

Tax and Legal News Banking Legislation

November 2009

Recently the new Law of Ukraine # 1533 “On overcoming the negative impact of the financial crisis” (the “**Law**”) was adopted. The Law was published in the official media and became effective on 24 November 2009.

Key changes introduced by the Law include, among other things, changes relating to the tax accounting for banks and certain financial institutions.

Debt Provision

The Law introduces certain changes to the procedure for creation of debt provisions for tax purposes by banks and certain financial institutions. For instance, the Law allows creating a debt provision in respect of guarantees, sureties, avals, letters of credit, loan commitments and securities, as compared to the previous rule pursuant to which it was not clear whether the provision could be created in respect of such items.

Also, until 1 January 2011, banks are allowed to include in their deductible expenses 100% of their debt provision (as opposed to the previous rule allowing tax deduction of a debt provision in an amount not exceeding 10% of the amount of debt under loans, guarantees and sureties issued by the bank). And for certain non-bank financial institutions (e.g., factoring companies, credit organizations, etc.) the Law provides that such entities can include in their deductible expenses 80% of a debt provision.

Disposal of Pledges

The Law allows deducting the difference between the debt due under the loan agreement and the amount actually recovered by disposal of pledged property (including a mortgage), even if such property is not disposed of at a public auction.

Taxation of Loan Activity

From 1 January 2009 until 1 January 2011, banks are allowed to report taxable income from loan activity on the date of actual receipt of such income (as opposed to the previous rule of reporting such taxable income on an accrual basis). The loan income accrued but not received by banks during 2009-2010 is to be included to taxable income on the date of its actual receipt.

Minimal Charter Capital for Banks

The Law introduces new requirement regarding the minimal charter capital for Banks, which now amounts to UAH 75 million (previously, EUR 10 million).

Loans Granted to Individuals

Until 1 January 2011, the Law provides that banks and financial institutions can grant loans to individuals only in local currency, except for certain loans for medical treatment and foreign education which can be granted in foreign currency.

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