



STAU Interprets DTT re Shares Deriving Most of Their Value from Immovable Property



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Recently the State Tax Administration of Ukraine (“STAU”) published the letter of November 5, 2008 No.22685/7/15-0157 (“the Letter”) addressed to the State Tax Administration in the City of Kyiv covering its request of October 1, 2008 No.5079/8/31-604 in respect of taxation of capital gains earned by a resident of Lithuania as a result of alienation of shares in a Ukrainian joint stock company. The Letter is primarily aimed to provide clarification as to the taxation of capital gains on shares deriving most of their value from real estate.

In the Letter the STAU refers to paragraph 2a of Article 13 of the effective Double Tax Treaty (“the Treaty”) between Ukraine and Lithuania. The STAU also refers to Article 6 of the law of Ukraine On Securities and Stock Exchange Market, Article 155 of the Civil Code of Ukraine as well as Article 24 of the Law of Ukraine On Business Entities and Article 81 of the Business Code of Ukraine.

Based upon the above references, the STAU considers that for the purposes of the Treaty application, the provision referencing shares deriving all or most of their value directly or indirectly from immovable property refers to instances when the share capital of an entity consists for 50 percent or more of real estate. If this is not the case, the implication is that the Treaty would shield the gain from taxation in Ukraine. Such Letter is particularly noteworthy (and somewhat surprising) for analyzing this issue based on the composition of the share capital instead of the balance sheet as a whole.

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