



Citizen of Ukraine on the territory of Poland

Starting up and running a business (legal and tax aspects)



Dear Sirs,

Due to the events that will take place on the territory of Ukraine starting from 24 February 2022, we receive more and more questions related to the possibility of conducting business activity by citizens of Ukraine on the territory of Poland. To meet the expectations, we decided to collect the most frequently asked questions and present them to you in the form of questions and answers (Q&A).

CAN A CITIZEN OF UKRAINE PERFORM SOLE PROPRIETORSHIP IN POLAND?

The establishment and continuation of sole proprietorship by a citizen of Ukraine on the territory of Poland on the same principles as Polish citizens is possible, although it depends on the fulfilment of one of the premises legalizing the stay on the territory of Poland. These conditions include:

- permanent residence permit,
- temporary residence permit granted in specific cases,
- refugee status,
- subsidiary protection (a type of protection granted to foreigners who do not meet the conditions for granting the refugee status, e.g. in a situation when returning to the country of origin could expose such a person to a life or health threat resulting from widespread use of violence against civilians),
- permit for humanitarian reasons,
- permit for tolerated stay,
- a temporary residence permit and staying in a marriage contracted with a Polish citizen residing on the territory of the Republic of Poland
- a temporary residence permit for the purpose of carrying out economic activity granted due to continuation of already conducted economic activity, on the basis of an entry in the Central Business Register and Information on Business Activity.

In addition, the freedom of economic activity may be exercised by citizens of Ukraine, who use temporary protection in the territory of the Republic of Poland, or have a valid Pole's Card.

THE POLE'S CARD– WHAT IS IT?

The Pole's Card is a document confirming belonging to the Polish Nation, but it should be remembered that it does not mean having Polish citizenship.

- The Pole's Card may be obtained after meeting specific conditions, such as, among others: (i) demonstrating a basic knowledge of the Polish language and (ii) proving a connection to the Republic of Poland by making an appropriate declaration.
- The Pole's Card is valid for 10 years.
- Holders of the Pole's Card are entitled to exemption from the obligation to hold a work permit and to take up and pursue economic activity on the same principles as Polish citizens.

HOW CAN A CITIZEN OF UKRAINE ESTABLISH A BUSINESS IN POLAND?

In order to be able to conduct business activity in the territory of the Republic of Poland, it is necessary to register it beforehand. The very process of establishing a "company" basically comes down to filling out an appropriate form, which requires providing such data as: address of residence, company data, type of business activity defined by appropriate PKD codes (Polish Classification of Activities), address for delivery, permanent place of business activity, additional permanent place of business activity, information about the institution where the entrepreneur will be subject to insurance, data of the appropriate tax office, selection of the form of taxation, form of business activity (whether individual or in the form of a civil partnership) and others.

The application for registration of a sole proprietorship can be submitted online or in person at any city or municipal office. The application is free of charge.

In order to use the possibility of online business registration, a citizen of Ukraine should obtain a PESEL number and then create the so-called Trusted Profile, with the help of which it will be possible to register the business in the Central Register and Information on Business Activity.

The commencement of the economic activity may take place from the moment of its registration or from any other date indicated in the registration application.

ARE ANY OTHER STEPS REQUIRED IN ADDITION TO SUBMIT A REGISTRATION APPLICATION?

In addition to registering your business in the Central Business Register and Information on Business Activity, it is necessary to:

- register with the Social Insurance Institution,
- register as a VAT payer.

You should also not forget about securing a title to the premises where you run your business (lease agreement) and opening a bank account. Due to the complexity of Polish tax regulations, it is recommended to use an accounting office that will essentially do these activities for you (make the right declarations, calculate taxes, etc.).

Once you have reported the entrepreneur to the relevant Tax Office (VAT), you should expect a visit from an official to confirm the fact that you are doing business at the address indicated.

CAN A CITIZEN OF UKRAINE OPEN A COMPANY BANK ACCOUNT IN POLAND?

In principle, there are no obstacles for a citizen of Ukraine to open a business bank account. In order to do so, it seems necessary to appear in person at the bank branch of your choice with the necessary documents. Due to differences in the documents required to open such an account, we suggest contacting the bank of your choice for more detailed information on the requirements of a specific bank. These should be documents such as an identity document (usually a passport) and a proof of establishment in the form of a printout. However, it is also advisable to be provided with a relevant document indicating the legal basis of the entrepreneur's stay in the territory of the Republic of Poland.

Due to the current situation in Ukraine, some banks have started to introduce a package of facilitations for Ukrainian citizens, offering, among others, service in the Ukrainian language.

CAN A CITIZEN OF UKRAINE ESTABLISH A COMPANY IN POLAND?

A citizen of Ukraine may undertake and carry out in the territory of the Republic of Poland the following types of business activity: **limited partnership, limited joint-stock partnership, limited liability company, joint-stock company and simple joint-stock company**. Under the generally applicable provisions of Polish law and international agreements concluded between Poland and Ukraine, a citizen of Ukraine may undertake this type of business activity without any limitations.

Before choosing a particular commercial company to do business with, you should analyze your business plan in detail, assess the risks and familiarize yourself with the costs of setting up and continuing to run the chosen company (including tax issues).

WHAT ARE THE MAIN DIFFERENCES BETWEEN COMPANIES?

As already mentioned, each of the companies differs in terms of the formalities of its establishment and operation, the liability of individual partners and the costs of running it.

If an entrepreneur cares about his personal safety as a partner, then it may be reasonable to choose a limited liability company. In such a company, as a rule, partners are not liable with their own assets for the company's obligations (with the exception of a situation where a partner is simultaneously a member of the company's management board and the prerequisites for recognizing the subsidiary liability of such a board member have been met).

On the other hand, if the entrepreneur, due to the specificity of the industry in which he is to operate, is not afraid of personal liability as a partner of the company, then due to the simplicity of the company's operation, it is possible to consider a limited partnership.

Irrespective of the above, it should be remembered that a decision to start conducting business in the form of a commercial partnership requires detailed economic and strictly business-related analysis. In most of the indicated companies (except for the limited partnership) it is necessary to keep full accounting, which significantly increases the costs of conducted activity.

HOW TO SET UP A COMPANY?

There are two ways to set up the companies mentioned above. The "traditional" way and the electronic way.

The traditional way is directly connected with a visit to a notary where the company is incorporated, after which it must be registered electronically with the National Court Register (through the court register portal).

If time is a priority, it is possible to use a faster way of establishing a company by way of the so-called S24 registration, where, as a rule, one uses a provided template agreement/statute, into which relevant data is entered. However, this solution does not allow for free shaping of the document due to built-in system limitations. In order to use the S24 system it is necessary to have a qualified electronic signature or a trusted ePUAP profile.

I ALREADY HAVE A COMPANY, WHAT'S NEXT?

Registration of a company is in fact the first step leading to the performance of business activity in this form in the territory of the Republic of Poland. It should be remembered, however, to take care of the legal title to the premises where the company will conduct its business activity (lease agreement), to provide the company with a bank account that will enable settlements with contractors, to register the company as a VAT payer and, if necessary, to notify relevant persons to the Central Register of Real Beneficiaries (CRBR).

The CRBR is a system that collects and processes data on individuals who directly or indirectly control a company (so-called beneficial owners).

As in the case of a sole proprietorship, once the company has been declared to the relevant Tax Office (VAT), you should expect a visit from an official to confirm that the company is doing business at the address indicated.

IS IT POSSIBLE TO TRANSFER A BUSINESS FROM UKRAINE TO POLAND?

At the beginning it should be indicated that the concept of "transferring" a business/activity from the territory of Ukraine to Poland, depending on the type of conducted activity, may have a material or non-material character. In some situations, it may be sufficient to establish a new entity in the territory of Poland and to transfer to this entity the rights and obligations arising from specific contracts connecting the Ukrainian entrepreneur with its business partner, while in other situations it will be necessary to transfer the entire physical infrastructure of the enterprise.

Before deciding to take such a step, it is necessary to consider whether such a "transfer" is necessary and whether it will generally be profitable. Finally, it should be considered which specific elements/assets of the enterprise are so important to us that they would require transfer into the territory of the Republic of Poland. For this purpose, a detailed verification of the entrepreneur's assets (including intangible and legal assets) should be made, which contracts the entrepreneur remains bound by, whether it is possible to transfer all rights and obligations arising from these contracts to another entity, or whether it will be necessary to terminate them and conclude them with a newly established entity in the territory of Poland, etc. Finally, the manner in which such transfer would take place should be considered. Due to the complexity of such analysis, we advise against doing it yourself.

WHAT IS THE "POLAND BUSINESS HARBOUR" PROGRAMME?

Poland Business Harbour (PBH) is defined as a complementary set of tools and services, promoting building success of foreign IT specialists in the territory of the Republic of Poland, based on knowledge, modern standards and close trade relations with neighbors and the world. The PBH visa programme assumes that residents of countries such as Belarus, Armenia, Georgia, Moldova, Russia and **Ukraine** can apply for an accelerated and generally preferential visa pathway. Importantly, the PBH visa is the only one that allows new technology professionals to apply together with their families, take up employment without the need to obtain a work permit first, and **set up a business on the same basis as Polish citizens.**

TO WHOM IS POLAND BUSINESS HARBOUR DEDICATED?

Poland Business Harbour (PBH) is essentially dedicated to three groups of representatives of the new technology industry:

- IT specialist
- Startup
- Small, medium, large IT company

WHAT DO I NEED TO DO TO GET THIS TYPE OF VISA AS AN IT SPECIALIST?

In order to apply for a PBH visa, you must present:

- a completed and signed national visa application form with photo,
- an invitation from the partner company listed on <https://www.gov.pl/web/poland-businessharbour> along with one of the two documents:
 - a document certifying technical education (ICT), or
 - a document certifying one year's experience in the ICT sector
- a valid passport which has been issued within the last 10 years, has at least two blank pages and expires no sooner than three months after the expiry date of the visa,
- travel medical insurance valid for the period of the visa validity (unless the Ukrainian citizen will have an insurance in Poland that entitles him to medical services financed from public funds)

If you are applying for a visa with your family (spouse, dependent children), for minors you must provide :

- an application for a national visa signed by the child's parents (legal guardians) or one of the parents if only that parent has parental responsibility. If only one parent/legal guardian of the child is applying for a visa with a PBH endorsement, the other parent's written, notarized consent to the visa application must be submitted. If there is only one legal guardian, this should be documented by submitting a birth certificate, a court decision awarding sole parental authority or a death certificate of the other parent
- parents' passports - original (for inspection) and a copy,
- the child's birth certificate - the original (for inspection) and a copy.

WHAT DOCUMENTS DO I NEED TO ATTACH TO MY VISA APPLICATION IF I AM A STARTUP FOUNDER?

In order to apply for a PBH visa with a recommendation from the Polish Agency for Enterprise Development you must provide:

- a completed and signed application for a national visa with a photograph,
- information about qualifying for the "Poland Prize" programme
- valid passport, which was issued within the last 10 years and has at least two blank pages, and its validity period expires no earlier than 3 months after the visa validity period,
- travel medical insurance valid for the period of visa validity (unless the Ukrainian citizen will have insurance in Poland, entitling him to medical services financed from public funds)

If you are applying for a visa with your family (spouse, dependent children), for minors you must provide:

- an application for a national visa signed by the child's parents (legal guardians) or one of the parents if only that parent has parental responsibility. If only one parent/legal guardian of the child is applying for a visa with a PBH endorsement, the other parent's written, notarized consent to the visa application must be submitted. If there is only one legal guardian, this should be documented by submitting a birth certificate, a court decision awarding sole parental authority or a death certificate of the other parent
- parents' passports - original (for inspection) and a copy,
- the child's birth certificate - the original (for inspection) and a copy.

WHAT ABOUT SMALL, MEDIUM AND LARGE IT COMPANIES?

In order to apply for a PBH visa with a recommendation from the Polish Investment and Trade Agency you must provide:

- a completed and signed application for a national visa with a photograph,
- information about being qualified for the program by the Polish Investment and Trade Agency (PAIH),
- valid passport issued within the last 10 years, with at least two blank pages, and its validity period expires no earlier than 3 months after the visa expiry date,
- travel medical insurance valid for the period of visa validity (unless the Ukrainian citizen will have insurance in Poland entitling him to medical services financed from public funds)

If you are applying for a visa with your family (spouse, dependent children), for minors you must provide:

- an application for a national visa signed by the child's parents (legal guardians) or one of the parents if only that parent has parental responsibility. If only one parent/legal guardian of the child is applying for a visa with a PBH endorsement, the other parent's written, notarized consent to the visa application must be submitted. If there is only one legal guardian, this should be documented by submitting a birth certificate, a court decision awarding sole parental authority or a death certificate of the other parent
- parents' passports - original (for inspection) and a copy,
- the child's birth certificate - the original (for inspection) and a copy.

WHERE WILL A UKRAINIAN CITIZEN RUNNING A SOLE PROPRIETORSHIP IN POLAND AND PRACTICING AS AN ENGINEER BE TAXED?

As a rule, a person who pursues activity as a liberal profession or other activity of an independent nature is taxed at the place of residence. If, despite the fact that he does not reside in Poland, he has a permanent place of business here, e.g. an office, then the income connected with that place of business will be taxed in Poland. A liberal profession is also e.g.: independently performed scientific, literary, artistic, educational or teaching activity, as well as independently performed activity of doctors, lawyers, architects, dentists and accountants.

A citizen of Ukraine may tax his/her income according to the same rules as Polish citizens, i.e. according to the 17% or 32% tax scale or opt for a flat tax of 19%, and in cases provided for by the law - for a lump-sum tax on registered income, where the rate depends on the scope of services provided (2-17%).

WHERE WILL A UKRAINIAN CITIZEN RUNNING A SOLE PROPRIETORSHIP IN POLAND BE TAXED?

In the case of a citizen of Ukraine conducting one-person business activity in Poland, the country which will be entitled to tax the obtained income is Poland.

The citizen of Ukraine may tax their income according to the same principles as Polish citizens, i.e. according to the 17% or 32% tax scale or opt for a flat tax of 19%.

While registering his business activity the citizen of Ukraine should choose one of the available forms of taxation. The choice of the 19% tax scale makes it impossible to settle jointly with a spouse and to take advantage of tax allowances.

WHERE WILL THE ACTIVITIES OF THE UKRAINIAN COMPANY - INCOME TAX PAYER (THROUGH A BRANCH IN POLAND) BE TAXED?

The existence of a permanent establishment of the taxpayer in the source state will be decisive in determining the place of taxation of revenues (income) earned by the Ukrainian company. A company with its registered office in Ukraine conducting activity in Poland will, as a rule, be subject to taxation in the country of its registered office.

On the other hand, Poland will have the right to tax profits earned by an enterprise from Ukraine, provided that this enterprise will conduct its activity in the territory of Poland in the form of a permanent establishment. Otherwise, the income of the Ukrainian enterprise will have to be taxed in the country of its registered office.

A (foreign) enterprise, according to the OECD Model Convention, includes the conduct of any economic activity, including the exercise of a liberal profession and other activities of an independent nature.

A permanent establishment, on the other hand, means a fixed place of business through which the activities of an enterprise are wholly or partly carried out. An establishment also means a place of production.

In practice, the determination whether a taxpayer conducts business activity abroad by means of a permanent establishment always requires an individual assessment of the specific factual situation against the background of the provisions of the double tax treaty.

IS A UKRAINIAN ENTREPRENEUR OBLIGED TO PAY VAT IN POLAND?

As a rule, entities conducting activities subject to VAT in Poland must register for this tax.

VAT taxpayers are obliged to submit a registration notification to the head of tax office before the date of performing the first activity (paid supply of goods, paid provision of services, export and import of goods, WNT, WDT).

It should be noted that the definition of a VAT taxpayer covers both entities with their registered office or place of residence in Poland and entities with their registered office or place of residence outside the territory of the country.

It means that a foreign entrepreneur conducting activity in Poland, within the framework of its branch, may be subject to the obligation to submit a VAT notification.

In order to do so, you shall submit the NIP-2 identification notification and VAT-R registration notification to the competent tax office with respect to the address of the registered office or permanent place of business activity.

WHERE WILL A UKRAINIAN CITIZEN EMPLOYED BY A POLISH EMPLOYER OR CONTRACTOR BE TAXED?

The remuneration of a person with the status of a tax resident of Ukraine (Polish non-resident) for work performed in Poland will be taxed in Poland.

Non-residents are persons who do not have a place of residence in Poland within the meaning of tax regulations.

Such persons are subject to limited tax liability, which means that only their income earned in Poland is subject to taxation.

In turn, a person who resides in the Republic of Poland is a natural person who:

- 1) has a centre of personal or economic interests (centre of life interests) in the territory of the Republic of Poland, or
- 2) stays in the territory of the Republic of Poland for more than 183 days in a tax year.

In the case of being considered a Polish tax resident, such a person will be subject to tax liability on all of his/her income (revenues) regardless of the location of the sources of revenue (unlimited tax liability).

IS THE UKRAINIAN CITIZEN EMPLOYED IN POLAND COVERED BY THE POLISH SOCIAL SECURITY SYSTEM?

Natural persons who are employees in the territory of the Republic of Poland are subject to compulsory pension and disability insurance (Article 6(1)(1) of the Act on Social Insurance System).

The provisions of this Act do not make Polish insurance coverage dependent on citizenship, place of residence, stay, etc.

When deciding whether a Ukrainian citizen will be covered by social insurance, titles to insurance established in Poland are taken into account.

Therefore, in order to be covered by insurance, it is essential to conclude an employment contract or another contract with a Polish employer which, according to the law, entails the obligation of social insurance and to perform work under these contracts in the territory of Poland.

ARE THERE SPECIAL PROVISIONS FOR THE TAXATION OR LEVY OF REFUGEES FROM UKRAINE?

At the moment there are no specific provisions on taxation or social security for refugees from Ukraine.

However, work is underway on a special law aimed at creating a specific legal regulation providing an ad hoc legal basis for the legal stay of foreigners, in particular those holding Ukrainian citizenship, who as a result of war operations were forced to leave their country of origin and entered the territory of the Republic of Poland holding an appropriate entry permit.

The proposed act determines, among others, specific rules of employing Ukrainian citizens legally residing in the territory of the Republic of Poland.

According to the government's announcements, the act will also include special tax solutions regarding the situation of people from Ukraine, as well as the possibility for companies to settle expenses related to the provided assistance in tax costs.

IF YOU HAVE ANY QUESTIONS, PLEASE DO NOT HESITATE TO CONTACT US



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