

## LEGAL STATUS AND PECULIARITIES OF TAXATION OF E-RESIDENTS IN UKRAINE

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#### ABSTRACT

Even in times of war, Ukraine is introducing new, unconventional ways of doing business. The article will deal with one of them, namely doing business in Ukraine without the physical presence of the entrepreneur, i. e. by a so-called e-resident. The Ukrainian government expects to attract a wider range of foreign entrepreneurs in this way. First of all, foreign IT-specialists may act in this capacity. Certainly, such a way of doing business is best suited to such crisis stages in the state's history as an armed conflict or a pandemic. The legal regulation of the status and peculiarities of taxation of e-residents appeared in Ukrainian legislation only at the end of 2022, so the practice of its application is small and certainly may cause some problems, for example in the area of double taxation. However, the results of the study of the specifics of legal regulation of these aspects in Ukraine may provide a basis for understanding new approaches that can be used for the international organisation of work of small entrepreneurs, who are the most affected by economic crises.

**Keywords:** *e-resident, taxation of e-residents, avoidance of double taxation, small entrepreneurs*

### 1. INTRODUCTION

One of the consequences of the Russian-Ukrainian war will indisputably be a complete change in the directions of development of quite a few areas of social relations, the most obvious one occurring in international relations. After all, as early as now already we can follow the process of China transforming into a separate, powerful pole of global political influence, with total simultaneous negation of Russia's authority both in the world overall and in the Eurasian region in particular; and this, of course, will significantly affect the global balance of geopolitical forces in the near future.

Undoubtedly, the international law will also be subject to significant reforms, because Russia's audacious violation of its basic principles, despite its status as a permanent member of the UN Security Council, puts a yet stronger emphasis on the inefficiency of a number of the leading universal and regional international organizations (UN, OSCE, Council of Europe etc.) in peace maintenance, as well as on the invalidity of provisions of its specific areas like the law of international responsibility. This, in turn, has prompted and continues to prompt the forward-looking countries of the world to get to large-scale restrictive measures (economic sanctions) aimed at forcing Russia to stop its internationally illegal behavior, which, however, go against the liberalization course established in international economic law and do not contribute to the sustainable development of the world as a whole. Therefore, we are standing on the threshold of global reforms of international legal regulation of specific areas of interstate relations, which should introduce effective tools for prevention and avoidance of violations of the basic principles and norms of international law in future.

Against the background of these geopolitical, geoeconomic and international law developments, the Russian-Ukrainian war is also opening new horizons in applying information technologies. Yet, it is not only the defense industry or military operations, but also using these technologies in civilian areas. For example, “Diia” uniform state web portal of electronic services introduced in Ukraine in 2019, which also operates as a mobile application, has made it possible for many citizens of Ukraine who lost their identity documents as a result of Russia’s military aggression to confirm their citizenship and taxpayer ID, get the status of internally displaced persons and apply for the appropriate payments and benefits, submit information about the damaged/destroyed property, etc. Furthermore, after the Ukrainian armed forces achieved significant advantages at the front line, the parliament and the government began to develop measures aimed at strengthening the national economy, and information technologies, which, for example, help create new opportunities to attract foreign investment, have turned out to be invaluable for achieving these goals during the war.

On 06.10.2022, the Verkhovna Rada of Ukraine adopted Law of Ukraine No. 2654-IX “On Amendments to the Tax Code of Ukraine and to Some Other Laws of Ukraine Regarding the Peculiarities of Taxation of Business of Electronic Residents” (hereinafter, “Law No. 2654-IX”), which entered into force on 01.04.2023. This law has been developed to implement the pre-war initiatives of the Cabinet of Ministers of Ukraine, namely its Resolution “On implementing an experimental project on the introduction and implementation of electronic residency in Ukraine” dated 25.06.2020, and, as we can see, the war has not hampered this process. It should be mentioned right away that Europe has already the experience of introducing electronic residency (hereinafter, “e-residency”), which can be well used by Ukraine. We are talking, for example, about the experience of Estonia in this area, which specific legislative acts were amended back in 2009 to initiate legal regulation of the status and operations of electronic residents in the state; and, by the way, according to the Estonian official web resource, on which e-residency is administered, “Estonia has become the first country to offer e-residency starting from 2014. It remains the most popular program of its kind for ambitious entrepreneurs”(<https://www.e-resident.gov.ee/>). As a result, from December 2014 to April 2023, Estonia has witnessed registration of 101,372 electronic residents who subsequently founded 25,591 Estonian companies (<https://www.e-resident.gov.ee/dashboard>).

The disclosure of peculiarities of the legal regulation of electronic residents (hereinafter, “e-residents”) in Ukraine in comparison with the relevant experience of Estonia will allow making valuable conclusions about the ways of introducing this form of doing business and of overcoming the problems that arise along the journey, which can be further used by other world countries.

## **2.METHODS**

In the course of the research, the following methods were used: the method of analysis (when identifying individual segments (specific questions) of the subject of research, namely: the goals of introducing e-residency; areas of the economy in which e-residency can be used; procedures for acquiring the legal status of an e-resident; system taxation of e-residents); methods of analysis and comparative jurisprudence (when studying the legislation of Ukraine and Estonia, which regulates the legal status and taxation system of e-residents); critical method (when assessing the advantages and disadvantages of e-residency organization in Ukraine and Estonia).

## **3.RESULTS**

The difference between the Ukrainian and Estonian approaches to the legal regulation of e-residency is first of all seen from the legislative acts that enshrine this legal regulation. In both cases, involved are the laws related to finance and taxation. However, in Estonia, the e-resident status fundamentals are laid down in the Identity Documents Act 1999, while in Ukraine, the main part of them is contained in the Tax Code of Ukraine of 2010 (hereinafter, the “TCU”), i.e. it is the TCU that defines the qualities people should possess to become e-residents, outlines the general rules for acquiring and losing the e-resident status, and, of course, describes the specifics of taxation. Although, in our opinion, the grounds and procedure for obtaining and losing the e-resident status, that is, the provisions of Art. 70<sup>1</sup> TCU, could be included in Law of Ukraine “On State Registration of Legal Entities, Individual Entrepreneurs and Public Organisations”. This approach of Ukraine gives grounds

for the conclusion that the Ukrainian law-maker was considering e-residency mainly as one of the sources to contribute to the state budget. While the Estonian law-maker clearly followed the legislative technique and placed the regulation of various issues of the e-residency status and operations among them, according to the subject they regulate.

To understand the essence of any law initiative, it is also vitally important to understand the goals of its implementation. The goals of introducing e-residency in Ukraine were outlined in the Explanatory Note to the Draft Law of Ukraine “On Amendments to the Tax Code of Ukraine and to Some Other Laws of Ukraine Regarding the Peculiarities of Taxation of Business of Electronic Residents” made by the bill promoters, namely several people’s deputies of Ukraine, on 22.03.2021 (hereinafter, the “Explanatory Note”). According to this Explanatory Note, e-residency “will have a positive effect on the state’s investment climate overall, will trigger the activation and further development of the national economy, will stimulate the increase in the gross domestic product and inflows to the state budget, etc.”. So, conditionally, these goals can be divided into those aimed at improving the national investment climate (because doing business with no individual’s physical presence required in the state is a comfortable form of entrepreneurship not only during war, but also in the environment of volatile international economic relations) and the ones intended to improve Ukraine’s economic performance (which will primarily be achieved through payment of taxes by e-residents).

Alongside, we should emphasize that in Estonia, the goals of introducing e-residency are, first, enshrined at the statutory level, namely in the already mentioned Identity Documents Act, and, second, they are somewhat broader than simply attracting investments and, in particular, include stimulating the development of the economy, science, education or culture of Estonia by creating the possibility of using electronic services with an Estonian digital document (Part 2 of Article 20<sup>5</sup> of the Identity Documents Act). It should be added that the above-mentioned goals are not declarative and have legal nature, i.e. the e-resident status may be denied if its obtaining does not pursue the achievement of these goals, the issued document being declared invalid for the same reasons (Part 3-4 of Article 20<sup>6</sup> of the Identity Documents Act).

Speaking again about Ukraine, we should touch upon the question of economic sectors to which e-residents were expected to be attracted. Some clarifications on this issue have been provided in the Explanatory Note. According to them, the area of e-residency application was primarily the IT business done by those representing the developing countries or the states with an unstable political situation. The choice of this economy segment is obvious given a high demand for Ukrainian IT specialists in this market. Furthermore, according to Yulia Svyrydenko, First Vice Prime Minister of Ukraine – Minister of Economy of Ukraine, “the IT sector has suffered the least losses from the war – it has kept 95% of its contract volumes, i.e. they have adapted successfully to the extremely difficult ongoing conditions. The investments will allow us to move from IT outsourcing to product development. This will increase capitalization and make the information technology sector even more competitive on world markets”(Svyrydenko, Y. 2022).

At the same time, it still remains unclear to us why the Explanatory Note offers so much narrowed geography of attracting e-residents only from developing countries and the states with an unstable political situation, especially if we take into account the lack of clear criteria for assigning states to the last group? If we take as a basis for understanding this concept the approaches used by The Fund for Peace in determining The Fragile States Index, the top places in this ranking are traditionally occupied by economically weak states with permanent civil and armed conflicts on their territory, such as Somalia, Sudan, South Sudan, Afghanistan, Yemen, Congo, Syria, South Africa, Chad, Haiti, etc. (<https://fragilestatesindex.org/>), and it is unlikely that entrepreneurs from these countries will be able to make a significant contribution to the development of Ukraine’s economy. Any bona fide entrepreneurs who do not plan to abuse their position and commit financial crimes are important for Ukraine, regardless of the political and economic system of the state with which they are connected, unless of course it’s Russia. It’s good that this approach that has been presented in Law No. 2654-IX, which among other aims to prevent the involvement of e-residency in committing such serious financial crimes as money laundering, financing of terrorism and proliferation of weapons of mass destruction. Therefore, eligible for e-residency are only 18-year-old foreign individuals who have



no citizenship or residency of: a state recognized as the aggressor state and/or the occupying power in relation to Ukraine; a state included in FATF's "black" and "gray" lists and a state classified by the European Commission as one of the countries with weak regimes for preventing and combating the legalization (laundering) of proceeds of crime, the financing of terrorism, and the financing of proliferation of weapons of mass destruction (Article 70<sup>1.2</sup> of the TCU). It is important to note that FATF's "black" list currently includes the Democratic People's Republic of Korea, Iran and Myanmar (<https://www.fatf-gafi.org/en/countries/black-and-grey-lists.html>), each, by the way, being easily classified as a state with an unstable political situation. FATF's "gray list" is more extensive, and in 2023 it included: Albania, Barbados, Burkina Faso, Gibraltar, Haiti, Democratic Republic of the Congo, Yemen, Jordan, Cayman Islands, Mali, Mozambique, Nigeria, United Arab Emirates, Panama, South African Republic, South Sudan, Senegal, Syria, Tanzania, Turkey, Uganda, the Philippines, Jamaica (<https://www.fatf-gafi.org/en/countries/black-and-grey-lists.html>). So, as we can see, these lists include, among other, the developing countries whose citizens and residents were considered by the Explanatory Note developers as applicants for e-residency in Ukraine. At the same time, it is worth noting that citizens and residents of such countries as Turkey, the United Arab Emirates, and the Republic of South Africa will not be able to acquire e-resident status in Ukraine, since the listed countries are included in the "gray list" of the FATF. However, these states, although according to the ratings of a number of international financial organizations (for example, the IMF (<https://www.imf.org/ru/Publications/WEO/Issues/2023/04/11/world-economic-outlook-april-2023#Projections>), and are considered developing countries, at the same time, according to UN data, they are states with a very high human development index (Turkey, UAE) and states with a high human development index (South Africa) ([https://hdr.undp.org/system/files/documents/global-report-document/hdr2021-22pdf\\_1.pdf](https://hdr.undp.org/system/files/documents/global-report-document/hdr2021-22pdf_1.pdf)), which indicates their significant economic potential. Thus, citizens and residents of these states will implement their entrepreneurial initiatives in Estonia. It is also worth noting separately that the inclusion of a state that is not currently included in these lists will lead to the cancellation of the e-resident status of a person related to this state in Ukraine (Article 70<sup>1.4</sup> of the TCU).

It should be stressed that Estonia does not single out the involvement of individuals in committing the above-mentioned financial crimes as a separate reason for e-resident status denial or cancellation. The Estonian law-maker has described these reasons more generally: a threat to public order or national security, an intention to engage in prohibited business operations, etc. At the same time, since March 2022, citizens of Russia and Belarus are no longer able to obtain e-resident status in Estonia, as this method of doing business can be used to arrange the financing of Russia's armed aggression against Ukraine or circumvent the economic sanctions introduced by the European Union (<https://www.politsei.ee/en/>), and the adoption of this measure has been legally allowed by Part 3-4 of Article 20<sup>6</sup> of the Identity Documents Act.

Also, we should remember that for Estonia, as a member of the European Union, binding is Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC. It is this Directive that the European Commission refers to when making a list of third countries with a high degree of risk that have strategic deficiencies in their regimes for combating money laundering and terrorist financing, which was described in Article 70<sup>1.2</sup> of the TCU. At the end of 2022, this list was updated by the European Commission, and among other it includes: Afghanistan, Barbados, Burkina Faso, Cambodia, Cayman Islands, Democratic Republic of the Congo, Democratic People's Republic of Korea, Gibraltar, Haiti, Iran, Jamaica, Jordan, Mali, Morocco, Mozambique, Myanmar, Panama, the Philippines, Senegal, South Sudan, Syria, Tanzania, Trinidad and Tobago, Uganda, United Arab Emirates, Vanuatu, Yemen. However, it should be noted that according to Directive (EU) 2015/849, in case with the individuals related to these states and intending to do business in the Union, the EU member states are solely required to carry out enhanced financial checks of these individuals, and this approach is presented in the Money Laundering and Terrorist Financing Prevention Act 2017, in particular para. 3 of Part 1 § 31, which concerns e-residents.

In our opinion, the Estonian approach to qualifying the individuals as eligible for e-resident status is more flexible than the Ukrainian one, since the latter completely cuts off the possibility for bona fide entrepreneurs from the states included in FATF's "gray list" or European Commission's list to be involved in doing business in Ukraine. Also, the popularization of Ukrainian e-residency will be undermined by the possibility of losing the e-resident status if a state gets included in the lists of FATF or European Commission, even if the entrepreneurs who belong to this state and have become e-residents of Ukraine fulfill all their duties and do their business transparently and in good faith. In connection with the above, we should note that in Estonia, e-residents from Russia and Belarus who had got this status before 2022 did not automatically lose it, and they could extend their status in future. Additionally, in Estonia, 3,883 citizens of Turkey were registered as e-residents who founded 1,453 companies; 258 citizens of Syria became e-residents of Estonia and founded 48 companies; 20 citizens of the United Arab Emirates acquired e-resident status there and founded 1 company. Even 992 citizens of Iran got registered in Estonia as e-residents and created 329 companies ( ); however, Ukraine, during the war, should have increased protection measures in place to cut off any possibility of being involved in financing Russia's military aggression, and as such, any cooperation is excluded with Iran, which supplies weapons, in particular "Shahed" drones, to the aggressor state, as well as as with Syria, and with Iranian and Syrian citizens.

At the same time, Ukraine should study the geography of individuals who have acquired the e-resident status in Estonia, to better understand the circle of states whose entrepreneurs may show interest in this method of doing business. It is also important to develop measures to attract businessmen from a wider range of countries. Now, the top ten countries whose citizens have acquired the e-resident status in Estonia are as follows: Ukraine, Germany, Russia, Finland, China, Spain, United Kingdom, France, India, Italy (<https://www.e-resident.gov.ee/dashboard>). It is significant that, in addition to European states, this list includes such economically powerful countries as India and China, and their potential gives hope that citizens of these countries will be interested in the e-resident status to be granted in Ukraine.

Back to the economic sectors to which e-residents may be attracted, it should be mentioned that the Ukrainian Explanatory Note promoters were going to "link" this method of doing business to IT, and in particular to provide that an e-resident could only carry out the following types of economic activity: publishing of computer games; publishing of other software; computer programming; other activities in the area of information technology and computer systems; data processing, posting of information on web sites and related activities. However, this idea has not been implemented in Law No. 2654-IX, and thus the scope of the e-resident's entrepreneurial initiative is not so strictly limited. Based on subpara. 3 of para. 291.4 of Article 291 of the TCU, e-residents registered in Ukraine may carry out economic activities in the provision of services, manufacture and/or sale of goods, however, this should be done solely in favor of non-residents of Ukraine.

The experience of Estonia, in its turn, shows that the IT sector is indeed a leader in the implementation of entrepreneurial initiatives by e-residents: 6,878 Estonian companies founded by e-residents work in computer programming, consultancy and related activities. However, the second place is taken by activities of head offices; management consultancy activities. The following industries are also popular: Retail and Wholesale trade, except motor vehicles and motorcycles; Information service activities; Publishing activities; Financial service activities, except insurance and pension funding, etc. (<https://www.e-resident.gov.ee/dashboard>)

However, the legislation of Ukraine has a number of provisions that restrict considerably the areas in which the prospective e-residents can implement their entrepreneurial initiative. The analysis of Law No. 2654-IX allows a conclusion that e-residents will be able to register in Ukraine only as individual entrepreneurs, payers of a single tax (which is 5% of income) and will be required to do their business solely in favor of non-residents of Ukraine. Their income should not exceed 1,167 times the minimum wage amount (which is about UAH 8 million, or approximately EUR 200,000); in case of the exceeded income amount, the tax rate is to increase to 15% of the excess amount, with the additional obligation to pay all other taxes and fees provided for by the TCU. At the same time, e-residents cannot use the labor of hired individuals – citizens or residents of Ukraine, nor can they

receive income with the source of origin from Ukraine (other than passive income). E-residents may open a current account in one bank using the dedicated electronic system called “E-resident”, which is part of the “Diia” uniform state web portal of electronic services; the bank should be chosen from the list offered by this system. This bank will act as the e-resident’s tax agent, i.e. will be obliged to withhold the applicable tax when the money is credited to the account, as well as transfer this tax to the state budget no later than within the subsequent two working days.

The system of registration of an individual as an e-resident is expected to be as simple as possible. To get the status, an individual will be required to submit an application form signed by a qualified electronic signature through the “E-resident” electronic system, and after that, the individual will be registered as an individual entrepreneur in the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Organizations. Prospective e-residents will use their passports for traveling abroad as their identity documents (Part 8 of Article 14 of the Law of Ukraine “On State Registration of Legal Entities, Individual Entrepreneurs and Public Organisations”). The submission of this application form will be considered equivalent to personal submission to the tax authority of the individual taxpayer ID card and application form for registration in the State Register of Individual Taxpayers (Article 70.5 of the TCU). Still, it should be noted that the Ministry of Justice of Ukraine and the Ministry of Digital Transformation of Ukraine should better regulate the procedure for submitting such an application form and address a number of procedural issues; yet, it is clear that the registration process will be prompt enough.

So, it is clear that the e-resident status only implies small entrepreneur business, which e-residents are to do independently and at the same time with the least possible physical connection with Ukraine. A bank account and paid taxes will be nearly the only “material” sign of the e-resident’s presence in Ukraine. Therefore, in our opinion, the main thing that can encourage foreigners to this way of doing their business is the tax amount and simplicity of its payment. Ukraine, in its turn, should take measures to popularize e-residency so that this method of doing business gets widespread and brings significant income to the state budget. After all, the tax, which maximum amount can be around EUR 10,000, will not cover the needs of such a large country as Ukraine, which is also anticipating its post-war recovery.

At the same time, e-residents in Estonia may organize larger forms of entrepreneurship, because they are granted the right to establish a company. Although, according to the official data of the website of Estonia dedicated to e-residents, “The majority of companies established by e-residents have 1-2 employees. Quite often these companies are “one-person companies”, where an e-resident is the single shareholder and the only director/management board member ... By far the most commonly used form of business and most likely the most suitable for e-residents is a private limited company” (<https://www.e-resident.gov.ee/> ). Especially that according to the Estonian Commercial Code (hereinafter, the “CC”), such companies can also be founded by one individual (§ 137 of the CC), and in this case the incorporation agreement is replaced by a notarized foundation decision signed by the founder (Part 5, § 138 of the CC), however, the articles of association and the authorized capital are required to be in place. That is, in case of sole foundation of a private limited company, e-residents are still required to make constituent documents; the difference is that these documents are simpler (i.e. a decision instead of an agreement). According to the Estonian Commercial Code, “A private limited company is a company which has share capital divided into private limited company shares. A shareholder shall not be personally liable for the obligations of the private limited company. A private limited company shall be liable for performance of its obligations with all of its assets” (§ 135 of the CC).

Therefore, an individual who intends to get e-residency in Estonia should first register as an e-resident and then register their company. Integral to the e-resident status acquiring process in this country is getting an e-resident card, which is not virtual but rather issued physically. We consider it to be a significant weakness compared to the procedure for obtaining e-resident status in Ukraine, which takes place online only.

Individuals who intend to become e-residents of Estonia, after they have done a number of administrative actions online, should get a special card at one of the service centers located in various



Estonian cities or at the Estonian diplomatic mission offices abroad. So, the advantage is that an individual does not necessarily have to go to Estonia, but the disadvantage is that this card can only be obtained in 45 Estonian diplomatic mission offices (<https://www.e-resident.gov.ee/pick-up-locations/>); for example, in South America, such mission office is only available in Brazil; in Africa, it can only be found in Egypt and in the South African Republic. But, say, Indonesia, which is the country with powerful economic potential and a huge territory, does not have a diplomatic mission of Estonia at all; no Estonian diplomatic mission in Israel, too. There are also not many diplomatic missions of Estonia in Arab countries. As such, say, a citizen of Chile, in order to become an e-resident of Estonia and establish a company there, should have a flight to Brazil and comply with the Brazil entry requirements, i.e. do additional administrative actions and incur additional costs. We believe that it does not contribute to the popularization of this way of doing business. Although, the opportunity to establish a company in a member state of the European Union and receive all the related benefits is probably worth the candle.

Because e-residents establish companies in Estonia, the system of taxation of their business differs considerably from the one introduced in Ukraine, namely: it is more variable and, accordingly, the tax amounts depend on quite a few factors like incorporation form and place of company management. Thus, in Estonia, the tax status of an individual who has acquired the status of e-resident and the company created by him is split. The individual who is an e-resident pays taxes in the state in which he is a tax resident; in Estonia, she is not a tax resident, in particular, because citizens of Estonia, as well as foreigners who received a residence permit in Estonia or applied for one, cannot acquire the status of e-resident (Part 2, § 20<sup>5</sup> of the Identity Documents Act 1999). Instead, a company created by an e-resident is a tax resident of Estonia, and must pay, first of all, income tax, the usual amount of which is 20% (Part 1 of § 4 of the Income Tax Act 1999 (ITA)), however, under certain conditions provided by this law, in particular, §§ 50, 50<sup>1</sup>, etc., may be significantly reduced (up to 14%) or not at all charge; Chapter 6 of the ITA also provides for the possibility of deducting certain amounts from taxable income.

It is clear that for an e-resident, the issue of taxation of dividends to be paid to him by the company he created is of great interest. This issue is regulated, first of all, by § 50 of the ITA, according to which dividends or other profits are subject to taxation at the time of their payment in monetary or non-monetary forms, and therefore the profit reinvested in the company is not subject to tax and this circumstance is assessed by experts as a significant advantage, which promotes the development of entrepreneurship (Liivamägi, E. 2017). In addition, the said Article 50 of the ITA provides for numerous cases of non-payment of tax. Additionally, according to § 50<sup>1</sup> of the ITA, the profit distributed in a calendar year, which is smaller than or equal to the average distributed profit of the previous three calendar years on which a resident company has paid income tax shall be subject to taxation at the rate 14 %. Along with this, the Estonian legislator provides measures aimed at preventing tax evasion, in particular, a resident company shall pay income tax on a loan granted to a shareholder, partner or member of the company if the circumstances of the transaction refer that this may constitute a hidden profit distribution (§ 50<sup>2</sup> ITA).

Goods and services that will be sold by a company created by an e-resident will be subject to such an indirect tax as value-added tax (VAT) according to the Value-Added Tax Act 2003 (VATA) (<https://www.riigiteataja.ee/en/eli/531082022001/consolide>) in the amount of 20% of the taxable value, however, numerous exceptions are provided here, when the tax rate can be reduced to 9%, 5% or 0% (§ 15 VATA), or goods and services will be exempt from taxation altogether (§§ 16-18 VATA). In particular, it is of undoubted interest for companies created by e-residents that the VAT rate for the sale of books and educational literature in electronic form is 9% of their taxable value (Clause 1, Part 2, § 15 VATA). In turn, the VAT rate of 5% of the taxable value applies to printed publications in electronic form, which can also be an interesting business for e-residents (clause 2<sup>1</sup> § 15 VATA). Of course, preferential VAT rates are provided for goods and services sold within the European Union according to Directive 2006/112/EC on the common system of value added tax.

Excise duties on Alcohol, Tobacco, Fuel and Electricity may also be charged as indirect taxes from e-resident companies in accordance with the Alcohol, Tobacco, Fuel and Electricity Excise Duty Act

2003 and Packaging according to the Packaging Excise Duty Act 1998, if these companies will deal with their implementation.

If a company founded by an e-resident will invite employees to work, it, according to the Social Tax Act 2002 (STA) must pay a social tax, the amount of which is 33% of the wages and other benefits paid to each employee (Part 1 § 7 STA). In certain cases, this rate can be reduced to 20% and 13%, but this mainly applies to public employees institutions, legal entities under public law and crew members of sea vessels, as well as those payments made in connection with unemployment (Part 2<sup>1</sup>-4 § 7 STA). The paid social tax is divided into pension insurance and state health insurance.

Together with the social tax, an unemployment insurance premium in the amount of 0.5 to 2.8% of the employee's salary and in the amount of 0.25 to 1.4% of the wage fund must be paid (§§ 40, 41, 42 Unemployment Insurance Act 2002 (UIA)). Unemployment insurance premium rates are set by the Government of Estonia once every four years (Part 3, 4 § 41 UIA).

If the activities of the company founded by the e-resident will be related to the use of natural resources, namely: their extraction from the natural state, emissions of pollutants into the environment, placement of waste (for which an appropriate permit should be obtained), then it must pay environmental charges according to Environmental Charges Act 2006.

In Estonia, there is also a Land tax, the amount and payment rules of which are regulated by the Land Tax Act 1993. However, a company founded by an e-resident will have to pay it only if it acquires ownership of the land, because according to the Land Tax Act 1993, only the owners of the land, with some specific exceptions provided for in Article 10 of this law, are Land tax payers.

Depending on the type of business activity of the company established by the e-resident, it may also be obliged to pay Gambling Tax, according to the Gambling Tax Act 2010, Heavy Goods Vehicles Tax, according to the Heavy Goods Vehicles Tax Act 2003 and customs duty, according to the requirements of EU law.

It should be added that e-residents registered in Estonia sometimes also choose sole proprietorship as a form of organization of their business, at least 173 sole proprietors were registered in this capacity (Havam, H. 2022). However, due to the complexity of the tax system and high tax rates, this form of business organization is not ideal for e-residents, even according to the Estonian state executive authorities (Havam, H. 2022; <https://learn.e-resident.gov.ee/hc/en-us/articles/360001388857-Is-e-Residency-a-good-solution-for-me>). A sole proprietor must pay almost all the same taxes as legal entities registered in Estonia (except unemployment insurance premium for himself (Part 2 § 3 UIA)). That is, for them, for example, Income Tax will be the same size as for companies and will be 20%, Social Tax will also be deducted from the company's profit, but on the amount not less than the 12-fold monthly rate, which is established in the state budget for a budgetary year, with some exceptions, but not more than ten times the sum of the minimum monthly wages for the taxable period (clause 5 part 1, part 5 § 2, § 21 STA), etc. For our part, we would like to add that individual entrepreneurship: provides opportunities for organizing and running only a small business; according to § 78 CC, an individual entrepreneur is liable for his obligations with all his property, which is a significant disadvantage compared to a private limited company, which is liable for obligations with all his property, and not with all the property of its members (§ 135 CC); An e-resident registered as an individual entrepreneur automatically becomes a tax resident of two states: the state of citizenship or permanent residence of the e-resident and Estonia.

#### **4.DISCUSSION**

In order to increase the interest of foreign citizens in the e-resident status, the state offering such status should take measures to avoid double taxation by concluding relevant international treaties. It should be noted that in Estonia, due to the need for an e-resident to establish another private legal entity, namely a company, the tax status of the e-resident and the company is split: the former is not a tax resident of Estonia, while the company established by him/her has such status. As a result, the e-resident pays taxes in the country where he is a tax resident, while the company he establishes must pay taxes in Estonia. It is clear that this situation may result in the company's profits being taxed in several countries, and therefore international double taxation treaties play an important role for Es-



tonia, allowing it not to pay taxes in one country if they are paid in another or to pay them in the part that was not covered by the tax paid in another country. Thus, according to the official website of the Ministry of Finance of the Republic of Estonia, this country has concluded bilateral international treaties for the avoidance of double taxation with 62 countries, including Ukraine (<https://www.fin.ee/en/double-taxation-agreements>). And E. Liivamägi, Head of the Tax Department at the Estonian Tax and Customs Board, described the range of states with which such agreements were concluded as follows: “all EU member states and most OECD member states, as well as key countries where e-Residency is growing the fastest such as Ukraine and Turkey” (Liivamägi, E. 2017).

The established system of avoiding double taxation, regulated by the TCU and 72 relevant international treaties ([https://mof.gov.ua/uk/international\\_agreements\\_of\\_ukraine\\_on\\_avoidance\\_double\\_taxation-543](https://mof.gov.ua/uk/international_agreements_of_ukraine_on_avoidance_double_taxation-543)), will contribute to the development of e-residency in Ukraine as well. However, due to the fact that e-residents and their businesses are not physically present in the country, and that they are not tax residents of Ukraine under the TCU, there is a debatable question of whether the relevant international treaties should apply to these entities and the single tax they pay. The answer to this question is best given on the example of a particular international treaty on the avoidance of double taxation, for example, the Convention between the Government of Ukraine and the Government of the Republic of Estonia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital of 1996.

Thus, when it comes to the range of entities covered by such international treaties, they usually provide their own definition of a resident. In particular, according to the said Convention, a resident of a Contracting State is a person who, in accordance with its legislation, is subject to taxation therein on the basis of residence, domicile, place of management, place of registration or other similar criterion. Moreover, if an individual is a resident of both contracting states, he or she is considered a resident of the state where he or she has a permanent residence. Thus, an individual who is permanently resident in Estonia and has an e-resident status in Ukraine and pays taxes here will still be considered a resident of Estonia. If we talk about the subject matter covered by the Convention, i.e. taxes, it refers to taxes on income and property. In Ukraine, this includes, in particular, corporate income tax, and, as you know, the single tax includes such a tax. In addition, the Convention shall also apply to any identical or substantially similar taxes that will be levied by a Contracting State after the date of signature of the Convention, in addition to or instead of existing taxes. Therefore, we believe that international treaties on the avoidance of double taxation may apply to e-residents who have obtained such status in Ukraine, but the state needs to establish an online procedure for issuing certificates of payment of such taxes in Ukraine to these entities.

It should be noted that double taxation is not the only issue that should be addressed by the Government of Ukraine to attract e-residents. In our view, discussions may arise regarding their perception as foreign investors and the extension of international treaties on mutual protection of investments to them. As is well known, these international treaties are concluded on a bilateral basis to ensure a favourable investment climate for investors of the participating states and each of them contains its own package of privileges granted to the respective investors. The most important privileges include protection from nationalisation; compensation for losses incurred by foreign investors in the event of war, armed conflict, etc.; and the right to transfer funds to the country of residence without hindrance. It is clear that e-residents cannot be considered foreign investors, as they do not invest in the Ukrainian economy, however, they may also be interested in the privileges granted to foreign investors and Ukraine should provide them with at least the right to transfer funds to their country of residence without hindrance.

Undoubtedly, further practice will reveal many more problems in the status and activities of e-residents registered in Ukraine, which will need to be resolved quickly. For now, the state needs to focus on solving common problems, such as increasing trust in the judiciary, overcoming corruption, ensuring a stable Internet connection and reliable storage of personal data. With regard to the latter issue, it is imperative to study the experience of Estonia. By the way, Estonia is constantly concerned about this problem, but there are still problems in this area, as written, for example, by A. Rull, T. Kerikmäe (Rull & Kerikmäe, 2016).

## **5. CONCLUSION**

Thus, e-residency is a new way for a foreign citizen to organise a business that requires a minimum physical presence in the country where he or she intends to implement his or her business initiative. The experience of Ukraine and Estonia shows that the introduction of e-residency may be subject to different algorithms, the specifics of which will be determined by a number of factors. In particular, the level of complexity of the procedure for obtaining e-residency status depends on the volume and capacity of the business that the state will allow them to organise: the more powerful the business, the more formalities the e-resident will have to complete. For example, the fact that in Estonia an e-resident can only implement his or her entrepreneurial initiative by establishing a company results in a more complicated procedure for obtaining such status, which, in addition to online actions, also requires obtaining a special e-resident card from the Estonian state authorities or its diplomatic missions and, subsequently, taking a number of steps to establish a company. In Ukraine, however, the procedure for obtaining e-residency status is quite simple and can be completed entirely online, as persons with this status will be able to engage in small businesses that will generate small profits. By the way, the online procedure for registering an e-resident and paying taxes allows us to overcome such a traditional problem for Ukraine as corruption.

When assessing the various procedures for obtaining e-residency status, it should also be noted that today's realities impose new restrictions on the freedom of entrepreneurship. Modern states, assuming international legal obligations to combat money laundering and the financing of international terrorism, are taking enhanced measures to verify that a future e-resident is not involved in the commission of these financial crimes, which, of course, complicates the procedure for obtaining such status. In addition, due to the Russian-Ukrainian war and economic sanctions imposed by many countries against Russia, Ukraine and Estonia are taking measures to prevent citizens of the aggressor state from entering their economies. In turn, states that offer foreign citizens to obtain e-residency status must provide them with a secure business environment, including, above all, reliable protection of their personal data.

Therefore, if an individual wants to organize a business without going through additional procedures related to the registration of a private enterprise or the creation of a legal entity, it is appropriate for him to register as an e-resident in Ukraine. This will make it possible to open a bank account in Ukraine, through which she will be able to conduct those financial transactions that will be related to her business activities, as well as pay a small tax in Ukraine. This way of organizing business will certainly not create prerequisites for setting up a medium- or large-scale production of goods or provision of services; it is more suitable for small business, for freelancers. In addition, the rather inflexible system of combating money laundering and the financing of international terrorism introduced in Ukraine may lead to the fact that an honest person will be denied the status of e-resident in the territory of Ukraine.

The e-residency registration procedure in Estonia is more complicated and lengthy, compared to the procedure introduced in Ukraine, as it requires the physical receipt of a special card certifying the e-resident status. In addition, an e-resident cannot independently engage in business activities in Estonia. To do this, he must either acquire the status of an independent entrepreneur, or create a legal entity, which entails the obligation to pay numerous taxes, the amount of which is significantly different from those introduced in Ukraine for e-residents. These physical and material costs are justified by the fact that an e-resident can organize any business in terms of turnover: from small to large; the companies created by him can hire employees, take loans from the bank and, most importantly, enjoy the advantages that are provided to companies registered in the EU member states within the framework of the freedom of movement of goods, services, and capital.

At the same time, the introduction by Ukraine and Estonia of different algorithms for obtaining e-resident status has undoubted advantages, since the states will not compete with each other in attracting potential acquirers of this status.

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