



To: Administrators of the Universities for Ukraine (U4U) Non-Residential Fellowship Program

From: Nadiia Dmytrenko
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Re: Taxation rules applying to foreign fellowships and charitable donations in Ukraine

As requested, in this legal opinion we provide a legal assessment from the perspective of Ukrainian tax law of taxation rules applying to proposed foreign fellowships and charitable donations granted to U4U Fellows.

1. EXECUTIVE SUMMARY

Under Ukrainian tax law, fellowships or donations made by US charities are subject to an 18% personal income tax and a 1.5% special military tax in Ukraine. In such cases, however, reporting the income and paying the taxes are the responsibility of the Ukrainian Fellow; there are no reporting or withholding requirements for a sponsor.

Donations made by US sponsors to registered Ukrainian charities are tax exempt but are subject to reporting by a Ukrainian charity. Ukrainian law does not impose any reporting and/or tax obligations for US sponsors in this case.

2. BACKGROUND

You seek our advice as to whether fellowships and charitable donations granted to U4U Fellows (who are residents of Ukraine) are subject to reporting and taxation in Ukraine, and, if yes, who is the withholding agent in this case and whether there any possible exemptions.

For the purposes of this legal opinion, we have assumed and based our analysis on the following:

- 1) under the U4U Non-Residential Fellowship Program, Ukrainian scholars who have chosen or were required to remain in Ukraine receive unconditional funding from a sponsor;
- 2) there are two alternative options for providing the funding to Ukrainian Fellows:
 - unconditional funding in a form of a fellowship provided by a US-based sponsor (a university, a school or department within a university, a research group within a corporation, or a non-profit) that do not have affiliates in Ukraine;
 - funding in a form of a charitable donation provided by a charity registered in the US or in Ukraine.

This legal option and our conclusions relate only to Ukrainian legal matters. Our analysis has been limited solely to the current laws of Ukraine, and we express no opinion as to the impact or relevance of the laws of any other jurisdiction.

This legal option has been prepared for use in the context of the Universities for Ukraine (U4U) Non-Residential Fellowship Program and may not be relied upon by any other person or for any other purpose.

3. ANALYSIS

3.1. Taxation of fellowships

Paragraph 14.1.55 of the Tax Code of Ukraine¹ (the “**Tax Code**”) recognizes any income received by residents from any of their activities outside the customs territory of Ukraine (incl. passive income, inheritance, gifts, winnings, prizes) as foreign income.

To this end, fellowships received by Ukrainian Fellows from US-based sponsors are considered foreign income under the Tax Code. Fellowships are not included in income exempt from tax liability (provided under Article 165 of the Tax Code) and hence are taxable in Ukraine.

There is no minimum dollar amount of income (fellowship) that triggers a reporting and taxation requirement for a Ukrainian Fellow.

In Ukraine, the following tax rates apply:

- 18% personal income tax (PIT), and
- 1.5% special military tax.

For Ukrainian tax purposes, a Ukrainian Fellow is considered as a withholding agent for foreign income. There are no applicable reporting or withholding liabilities in Ukraine for the sponsor.

On a related note, in January 2022 Ukraine’s Cabinet of Ministers introduced a bill proposing to exclude foreign fellowships from the list of taxable income. This bill is currently pending before the Parliament, and there is no clarity as to when it may be voted on.

Reporting and withholding deadlines

Foreign income should be reported to the tax authority of Ukraine no later than April 30 of the year following the year when it was obtained. The tax payment deadline is July 31 of the year following the year when it was obtained.

The Ukrainian Parliament has extended the 2021 reporting and withholding deadline to three months after the termination or cancellation of martial law in Ukraine.

Applicable tax relief

Under the Ukraine-US Double Tax Treaty² (the “**DTT**”) a Ukrainian Fellow is eligible for reduced PIT tax with respect to received foreign income. Under the DTT, if fellowship payments have been taxed in the US, the amount of PIT in Ukraine shall be decreased proportionally (so-called “tax credit”).

The amount of tax credit under the DTT is limited to the amount of Ukrainian tax that would arise from the same income in Ukraine (i.e. 18%). If the tax withheld in the US is lower than 18% of income,

¹ <https://zakon.rada.gov.ua/laws/show/2755-17#n256>

² <https://www.irs.gov/pub/irs-trty/ukrain.pdf>

the Ukrainian Fellow will need to pay the difference in Ukraine. Claiming a tax credit against the 1.5% military tax is not allowed.

To get a tax credit for PIT, a Ukrainian Fellow will need to provide the Tax Service in Ukraine with an apostilled official statement issued by the relevant US tax authority confirming the amount of tax withheld in the US.

3.2. Taxation of charitable donations

Donations made to a Ukrainian Fellow by a charity incorporated in the US are reportable and taxable in Ukraine. The analysis for taxation of fellowships (as per item 3.1. above) applies equally to donations made by US charities.

Donations made by US sponsors to registered Ukrainian charities that further hand such donations to Ukrainian Fellows are tax exempt, provided that such activities correspond with the statutory goals of the Ukrainian charity. Such donations should be reported by the Ukrainian charity to the tax authority of Ukraine no later than 60 calendar days following the year in which they were obtained. In this case, the sponsor has no reporting obligations in Ukraine.

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We hope you find the information above useful and responsive to your query. If you have further questions or need additional clarifications, please do not hesitate to contact us.

Kind regards,

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