to procedural legislation, establishing new departments within existing bodies, creating interdepartmental investigative groups, etc. Some law enforcement authorities (such as the National Anti-Corruption Bureau) have even shown outbursts of activity in recent times.

Thus, businesses involved in criminal proceedings, either due to allegations of wrongdoing or as a victim of a crime, may expect

the level of activity of the said authorities to be similar to the one before the full-scale invasion.

Certain amendments to criminal procedural legislation aimed at easing requirements on the law enforcement authorities in the course of pre-trial investigations were implemented, but we don't observe abuse of such measures or implementation of extreme special justice measures for military needs.

The start of full-scale military aggression led to the introduction of new legal tools to block, investigate, and confiscate business assets related to Russia and their active application in practice. This includes a new sanction in the form of the seizure of assets in favor of the Ukrainian state (applied by the Higher Anti-Corruption Court of Ukraine); forced seizure of property with Russian traces for the sake of public needs (via the decision of the National Security and Defense Council of Ukraine confirmed by the President); establishing criminal liability for certain forms of cooperation with Russia or its related persons (i.e. "collaborative activity"<sup>1</sup>, "accessory to the aggressor state"<sup>2</sup>).

Despite armed aggression, the institutions involved in the protection of business being threatened by actions or inactions of the state authorities continue to operate. Those include the Business Ombudsman Council (an independent institution countering malpractice against businesses), the Department of Criminal Law Policy and Investments Protection within the Prosecutor General's Office (facilitating dialogue between prosecution bodies and businesses, with powers to address issues of illegal interference with business activities), business associations.

Thus, in case of ungrounded pressure or violations towards business within criminal proceedings or other procedures, the business

has working venues for voicing its concerns and chances to receive effective assistance.

In general, the Ukrainian judicial and law enforcement system operates in a manner similar to the one prior to the full-scale invasion. Surely with its flaws and residual problems, but definitely without tilt to "special measures for wartime".

Introducing a predictable and attractive tax regime for job creators and bona fide investors is also among AmCham's 10 Priorities for Ukraine's post-war economic recovery.

Despite the ongoing military action, on March 24, 2023, Ukraine and the International Monetary Fund signed a Memorandum on Economic and Financial Policies (Memorandum). The Memorandum, among other things, provides for the restoration of the pre-war structure of the most important components of tax policy and administration.



*"In general, the Ukrainian judicial and law enforcement system operates in a manner similar to the one prior to the full-scale invasion".*

To meet this requirement, the Law "On Amendments to the Tax Code of Ukraine and Other Laws of Ukraine Regarding the Specifics of Taxation during the Martial Law" #3219-IX (Law 3219) was adopted and entered into force on August 1, 2023.

Law 3219 provides for changes to the preferential treatment of taxpayers that was introduced during COVID-19 and continued during the martial law. The main changes of Law 3219 are the following:

- Almost all deadlines stipulated by the Tax Code are restored, some of which were stopped as early as March 2020.
- The regulatory authorities' right to conduct scheduled inspections of taxpayers engaged in business activities with excisable goods, gambling and financial/payment services is restored.
- The regulatory authorities' right to conduct documentary unscheduled inspections of taxpayers during the martial law is expanded.
- Additional rules for imposing liability on taxpayers are introduced;
- 2 percent turnover tax for businesses is abolished.

In addition to the mentioned, the Draft Law #10016-d was adopted in the first reading on October 17, 2023. It provides for the expansion of the range of business entities in relation to

which it is allowed to conduct documentary scheduled inspections. Thus, the businesses that for 2021 had a level of profit tax payment less than 50% among the industry may be included. Entrepreneurs who had value-added tax for 2021 less than 50% among the industry and those who had annual income of more than UAH 10 million with total expenses of more than 75% of the amount of annual income are also at risk. In addition, the inspections are to be restored for businesses that have twice as many receivables as payables.

Another legislator's initiative is the reform of the Economic Security Bureau of Ukraine (ESBU). Therefore, the Parliamentary Committee on Finance, Tax and Customs Policy recommended adopting as a basis the Draft Law #10088-1, which provides for the following:

- The announcement of a new competition for the position of Director of the ESBU by the Cabinet of Ministers.
- Organization of a new transparent competition for the position of the head of the ESBU (with preferential participation of international experts in the competition commission, following the practices of the National Anti-Corruption Bureau and the National Agency for the Prevention of Corruption).
- Attestation of the current staff of the ESBU. It is proposed that this attestation should be carried out during the year in accordance with a procedure to be approved by the

Director of the ESBU. Its purpose is to assess professional competence, knowledge and skills, professional ethics, integrity, and conflict of interest.

It is worth noting that the Memorandum does not stipulate requirements for changes in Ukrainian tax legislation. At the same time, on June 23, 2022, the European Council officially granted Ukraine the status of a candidate for membership in the European Union, and one of the requirements for Ukraine's membership in the EU is the harmonization of Ukrainian and European legislation, including in the context of tax policy. Hence, taking into account Ukraine's European integration aspirations and the need to adopt the best international practices in the field of taxation, it is worth considering the EU experience, for example, in differentiating the level of excise tax on tobacco products such as cigarettes and heated tobacco products (HTP) within the EU.

According to a study by one of the most reputable Ukrainian analytical centers, Growford Institute, "The Excise Policy in the Field of

Tobacco Products and Illegal Trade Prevention in the Face of New Challenges and Threats"<sup>3</sup>, published in 2023, the excise tax for HTPs in the European Union is significantly lower than the minimum excise tax liability for cigarettes. Among the 18 EU countries analyzed, the ratio of the excise tax burden on HTPs to cigarettes in 2023 ranged from 82.5% in the Netherlands to 14.9% in Hungary. In 7 EU countries, the excise tax for HTPs was at least 4 times lower than the minimum excise tax liability for cigarettes, and in only one country the ratio was less than 2 times.

There is a lot of discussion in Ukraine regarding the implementation of the best international practices in the tax sphere, and therefore it should be noted that Ukraine needs to take into account the experience of the EU countries on excise taxation when harmonizing legislation.

1. Part 4 of Art. 111-1 of the Criminal Code of Ukraine
2. Art. 111-2 of the Criminal Code of Ukraine
3. Growford Institute: Excise policy in the field of tobacco products and illegal trade prevention in the face of new challenges and threats, 2023. Read more [HERE](#).

