# Overview of Compliance of Ukraine Tax Legislation With the Requirements of the EU Directives

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***Abstract***. *The article is devoted to assessing Ukraine's commitments regarding the harmonization of its tax legislation with the requirements of the European Union Directives. The study underscores the significance of this process as part of Ukraine's integration into the European economic area, highlighting the necessity of aligning national fiscal policies with EU standards to foster mutual trust, economic stability and sustainable development. The relevance of this topic stems from Ukraine's aspiration to deepen cooperation with the European Union and the strategic importance of adopting uniform tax regulations to ensure transparency, fairness and efficiency in taxation. The primary aim of the research is to identify the scope and evaluate the current status of Ukraine's legislative efforts in achieving compliance with EU tax directives. The methodological approach includes systematic analysis, comparative legal analysis and qualitative assessments. The results of the study reveal significant progress in Ukraine's legislative initiatives to align with EU directives, particularly in areas such as VAT and corporate profit tax. However, the research identifies several gaps where further alignment is required. Implementing certain EU directives may require amending other Ukraine legislative acts. In particular, implementing rules on arbitration processes may require amending the Constitution of Ukraine; implementing Directives on cross-border mergers of enterprises will require changes to civil legislation. The article's practical value lies in its potential to inform policymakers, civil servants and other stakeholders involved in the tax harmonization process about the current inconsistency with the requirements of the EU Directives and underline such discrepancies. Moreover, the insights provided can serve as a framework for developing strategic roadmaps aimed at bridging identified gaps and achieving full harmonization. The harmonization process is not solely a legal or technical endeavor. By aligning its tax system with EU standards, Ukraine can pave the way for increased foreign investment, improved business climates and enhanced trade relations.*

***Keywords:*** *fiscal policy, tax harmonization, European Union Directives, European integration, corporate profit tax, value added tax, excise duty.*
***JEL Classification:*** *E62, E63, H87*

## 1 Introduction

The Preamble to the Constitution of Ukraine clearly defines the irreversibility of Ukraine's European and Euro-Atlantic course (Constitution of Ukraine, 1996). The harmonization of tax legislation with EU requirements and standards is one of the mandatory elements of European integration. To date, the main EU legislation on taxation is represented by about 20 Directives, half of which relate to the administration of VAT and excise duty. In the course of further work on improving the budgetary and tax instruments used under martial law, the guidelines of these EU Directives have to be taken into account.

Various authors have already reviewed the compliance of certain provisions of the Tax Code of Ukraine (further – TCU) with the EU Directives. In particular, N. Holovai, S. Bei highlighted the main directions of harmonisation of the tax legislation of Ukraine with the requirements of the EU Directives (Holovai & Bei, 2024); Y. Gaidai studied certain issues of non-compliance of indirect taxes with the EU guidelines (CES, 2023); L. Kasianenko and N. Atamanchuk reviewed the differences in excise duty taxation (Kasianenko & Atamanchuk, 2020); A. Monaienko, N. Atamanchuk, M. Kuts made a detailed analysis of the compliance of excise duty on energy products with the requirements of the relevant EU Directive (Monaienko & Atamanchuk & Kuts, 2024). At the same time, further systematisation of the existing inconsistencies in all taxes with the requirements of the EU Directives, which are mandatory for implementation by Ukraine, seems to be advisable.

The novelty of this research lies in its comprehensive assessment of Ukraine's obligations to harmonize its tax legislation with the requirements of the European Union's tax directives. This topic is particularly relevant given Ukraine's ongoing European integration process and the increasing importance of aligning national fiscal policies with EU standards. The adoption of uniform tax regulations is a critical step in fostering economic stability, transparency and fairness, which are prerequisites for deeper cooperation between Ukraine and the EU.

The aim of this study is to evaluate the scope and implications of Ukraine's commitments to harmonize its tax laws with EU directives, with a focus on identifying existing gaps. The research tasks include analyzing the current state of Ukrainian tax legislation and assessing its compliance with EU directives. Particular attention is given to directives on corporate profit tax, VAT, excise duties and measures to combat tax evasion, as these areas represent both progress and ongoing challenges for Ukraine.

The methodology of this research is based on a combination of systematic analysis, comparative legal studies and qualitative assessments. The study also integrates a critical analysis of Ukraine's legislative framework, considering the unique challenges posed by martial law and the need for flexible fiscal policies.

The logic of presenting the research material is structured as follows: the introduction outlines the relevance, novelty and objectives of the study; the subsequent sections analyze the compliance of Ukrainian tax legislation with EU directives, focusing on specific areas such as direct and indirect taxation; and the conclusions summarize the findings.

In conclusion, the harmonization of Ukraine's tax legislation with EU directives is not only a legal obligation but also a strategic necessity for fostering economic growth, enhancing international cooperation and advancing Ukraine's European integration ambitions. By addressing the identified challenges and implementing the proposed solutions, Ukraine can make significant progress toward achieving these goals.

## 2 Analysis of Ukraine's tax legislation compliance with EU Directives on direct taxation

The main EU Directives concerning the calculation and payment of corporate income tax and general tax administration include the following:

1. Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States. The Directive provides the abolition of taxation of interest and royalty payments between associated companies of different Member States in the Member State where they arise and ensures that these payments are subject to taxation once in the Member States (Council Directive 2003/49/EC, 2003). TCU provides the payment of 15 % withholding tax on the payment of income to a non-resident in the form of interest or royalties. The tax rate may be reduced based on a valid double tax treaty. Ukrainian law does not provide a separate exemption from taxation of interest or royalties paid to related parties – EU resident. Accession to the Directive will result in additional losses of budget revenues.

2. Council Directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States. The Directive provides the exemption from taxation of dividends paid by subsidiaries to their parent companies and the elimination of double taxation of such income at the parent company level (Council Directive 2011/96/EU, 2011). The TCU provides the payment of 15 % withholding tax on income paid to non-residents in the form of dividends. The tax rate may be reduced based on a valid double tax treaty. Ukrainian law does not provide a separate exemption from taxation of dividends paid to a parent company resident in the EU. Accession to the Directive will result in additional losses of budget revenues.

3. Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market (ATAD Directive). The Directive provides the following approaches to combat tax evasion practices:

– restrictions on the deduction of interest. The rule provides restrictions on the deductibility of interest expenses in order to prevent tax optimization through the payment of excessive interest. The Directive limits the deductibility of interest at the level no more than 30 % of a taxpayer's EBITDA. In order to reduce the administrative burden without significantly reducing their tax effect, a safe harbor rule may be provided, according to which interest can tax deducted within a certain fixed threshold;

– taxation of capital gains on the disposal of assets. Capital gains taxes on the disposal of assets are designed to ensure that if a taxpayer moves its assets or tax residence outside the tax jurisdiction of a state, that state taxes the economic value of any capital gains generated in its territory, even if those gains have not yet been realized at the time of the move. Thus, the Directive describes the cases when taxpayers are subject to such rules, the mechanism for calculating and paying the tax;

– General anti-abuse rules (GAAR). GAAR rules are applied to combat tax abuses that have not been regulated by special provisions of tax legislation. GAAR used as a gap-filling measure that should not affect the application of specific anti-abuse rules. Within the EU, GAAR usually applied to artificial transactions;

– controlled foreign companies rules (CFCs). The CFC rules provide the redistribution of income of a controlled subsidiary in a low-tax country to the controlling person, which results in the taxation of this income in the country of residence of the controlling person. In order to reduce the administrative burden and compliance costs, tax exemptions for companies with low profits or low profitability might also be acceptable;

– rules on hybrid mismatches. Hybrid mismatches result from differences in the legal qualification of payments in two different jurisdictions. Such mismatches often result in double deduction (i.e. deduction in both states) or deduction of income in one state without inclusion in the tax base in the other. In order to neutralize the effects of hybrid mismatches, it is necessary to establish rules according to which one of the two jurisdictions in which the mismatch arose should refuse to deduct the payment that led to such a result (Council Directive (EU) 2016/1164, 2016).

It should be noted that the adoption of the Law of Ukraine "On amendments to the Tax Code of Ukraine on improving tax administration, eliminating technical and logical inconsistencies in tax legislation" № 466 dated 16.01.2020 introduced into Ukrainian legislation several concepts provided by the BEPS Action Plan developed by the OECD, in particular: limitation of interest deduction, rules for taxation of CFCs, etc. However, the implemented rules differ in many aspects from the approaches provided by the ATAD Directive, which, as a result, narrows the scope of its application and reduces the effect of their implementation.

4. Council Directive 2009/133/EC of 19 October 2009 on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different Member States and to the transfer of the registered office of an SE or SCE between Member States. The purpose of the Merger Directive is to eliminate fiscal obstacles to cross-border reorganizations involving companies located in two or more states, to defer the payment of taxes on income, profits, capital gains due to business reorganization and to protect the tax rights of Member States (Council Directive 2009/133/EC, 2009). It should be noted that currently the Civil Code of Ukraine does not allow cross-border reorganization of enterprises. Therefore, in order to implement this directive, appropriate changes should be made to the corporate legislation in the first place.

5. Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (90/436/EEC). The Convention provides the introduction of an arbitration procedure to avoid double taxation.

If the tax authorities of different states do not agree on the procedure for collecting tax on the income of a company with branches in the other states within 2 years from the date of the taxpayer's application, the decision is made by an advisory commission consisting of a chairman, 2 representatives of the disagreeing tax authorities and an equal number of independent members. The commission must provide a decision on the avoidance of double taxation in the case.

The Convention contains provisions on the relationship between the arbitration procedure and the use of remedies under the national law of the respective states, such as judicial or administrative proceedings (Convention 90/436/EEC, 1990).

6. Revised Code of Conduct for the effective implementation of the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (2009/C 322/01). The Code of Conduct defines practical aspects of the application of the Arbitration Convention, in particular for cases of triangular transfer pricing. The Code specifies the starting points for the three-year period for submitting a case to the competent state authority and the two-year period for establishing an advisory commission that will have to provide a decision on the elimination of double taxation. The Code defines the stages of the case consideration (list of independent persons, establishment of the advisory commission, functioning of the advisory commission, conclusion of the advisory commission). There are provisions related to collection of taxes and interest during the cross-border dispute resolution procedure (Code of Conduct 2009/C 322/01, 2009).

7. Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union. The Directive is a supplement to the existing dispute resolution mechanisms provided for by the EU Arbitration Convention and the provisions of bilateral double tax treaties (MAPs). The Directive was developed to address

the shortcomings identified in the application of the Arbitration Convention, in particular with regard to access to the procedure, as well as the duration and efficient completion of the procedure. The Arbitration Convention allows tax authorities to apply to arbitration. The Directive provides the binding nature of the final decision for international tax disputes within the EU, as well as the possibility of active participation of the taxpayer in the process (Council Directive 2017/1852, 2017).

Currently, Ukraine is not a party to the EU Arbitration Convention. Moreover, accession to the said Convention may contradict the Constitution of Ukraine.

8. Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC. Directive 2011/16 is a basic document on legal assistance in tax matters between EU countries, applicable to any taxes levied in EU member states at all levels, except for value added tax, customs duties, excise duties and social security contributions.

The Directive has been amended 6 times to strengthen administrative cooperation between Member States.

– Directive 2014/107/EU (DAC 2) introduced the automatic exchange of information on financial accounts (CRS);

– Directive 2015/2376/EU (DAC 3) on the automatic exchange of tax rulings and advance pricing agreements (APAs);

– Directive 2016/881/EU (DAC 4) on the automatic exchange of country-be-country reports between countries (CbCr);

– Directive 2016/2258/EU (DAC 5) on access to information on ultimate beneficial owners;

– Directive 2018/822/EU (DAC 6) on the automatic exchange of information on cross-border transactions subject to mandatory declaration;

– Directive 2021/514/EU (DAC 7) on the automatic exchange of information on income/turnover received by dealers (sellers) on digital platforms (Council Directive 2011/16/EU, 2011).

Ukraine has joined the automatic exchange of tax information under the CRS and CbCR standards, which are part of the Directive. In the future, Ukraine should also join the exchange of information on tax rulings, ultimate beneficial owners and cross-border transactions subject to mandatory declaration.

9. Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures. The Directive sets out the rules under which Member States shall provide assistance for the recovery of any tax arrears that arise in another Member State (Council Directive 2010/24/EU, 2010). As of today, such rules are absent in the tax legislation of Ukraine.

10. Council Directive (EU) 2022/2523 of 14 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union. The Directive establishes rules to ensure a minimum level of effective corporate taxation for large multinational groups. The Directive concerns the harmonization of approaches to the taxation of large international business groups in the digital economy and aims to counteract the erosion of the tax base (Council Directive 2022/2523, 2022). Ukrainian legislation does not contain the provisions of this Directive.

## 3 Analysis of Ukraine's tax legislation compliance with EU Directives on indirect taxation

The main EU Directives concerning the calculation and payment of indirect taxes (VAT and excise duty) include the following:

1. Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax. The Directive establishes a common VAT system in the EU. It provides, in particular, the general approach to VAT taxation, the tax base and objects, tax rates, the list of transactions exempt from taxation and other provisions related to VAT taxation of taxable entities of the Member States (Council Directive 2006/112/EC, 2006).

Currently, most of the provisions of the TCU have already been harmonized with the Directive. At the same time, some provisions still need to be clarified to achieve full compliance with the requirements of the Directive. In particular, the list of existing tax exemptions and cases of application of the reduced VAT rate need to be revised in order to cancel those that are not mandatory in the EU. It is also necessary to bring the functionality of the existing VAT administration systems in line with the requirements of the EU VAT regulations.

2. Thirteenth Council Directive 86/560/EEC of 17 November 1986 on the harmonization of the laws of the Member States relating to turnover taxes – Arrangements for the refund of value added tax to taxable persons not established in Community territory. This Directive establishes detailed rules for VAT refunds to taxpayers registered in third countries and not operating in the EU (the entity was not registered in a Member State or did not have a permanent establishment through which it carried out its business activities).

The Directive provides the VAT refund procedure; the procedure and deadlines for submitting applications for refund, the authorized authorities to accept them and the minimum amounts for which applications may be submitted; the procedure and deadlines for refunds; the content and justification of the application to avoid fraud, in particular, the obligation of the payer to provide proof that it is engaged in the relevant economic activity, etc (Thirteenth Council Directive 86/560/EEC, 1986).

Currently, the TCU does not contain relevant provisions.

3. Council Directive 2008/9/EC of 12 February 2008 laying down detailed rules for the refund of value added tax, provided for in Directive 2006/112/EC, to taxable persons not established in the Member State of refund but established in another Member State. The Directive establishes detailed rules of the VAT refund set in Article 170 of Directive 2006/112/EC to taxpayers who are not registered in the Member State of refund.

The Directive regulates the right of each Member State to refund to any taxpayer VAT charged in respect of goods or services supplied to it by other taxpayers in that Member State or in respect of imports of goods into that Member State; the procedure, deadlines for refunding VAT and other procedural matters (Council Directive 2008/9/EC, 2008).

Currently, the TCU does not contain relevant provisions.

4. Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax. The said Regulation establishes the conditions for cooperation between the competent authorities of the Member States in the field of VAT; rules and procedures that will allow the competent authorities to cooperate and exchange information, in particular, to control the correctness of VAT taxation and to combat VAT fraud (Council Regulation 904/2010, 2010).

Currently, the TCU does not contain relevant provisions.

5. Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC. This Directive is the basic directive on excise duty collection.

It provides a mandatory list of excisable goods (alcohol, spirits, energy products, tobacco products); the establishment of a tax suspension regime, the provision of a financial guarantee to the tax authority and electronic control (Council Directive 2008/118/EC, 2008).

6. Council Directive 95/60/EC of 27 November 1995 on fiscal marking of gas oils and kerosene. The Directive provides the labeling of diesel and aviation fuel in order to control its intended use; empowering the controlling authorities to stop vehicles and check the presence of fuel in the fuel tank.

The Directive is not mandatory, states may be exempt from labeling fuel that is taxed at preferential rates if proper control is ensured (Council Directive 95/60/EC, 1995).

7. Council Directive 92/83/EEC of 19 October 1992 on the harmonization of the structures of excise duties on alcohol and alcoholic beverages. The Directive establishes a list and definition of alcoholic beverages that are excisable goods and tax rates for them (Council Directive 92/83/EEC, 1992).

In general, the provisions of the TCU regarding the structure of the excise duty on alcoholic beverages comply with the requirements of the Directive. The excise duty rates on alcoholic beverages are expected to be brought in line with the minimum rates in force in the EU by 2028.

8. Council Directive 2011/64/EU of 21 June 2011 on the structure and rates of excise duty applied to manufactured tobacco. The Directive establishes the list of tobacco products that are excisable goods; minimum excise duty rates on tobacco products; the ratio of specific and ad valorem rates; calculation of the weighted average retail price, which is the basis for revising the rates (Council Directive 2011/64/EU, 2011).

In general, the provisions of the TCU on the structure of the excise duty on tobacco products comply with the requirements of the Directive. However, in order to fully comply with the Directive, tobacco tax rates should be set in euros. The excise duty rates on tobacco products are expected to be brought in line with the minimum rates in force in the EU by 2029.

9. Council Directive 2003/96/EC of October 27, 2003 on the restructuring of the Community system for the taxation of energy products and electricity. The Directive establishes a list of fuels and energy products that are excisable goods (gasoline, diesel fuel, electricity, kerosene, gas, coal); minimum excise duty rates on fuel in the EU; exemptions from taxation (e.g., exemption of fuel for air transportation and inland water transport, which are not provided by the legislation of Ukraine) (Council Directive 2003/96/EC, 2003).

In general, the provisions of the TCU on the structure of the excise duty on energy products comply with the requirements of the Directive. However, the excise duty rates on fuel products are expected to be brought in line with the minimum rates in force in the EU by 2029.

**4 Conclusions**

The findings of this study highlight that while Ukraine has achieved significant progress in aligning its tax legislation with EU standards, substantial efforts are still required to ensure full compliance. The progress in areas such as VAT administration and combating with tax evasion demonstrates Ukraine's commitment to modernizing its fiscal policies and fostering greater transparency in taxation.

The implementation of certain directives will require legislative changes to other acts, including the Civil Code of Ukraine (regarding cross-border merger) and the Constitution of Ukraine (regarding the arbitration procedure).

In the area of excise duty, it has been determined that Ukraine's legislation largely corresponds to the relevant EU directives. However, there remains a need to align tax rates with the minimum levels established by these directives. Currently, Ukraine is gradually revise its excise duty rates to bring them in line with the minimum rates. Full alignment of the rates is expected in 2028–2029.

Ukraine's tax policy development must consider the provisions of EU directives, particularly when evaluating the feasibility of existing tax incentives. Special attention should be paid to the EU Directive on the global minimum level of taxation, which effectively diminishes the economic efficiency of certain tax incentives. That's why the relevance and impact of tax incentives implemented in Ukraine have to be reassessed within the broader context of fiscal alignment and global tax fairness. Policymakers must ensure that temporary tax measures introduced under martial law do not conflict with EU directives, thereby preserving the integrity of the harmonization efforts.

In conclusion, the alignment of Ukraine's tax legislation with EU directives is a complex, but indispensable component of the country's European integration. The findings of this research provide valuable insights to guide future legislative reforms. By intensifying efforts to achieve full compliance, including necessary legislative changes to key documents and aligning excise duty rates, Ukraine can strengthen its integration with the European Union and lay the foundation for sustainable economic growth.

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