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## **Round Table on “Ukrainian Immigration Rules and Labor Law”**

**June 7, 2011**

**Alex Frishberg:**

Thank you all for coming today. This will be a very interesting discussion about a very non-transparent area of law – immigration and labor law as it pertains to foreigners in Ukraine. Many foreigners still keep coming to Ukraine despite the fact that they, according to law, are in violation of the ambiguous immigration rules. Until recently, most foreigners were not subject to the fines provided by Ukrainian immigration law. However, we even received a news bulletin today from a well-know accounting firm, which states that the Ukrainian border authorities are beginning to strictly enforce the immigration rules which have always been on the books.



So, we came here to clarify the law. Some of you haven't been to our seminars before and today, for the first time in 21 years, we decided to open up our roundtable to outside counsel – to people who are our competitors/colleagues from different law firms. The reason why we decided to invite all of our colleagues this time is to open up the floor for discussion afterwards. There will be an initial presentation, which will be fairly technical but painless and quick, and afterwards we will move into what everyone really came here for – questions and answers and discussions about experience in immigration matters. So, you don't necessarily need to have a question. You can simply raise your hand and tell us what is bothering you about immigration rules or what your experiences have been in this field.

We found out recently that a new Resolution of the Cabinet of Ministers has been issued, which will change life as we know it today once it is published and not for the better. Without further adieu, I'd like to turn the table over to my partner, Scott Brown, who will quickly review the existing labor and immigration law for foreigners in Ukraine. Afterwards, Mr. Sergei Potabenko, who is the chief of our registration department, will tell you in more detail which documents and registrations are needed, timeframes, problematic areas, etc. And, last but not least, Ms. Inna Ignatenko, chief accountant of Frishberg & Partners, will talk to you about tax aspects for foreigners living in Ukraine. Inna not only does tax planning for all of our clients, but she also works as an interface between our clients and the Tax Inspection and Tax Police.

Thank you. Mr. Brown, the floor is yours.



**Scott E. Brown**

**Scott E. Brown:**

Good afternoon. As Alex said, I will give a brief overview of the immigration rules for foreigners. Sergei Potabenko will get a bit more into the details and the practical aspects.

You are basically here to find out how foreigners can immigrate to Ukraine, which means that they will be able to stay over 90 days within each 180-day period. There are ways for foreigners to stay in Ukraine over 90 days, but you need to have legal grounds for such stays.

The first legal ground is to apply for a work permit. In applying for a work permit there are four different categories. The first category is when a foreigner works in a Ukrainian legal entity (local company). This category does not apply to representative offices, which is a separate issue to be touched upon later. In this category, the foreigner is directly employed by a local legal entity on the basis of an employment agreement or contract. It makes no difference whether the legal entity is 100% foreign-owned or a joint venture or

100% Ukrainian-owned. The main factor is that the local entity is registered as a legal entity.

The second category relates to those foreigners, who come to Ukraine to work on the basis of a contract concluded between a resident entity and a non-resident entity. The most common case

is when a non-resident entity sends an employee to Ukraine to provide services under a contract concluded with a Ukrainian customer. This category requires a work permit, but in place of an employment contract, the service contract is submitted to the employment authorities.

There are two other categories, which are quite interesting in print, but in practice we have not yet applied for work permits under these categories. Most of the local authorities have not yet heard of these categories, but they are connected with Ukraine's entrance into the World Trade Organization. One of these two categories is known as an "Intra-corporate Transferee" and the other category is when a foreign citizen provides services in Ukraine without the establishment of a commercial presence in Ukraine. You will more than likely see the first of these categories in Ukraine before you see the latter category because in the latter category, without additional legal grounds to stay in Ukraine, there is no procedure for registering individuals under this WTO category yet. You can try to refer to the WTO agreement, but you won't get very far on a practical basis without the required internal procedures and instructions.



An Intra-corporate Transferee is basically a person employed by a legal entity registered in a member state of the WTO (except non-profit organizations) seeking temporary stay to supply services in Ukraine to such legal entity's branch, affiliate or subsidiary engaged in similar business operations. This category applies to specific types of employees, and specifically to executives, managers and specialists with the required academic and professional qualifications. Again, in this category, you may face trouble

because OVIR (the local immigration police) does not have a procedure in place to register such employees for temporary residency of at least 1 year. Unless one of our audience members has gone through this process, this is all I will say about the two WTO categories.

When you submit the application for a work permit, there is a lot of documentation involved, especially from the local employer's or host's side, including but not limited to official statements from the local tax and social security authorities that the legal entity in question does not have any debts before such authorities. Therefore, prior to submitting a work permit procedure, all company documents should be in hand and verified for correctness/completeness in order to avoid a refusal to issue a work permit.

The Employment Commission has, by law, 30 calendar days to review an application and issue or refuse a work permit. In practice, we can usually get a work permit within two weeks only after we receive all duly executed documents and catch the earliest Employment Commission session,

which occurs twice per month. This means that it usually takes 1 to 1.5 months to get a work permit, document processing taken into consideration.

Once a foreigner is issued a work permit, then he or she will be required to obtain the necessary visa that will contain the number that coincides with the number on the work permit. For this purpose, the foreigner will be required to apply for an immigration visa or otherwise known as an IM-1 visa. For this purpose, if the foreigner is in Ukraine when the work permit is issued, then he or she will be required to leave Ukraine to apply for an IM-1 visa at a Ukrainian consulate outside of Ukraine on the basis of the work permit.



**Dominique Menu, BNP**

There are some practical aspects here. Some of the Ukrainian consulates in other countries refuse to issue immigration visas to a foreigner that is not registered or has never resided in the country in question. You shouldn't listen to the Consulate's first refusal. You should use all of your efforts to convince them that wherever the Consulate is located, it is obliged to issue the visa to you. I have obtained IM-1 visas in countries other than the US of which I am a citizen. So, there is a bit of effort and planning involved before you leave to get your IM-1 visa. You should contact the intended Consulate and confirm with them that they will issue the IM-1 visa prior to your arrival. You should be a bit pushy and ask them to show you in the legislation where it says that that Consulate is not allowed to issue a visa to a foreigner, who is not a resident of that country where the Consulate is located. They will not be able to find such legislation in writing.

The next step in the immigration procedure is registration with OVIR, which should be done as soon as the foreigner enters Ukraine on the basis of his or her IM-1 visa. In practice, the foreigner has 10 days to register with OVIR upon entrance into the country with his or her IM-1 visa. I do not recommend waiting for the 10<sup>th</sup> day to do so. Again, this is yet another packet of documents on the basis of which OVIR (the local immigration police) will issue a temporary residency certificate.



**Scott E. Brown**

With a temporary residency certificate, your IM-1 visa and your work permit, you will now be able to stay in Ukraine more than 90 days out of 180 days. At this point, I'll back up one step. The IM-1 visa is issued as a single-entry visa and it only "transforms" into a multiple-entry visa once you get your temporary residency certificate from the local OVIR office. Whether you will be registered in Kiev or a different city or even the Kiev Region, some of the document requirements for OVIR registration will slightly differ. Therefore, you should find out which documents are needed for your place of temporary residence prior to submitting your application. Sergei Potabenko will go into more details later about this.

This is the end of the main immigration procedures. There are also post-immigration issues that should be taken care of on a case-by-case basis. These include obtaining a tax ID code and applying for tax residency. These procedures are quite simple and straightforward.

Now I will mention a few words about the Cabinet of Ministers' Resolution of June 1, 2011, which will now change the visa regimes for Ukraine. Once this Resolution comes into force (and if it is not changed before then) we will no longer see IM-1 visas. I think we will see amendments to this Resolution because it contains a lot of absurd provisions. In a nutshell, there will now be 3 new types of visa: transit visas ("B" visas"), short-term visas ("C" visas) and long-term ("D" visas). We will no longer see business visas, IM-1 visas, private visas, etc.

The most interesting aspect of the new Resolution is for representative offices of foreign legal entities in Ukraine. Foreign employees of representative offices will be able to apply for a long-term visa on the basis of which they may apply to OVIR for a temporary residency certificate. In the past, a foreign employee of a representative office would apply for an accreditation (service) card and a business visa. On the basis of these two documents, the foreign employee could enter Ukraine, but he or she would not by law be able to stay over 90 days within a 180-day period. Obviously, this is not very conducive for the day-to-day operations of representative offices if

a foreign employee is required on site full time as the head or director of the office. So, in the future, such foreign employee will be able to apply for temporary residency with the ability to come and go as often as necessary on the basis of an accreditation card and long-term visa.



**Jim Bown, Vanco Oil**

A brief note for foreign bank representatives, the new Resolution also provides the opportunity to obtain temporary residency. However, they will need to get accreditation from the National Bank and the procedure of such accreditation does not yet exist. Perhaps we will see it in the near future?

One of the not-so-bright sides about the new visa procedure is that foreigners will need to send their passports ahead of time to the Consulate (no earlier than 3 months before the planned trip) for visa processing. The Consulate has 15 calendar days to process the visa and, if it feels necessary, can extend this processing period up to 30 calendar days. So, if you need to be travelling and only have one passport, this could be problematic. Again, I expect to see some changes once they realize some of the practical impossibilities in this Resolution.

*[Editor's note: After this Roundtable, Resolution No. 567 of the Cabinet of Ministers of Ukraine "On Approval of the Rules of the Execution of Visas for Entrance into Ukraine and Transit Via*

*the Territory of Ukraine", dated June 1, 2011, was officially published on June 10, 2011 and it will come into legal force 3 months after its official publication (i.e., September 10, 2011)]*

That was the Ukrainian immigration rules in a nutshell. Once we move into the Q&A session, we can get into more of the specifics. So, now I will pass the microphone over to my colleague, Sergei Potabenko. Thank you.

**Alex Frishberg:**

Thank you, Mr. Brown, for the very short yet succinct summary of where we stand today and what we have to look forward to tomorrow. I'd now like to turn to Mr. Sergei Potabenko, who has been in the legal (and registration, in particular) business for the last 20 years. Sergei knows many people in the local authorities in Kiev. We tried to get some representatives of the local authorities to participate in our roundtable, but they unfortunately refused. In presenting Sergei, we are presenting someone who deals with these people on a day-to-day basis. He will tell us where we all need to go for registrations, what documents to bring and how things are done in practice.



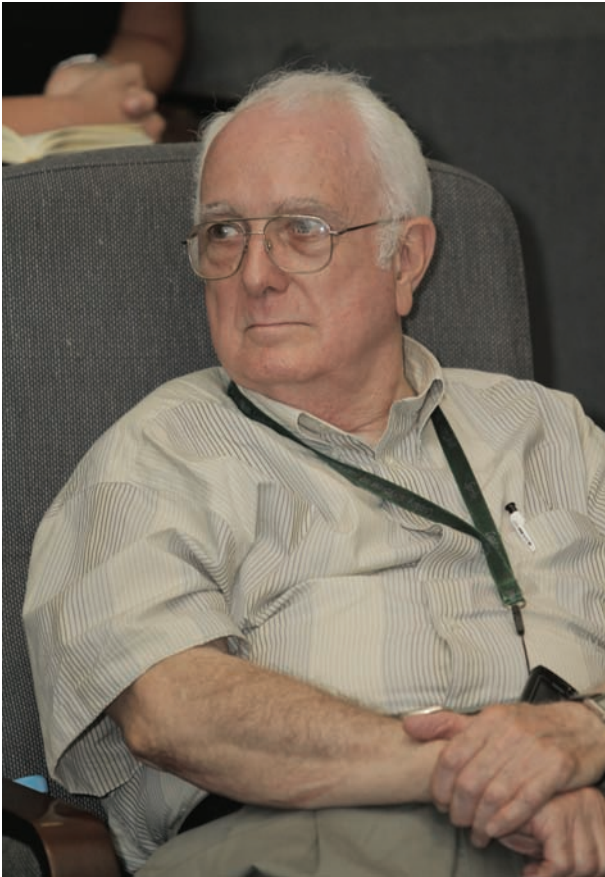
**Sergei Potabenko**

**Sergei Potabenko:**

Good afternoon. I will try to make my presentation as informative yet as short as possible. I would like to point out some of the nuances of Ukrainian legislation. Most people who cross the border into Ukraine either do so for one-time trips or on a permanent basis. So, I would like to touch upon the topic of the legalization of the stays of natural persons in Ukraine.

Importantly, the main problem in crossing the Ukrainian border is that foreigners often incorrectly describe the purpose or goal of their visits to Ukraine. This is often the case even if a foreigner has the proper visa. Upon each initial crossing of the border to Ukraine each foreign citizen is confronted with the first line of control. In practice, there are usually no problems in crossing this first line of control, unless you are located in the database of the customs authorities of persons not permitted to enter into Ukraine for certain reasons.

Recently, the immigration cards that foreigners used to fill out upon entrance into Ukraine were annulled. This used to be a very important document, even though it was a very small piece of paper, because if you lost that piece of paper you could have faced problems. Presently, you can cross the border without this document, but you will still get a stamp in your passport upon entry to and exit from Ukraine. This stamp is the basis for immigration control upon exit from the country. This stamp is also necessary upon extension of your stay in Ukraine with OVIR if your stay will be over 90 days. Based on this information one may see that there is an initial registration of a foreigner. This initial registration is for a 90-day period only.



**Jim Davis, Publisher**

When a foreign citizen is in Ukraine for more than 90 days, as stated previously, such individual's initial stay must be extended with OVIR (the local immigration police). This is where the problems begin.

I would firstly like to focus my attention on employees of foreign representative offices. The main issue here is the extension of the initial registration of foreign chief executives and employees of representative offices. The law is pretty clear about the regulations for foreign employees of representative offices, including crossing the border and extension of stays. The nuances come in for those who accompany these foreign employees – i.e., dependents. And, unfortunately, other foreigners are affected by these nuances.

The opinions of the State Border Service and OVIR are not consistent with each other. My attempts to gather an explanation of certain narrow issues related to the extension of a foreigner's stay in Ukraine always leads to the

following answer. Unfortunately, at this time in Ukraine, the law does not settle all issues. Scott mentioned a few things about the new Resolution that will come into force. This Resolution is actually a great joy for us. This initiative was actually started by Tymoshenko's Cabinet, but they didn't have time to bring it to fruition.

Under current legislation, special attention is focused on the foreign employees of local companies, including their spouses and children. The situation is quite clear – there is a visa (IM-1), a work permit and the corresponding procedure for obtaining temporary residency. The foreign employees of representative offices, however, are not as fortunate.

The document permitting a foreign employee of a representative office to work in Ukraine is called an accreditation (service) card. In reality, this document does not give such foreign employee the right to work in Ukraine; it is, in essence, merely a statement of fact that such person works with the representative office. The Ministry of Economy issues accreditation cards, but it does not even have the legal right to do so. However, this document is accepted for executing business visas and was specially devised for foreign employees of representative offices.



The future of the accreditation card is quite difficult to foresee. Under the current system, the foreign employee of a representative office has the choice to enter Ukraine and stay there without leaving by extending his or her stay as long as needed over 90 days (and only for the validity term of his or her visa). In such case, it is possible, albeit not very convenient, to manage a representative office. Alternatively, the foreign employee may come and go on frequent business trips.

By law, a foreign citizen, who stays in Ukraine over 90 days, must apply to the Ministry of Internal Affairs (OVIR) in order to extend his or her stay in Ukraine. This is the case even if the individual has a visa. This is difficult for representative office employees because they are subject to the 90 days within a 180-day period rule.

Until recently, it was quite difficult to count 90 days within each 180-day period. Do you count this as 90 days in aggregate or 90 days of uninterrupted stay? It was impossible to receive an answer from the various authorities as to how to count the 90 days, when to start counting. Now, you can verbally request this information from the authorities. In any case, any foreign citizen, who works in a representative office, is not considered to be residing in Ukraine on a permanent basis.

The complex question arises for those foreign employees of representative offices who travel frequently. The law states that the 90-day term begins from the date of the first crossing of the border. No one knows when this date is because no one knows whether this means the first “physical” crossing of the border or the first crossing for a concrete purpose (as stated in the visa – business, tourism, private, employment, etc.). When there were immigration cards, it was simple to determine the purpose of visit because that was one of the required blanks to fill in. In my opinion, as a person

who really tried to make heads or tails out of this issue, the only way to count is as follows: in all cases, foreign employees of representative offices should obtain a business visa and, accordingly, on the basis of this document the foreign employee crosses the border into Ukraine for a business purpose. As the foreign employee approaches his 90-day limit, he or she should within 3 days of that limit apply to OVIR to extend his or her stay (unless they are leaving before then). By strict letter of the law, this is prohibited without substantiated grounds for extending your stay.

In many cases, it is easier for the foreigner to pay the fine for overstaying 90 days (if they actually



overstay 90 days). Since this procedure should go through a court, it takes a certain amount of time. In the meantime, the foreigner's documents can already be in the local OVIR office. Further, as it was explained to me by the border patrol, the date when one starts counting the 90 days for each foreign citizen is personal information and is determined on a case-by-case basis. Thus, if you want to carefully set up an "immigration plan" for yourself, they need to look at the individual's passport and determine the so-called "immigration history", which is maintained in a special computer. In order to receive information from that

computer, the individual will need to wait at least one month.

Nevertheless, is the 90 days "in aggregate" or "uninterrupted stay"? This issue is not regulated on a legislative level. So, there is an individual approach to every case. The border officials lean more toward "in aggregate". As you can see, it is very difficult to come up with a consistent answer. OVIR has a different opinion. OVIR believes that the other authorities are completely wrong. It has its own regulations and chain of command.

This is how OVIR works with the law that hasn't really changed that much over the years. In the past, a foreign citizen would arrive to Ukraine on a business visa and register himself/herself in OVIR for a period of a year. After registration, the foreign citizen would be able to freely travel to and from Ukraine. However, recently, when the Border Service began to correctly read the law, they started to pay more attention to foreigners' stays in Ukraine. Thus began the strict counting of 90 days out of a 180-day period.

In our opinion, business visas should be obtained for the head of a representative office and for its foreign employees. They should count both their uninterrupted stays and aggregate presence in Ukraine. Once they are nearing 70 days of presence in Ukraine, they should start preparing the documents for OVIR registration so that they can be submitted 3 days before the 90-day period ends.



**Sergei Potabenko**

In OVIR much will depend on which officer you happen to get for your case because each officer has an “individual” or “personal” approach. In practice, the extension of a stay is not too much of a problem, provided that you submit your request on time without overstaying 90 days. OVIR does not count 90 days on a very strict basis – they simply extend your right to stay in Ukraine until you can leave. The controlling authority for the 90-day issue is actually the Border Service because they have a working database of foreigners’ entries and exits. OVIR does not have access to this computer database.

Many issues may be resolved by the Cabinet of Ministers’ new Resolution, which will be subject to amendments over the next 3 months, of course. The new Resolution determines that there will be one type of visa for foreign employees of legal entities and representative offices. As of now IM-1 visas are only issued to foreign employees of resident legal entities and business visas are issued to foreign employees of representative offices. The new visa for both categories will be changed from the current IM-1 visa to a “D” visa (“Dovgostrokova” or “Long-term” visa).

In the immediate future, the system will become much more simplified for foreign employees of representative offices and banks. The goal of the new visas is to allow these categories to obtain temporary residency certificates. Thus, for all foreigners, who come to work in Ukraine, there will be one visa type, one procedure and one entry/exit procedure. This does not mean that the Cabinet of Ministers won’t change its mind over the next 3 months.

The next nuance that is important to foreigners in Ukraine is how to legally register their family members (dependents). Unfortunately, this issue is also not regulated very logically. There exists a so-called “private visa” or “P-1” visa for dependents, which we recommend for everyone, even those who are able to enjoy the visa-free regime. First of all, the visa-free regime actually applies to tourism, although it doesn’t prohibit one from doing business in Ukraine. The Border Service and OVIR strictly control those who enter and exit within the visa-free regime. Thus, if a family member enters Ukraine on the visa-free regime and overstays 90 days, then such family member will be in violation of immigration rules and will not be able to extend their right to stay over 90 days. This is why we recommend a P-1 visa for dependents of foreign workers in Ukraine, even for small children.



Please note that small children don't have to be separately registered in OVIR, as they are automatically registered with their parents. The P-1 visa grants the holder the right to reside in Ukraine while the IM-1 visa holder is legally able to reside here. Unfortunately, the fate of this type of visa is not very clear in the new Cabinet Resolution. In addition, I have seen different versions of P-1 visas, including single-entry, multiple entry, 6 months, 1 year, etc.

When you wish to extend your P-1 visa so that you can stay over 90 days, such registration will only be valid until you actually exit Ukraine. Accordingly, when you re-enter on a P-1 visa, you are once again faced with the unresolved issue of whether to count 90-days from your date of re-entry or 90 days in aggregate. OVIR will tell you to count one way, while the Customs Service will tell you to count another way. So, as you can see, P-1 visa holders are treated much the same as business visa holders. Both visas grant the right to extend a stay in Ukraine to over 90 days.

Thus, until recently, many foreigners either didn't pay attention to the 90-day rule or simply didn't know how and when to start counting those days within each 180-day period. Unfortunately, the authorities are now focusing on this issue. There have been cases when people have been turned away from Ukraine at the airport, even though they were holding business visas, because they had already been in Ukraine 90 days within the last 180-day period. This has also happened to those entering within the visa-free regime, as the database contains each visitor's immigration history. It is entirely possible, however, that other reasons existed for their entry refusal. This procedure will remain the same until the new Resolution enters into force [on September 10, 2011]. I hope that the changes will be for the better.



There are fines for a foreigner's failure to adhere to immigration legislation. The legislation has defined the responsible parties. The fines apply to the foreigner, the local company which invited the foreigner and/or the individuals who signed the invitation letter for inviting the foreigner to Ukraine. You need invitations for business and private visas. The fines have increased over the years. For legal entities the fine is 850 hryvnias.

The only legal way to extend a 90-day stay in Ukraine, regardless of the visa type, is a temporary residency permit. However, only foreign employees of legal entities (resident companies) have the right to receive such permits on the basis of their IM-1 visas. In relation to family members, OVIR accepts documents from both Ukrainian citizens and foreigners, who are in Ukraine on a legal basis. I'd be happy to discuss the details of how to get a temporary residency permit after our discussion. Inna will now discuss the taxation issues for foreigners in Ukraine, including the requirement to obtain a tax identification code (now known as a "registration number of a record card of a taxpayer").

#### **Alex Frishberg:**

Inna's presence is vital to any operations because, sooner or later, the tax authorities make inquiries, especially these days. Her experience in this field is unmatched as a professional.

#### **Inna Ignatenko:**

The most pleasant news in the area of taxation is the cancellation of the requirement of tax residency for foreigners. Any foreigners, who receive income on the territory of Ukraine (including salary), are treated as residents of Ukraine for purposes of taxation and are taxed at the rate for any natural persons. This rate is 15% or 17%. Formerly, the income tax law imposed a double taxation rate on foreign citizens' income in Ukraine. From this year, this provision of the law is no longer effective.



**Inna Ignatenko**

The issue that arises for foreigners upon submission of an income tax declaration in Ukraine prior to May 1<sup>st</sup> is the confirmation of a foreigner's presence in Ukraine for over 183 days. The tax inspection may demand a statement from the tax authority in the foreigner's home country, evidencing that the foreigner was located in Ukraine for over 183 days, received income, and may be subject to the Ukrainian tax rates on the territory of Ukraine. With respect to other payouts, such as dividends, royalties, insurance compensation, etc., the rules under the new Tax Code have not significantly changed.

The income tax rate on income received from Ukrainian residents by non-residents will also be 15% or 17%. This is in relation to the sale, alienation or assignment of property. The 15% rate is applied on income less than or equal to 9,410 Ukrainian hryvnias per month in this year. All income amounts above 9,410 hryvnias per month will be taxed at the rate of 17%. These rates are based on the monthly minimum taxable income permissible under Ukrainian law on January 1, 2011 (941 Ukrainian hryvnias) and, specifically, 10 minimum taxable incomes (10 x 941).

The new Tax Code has not established any other rules in relation to income received by non-residents from a Ukrainian source. However, as the Cabinet of Ministers and the Parliament have been quite productive this year in relation to taxation, one can expect more changes throughout the year.

### Question and Answer Session:



**Jim Davis**

#### **Jim Davis:**

As an ex-pat that has been here forever, with the necessary convenience of a Ukrainian wife and permanent residency that goes along with this convenience, I understand there have been some changes in the permanent residency situation. How does this affect one like me? One of the wire services covered a story that permanent residency has basically been wiped out. Is this true? And, what about the 90-day rule for permanent residents?

#### **Scott Brown:**

I have not seen any changes like that in the legislation. Has anyone heard of something similar? This may be something that they are planning on doing, but I haven't seen changes to permanent residency yet. The 90-day rule does not apply to permanent residents. It doesn't even apply to temporary residents. Once you show your permanent or temporary residency permit to the border authorities, they will not bother to count 90 days.



**Dominique Menu:**

I am not going to go through the special status of representative offices of foreign banks. I just got my new visa on May 16<sup>th</sup>. Shall I assume that the 90 days out of 180 days starts from the day of my new visa? Or, do I also count the days under my old visa?

**Scott Brown:**

This is where the confusion comes in that we talked about. My opinion is that you must start counting from the first day you entered Ukraine under your current passport. It is quite complicated because you need to take your passport and count the days present in Ukraine. I got three explanations when I contacted the local authorities. The answer can also depend on whether you speak Russian, Ukrainian or another language. In most cases, their safe answer was that you must leave.

Before the new visa, what kind of visa did you have? You had a business visa. So, the status of your stay in Ukraine never changed. In other words, you were always permitted into Ukraine as a business visitor. Arguably, you should be counting your 90 days from the first time you physically entered Ukraine on your first business visa. The rule only came into effect two years ago, so it shouldn't be "too difficult" to count. The authorities weren't really counting 4, 5 or 7 years ago.

To be safe, I would count the days under your new visa, but I would also request the amount of days you can stay in Ukraine next time you cross the border.



They will have this information in the database and are obliged to tell you. This is the easiest method of counting, but you may also open the proverbial “can of worms”.

**Sergei Potabenko:**

But, there is a risk, of course. There are three ways of counting how many days you have left or from which date you count your days. The first way is to count by your stamps in your passport. This can be quite difficult and cumbersome. The second way is to ask the customs officer at the border. The risk here is that if the customs border is in a bad mood and he may look at his computer and determine that you’ve been here too long. Needless to say, you may face problems in such situation. Would you want to expose yourself to the government authorities?

I believe that the third way is the most preferable. You can send an official written request to the border authorities, which will provide you with the full information about how many times you crossed the border and how many days you have been present in Ukraine. They can also give you information, if requested, about the date from which you should count your 90 days. From the point of view of the border authorities, each foreigner’s “year” is different, depending on when they first entered the country.

**Scott Brown:**

You see, everyone receives a visa on a different date. Some foreigners receive different types of visas and enter on the visa-free regime between visas. However, when you have two of the same types of visas in a row, your immigration status does not change and you should, by strict letter of the law, count your days from the first visa issued. Again, the news is that they have been checking more frequently. However, I have my doubts about how closely they check those foreigners with accreditation cards to work in representative offices. In such cases, they may show more lenience for the sake of business, but it is almost impossible to predict how each border official will react.



**Dominique Menu:**

The fine is 850 hryvnias and when you are fined, you are fined at the border when you exit? And if you pay, you can come back?

**Scott Brown:**

Of course, you can come back, unless they warn you that you won’t be let back in. Again, some foreigners have been refused entry at the border because they have already used up their 90 days. However, I



**Mark Rachkevych, Kiev Post**

haven't heard of someone being told upon exit that they can't come back for 6 months or 1 year, although such rule exists.

**Sergei Potabenko:**

Documents are being check upon entry and exit. So, your 90 days can be monitored either way. If you are exiting and you have violated the law, then you will be fined and warned about your violation. If you are entering and they let you in, you will either have another 90 days or they will begin adding days onto the days you have already been in Ukraine. Yes, there are cases when the border officer won't let you in at all.

**Question:**

I just want to clarify. Generally speaking, the new Cabinet of Ministers' resolution simplifies the visa regime?

**Scott Brown:**

Well, it doesn't really simplify the visa processing procedure. Yes, there will be only 3 categories of visas, but you will need to send your passport well ahead of time to obtain your visa. This is not convenient when you travel a lot, unless you have a second passport.

**Question:**

Once you get the visa under the new rules, will the visa already be a work permit?

**Scott Brown:**

No, prior to applying for an immigration visa (or a "D" visa under the new rules), you firstly need to apply for a work permit. You can have legal representatives apply for your work permit before you come to Ukraine. If you are



in Ukraine when you receive your work permit, you will have to leave the country to get your visa. The number of your work permit will be indicated on your visa. Then, when you return to Ukraine, you will need to register with OVIR to get a temporary residency permit on the basis of your work permit and visa, which both must have matching numbers. Once you register with OVIR, your single-entry IM-1 visa “transforms” into a multiple entry visa along with your temporary residency permit. You must bring your temporary residency permit with you each time you exit and enter Ukraine; otherwise, the border authorities will cause problems if you enter on your IM-1 visa alone.

The new rules do not state whether the “D” visas will be single or multiple entry visas for employees of local companies and representative offices. They could be multiple entry visas for up to 3 years, but it is not clear what will eventually issued to work permit holders and foreign employees of representative offices. I’m sure that there will be some changes to the work permit rules in conjunction with the new visa rules.



**Question:**

What is the maximum duration of the residency permits?

**Scott Brown:**

The maximum duration of the residency permit is the maximum duration of your employment contract. However, as a general rule, residency permits are valid for the duration of work permits, which is in most cases one year. The other WTO categories allow for work permits up to 3 or 5 years, but we have not yet seen a work permit issued for longer than one year in practice.

**Dominique Menu:**

So, this new Resolution has been published and will come into force in two months?

**Scott Brown:**

It was issued on June 1<sup>st</sup>, but I don’t know if it has been published yet [*editor’s note: it was eventually published on June 10<sup>th</sup> – a few days after the roundtable*]. Usually, these types of resolutions are published quite quickly (within a week to ten days) and come into force 3 months after publication. We did not find it published yet in the official state bulletins.

**Question:**

I have a question about extension of 90 days within OVIR. The stamp itself does not bear the date when it was issued. It only states until which date the foreigner can stay in the country. When the foreigner crosses the border with that stamp, the border control sees that the foreigner is crossing the border, but they don't put a stamp annulling the OVIR registration. The next time the foreigner crosses the border, the stamp may appear technically valid because the border authorities don't know whether it was issued before the foreigner exited last time or within his stay after his last entrance. My question is do you know from your own practice whether the OVIR registration is cancelled in some way upon exit? Is there a separate register with information about these stamps?

From what I've heard, there is a different attitude at different border crossing points in Ukraine. For example, in Kiev there is a general instruction not to touch foreigners,

but in other regions the situation is different – they might be more favorable to people registered in their own regions. For example, if you are registered in Dnepropetrovsk, the Dnepropetrovsk border control will not touch you, but if you are registered in Kiev and enter in Dnepropetrovsk, then you might have problems entering in Dnepropetrovsk.

**Sergei Potabenko:**

With regard to the second part of your question, yes, we have heard of this situation. The nonsensical part is that 90 days will in any case end at some point – whether you count it in aggregate or consecutively. The law for all foreigners is the same. 3 days before such 90 days expires you must visit the local OVIR office if you are planning to stay over 90 days. This extension of the right to remain in Ukraine is a separate issue from the visa issue, but it is counted on the basis of the visa. Having the corresponding documents, which confirm your necessity to stay in Ukraine over 90 days, OVIR will extend your right to stay for the duration of your visa. Again, however, OVIR is only extending your right to remain in Ukraine. As soon as you exit the country, this registration is annulled. Therefore, I don't recommend going to OVIR immediately upon arrival, but waiting until closer to the end of your permissible 90-day stay.

**Scott Brown:**

I'd like to touch upon the first question about the OVIR extension stamp. The stamp doesn't actually have an issuance date, but it has a maximum date, which is the date until which your visa is valid. The border authorities will know that if your passport has a stamp that states you exited the country before the OVIR registration expired, then the OVIR registration was cancelled upon exit. The border authorities don't place a cancellation stamp on the OVIR registration, but the foreigner is in the database as having exited prior to expiration of the OVIR registration. Therefore, the OVIR registration is automatically cancelled. The border authorities don't have the OVIR database, but they can easily compare in their database whether a foreigner exited prior to the expiration of OVIR registration thereby cancelling the OVIR registration upon exit. The OVIR extension only remains valid while the foreigner is in the country. Once he or she exits, it gets cancelled and the border authorities can check that through

their own database. If the foreigner leaves and needs to once again get an OVIR extension, then the foreigner will have a second identical stamp in his or her passport.

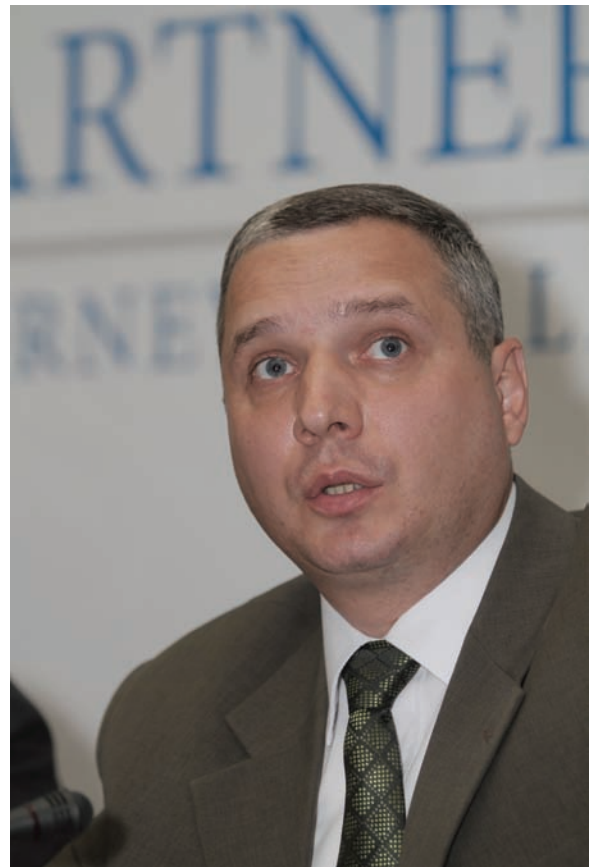
**Sergei Potabenko:**

This was one of the problems I pointed out. The customs officials only register your crossings of the Ukrainian border. OVIR is concerned with another 90 days. For example, the border official will notice that you overstayed 90 days, but they will also notice that you have an OVIR extension and shouldn't be punished for overstaying 90 days. Thus, the border authorities only see that final date that you can stay until in the OVIR registration stamp. If you didn't have the OVIR extension, you would be faced with a fine on the basis of the border authorities' database. The customs officer's placing of an exit stamp in your passport is sufficient to annul the OVIR registration (it will not place a special annulment stamp on such registration). Therefore, if you re-enter later and try to re-exit on the basis of your previously automatically annulled OVIR extension, any qualified customs official will notice a violation. Also, the customs officer may place a stamp on top of your visa or OVIR registration to notify other officers of the actual expiration date.

This situation is not always controlled effectively and, therefore, there are cases when one authority doesn't notice the remarks of the other authority. However, we see a trend in tightening up of the controls. Why? Because this is a feeding ground for bringing money into the state budget. While OVIR may control this for treasury purposes, the customs authorities may have other reasons for cracking down on violations. Since such careless border crossings are becoming more and more risky for foreigners, but they always have the opportunity to verify their immigration status with the border officials.

**Question:**

A person came to Ukraine with no visa and has been staying here for 3 years. This person did not apply for OVIR extension, visa extension or anything else. Now, this person wants to leave Ukraine and he wonders if he will have any problems. Will Ukraine let this person leave? And, will Ukraine let this person come back again?



**Sergei Potabenko:**

They will let this person out of the country, but he will have to pay a fine. There are two ways to deal with this situation. The first method is to give himself up to OVIR on an official basis. He will be faced with a fine. The amount of the fine will depend on the personal judgment of the inspector and the gravity of the violation. The fine must be paid via a court and, if the documents are not lost in the process, the fine will be imposed within between 2 and 6 weeks. Once such fine has been paid, you may request that OVIR place a registration stamp in your passport. This is the complicated method.

The other method is for the foreigner to simply go to the airport and politely ask to leave the country. The officer may initially be in shock, but he will eventually overcome his shock. Why is this more advantageous for the foreigner? A protocol is executed on the spot with the specific amount of administrative fine. After the fine is paid, the foreigner will be able to leave the country.

OVIR will not do anything except levy a fine against the foreigner. However, the border officials may allow the foreigner to leave after payment of a fine, but they may also put in their database a short-term temporary restriction of re-entry by such foreigner. They also have the right to



place a long-term or permanent restriction on such foreigner re-entry in the future. Again, this will depend on the severity of the violation and the attitude of the specific border official in question.

In the first, more complicated case, having OVIR's registration and paying the fine, you are at least showing a respect for the rules and admitting to a violation. Thus, the border official may take this into account and only demand a fine without any restrictions on re-entry in the future. In the second case, you are just showing up and saying "Well, here is my situation, do what you have to do and let me go". Since they are more or less required to "decide your fate" on the spot, they may not take to kindly to the extra efforts involved from their part and may decide that you have no respect for immigration laws. Thus, in such case, restrictions upon re-entry are more likely and will be on your record. No matter when you come into the country, the most important factor is that there are no restrictions or bans on your entrance and, of course, the availability of the proper documents.

**Scott Brown:**

They are talking about establishing a system in the future whereby if you have any debts before the local authorities (especially tax authorities) or Ukrainian creditors, you may not be allowed to exit the country without payment of those debts. It is similar to alimony cases in other countries. If your debts are quite high and you don't have enough in your pocket, you are staying in Ukraine.

**Question:**

I have a couple of questions about the business visa and doing business in Ukraine. I've seen on a Ukrainian government website that an American citizen does not need an invitation to get a business visa. Is this true? If so, what assets do I need to prove?



**Scott Brown:**

They have cancelled the requirement of an invitation for EU, US and some other countries for the business visa. For some of the new visas that will come into force in 3 months, there will be certain registration requirements. A business visa is not a work visa. Ukraine doesn't have work visas, rather it has work permits. Work permits are not placed in your passport and they must be strictly kept by the employing company. Work permits give you the right to work in a specific company in

Ukraine. In other words, you can't get a general work permit to do any work in any company.

If you are just starting a company, you will start with a business visa. In such case, you don't write an invitation for yourself to invest in Ukraine. Right now, there is the visa-free regime that allows you to do the necessary initial discovery phase to start a business. Once you have local partners, potential employees, etc., you will want a business visa because it will allow you to expand your activities a bit on the territory of Ukraine. Truthfully, most people are able to do whatever a business visa allows under the visa-free regime. However, there are certain restrictions on the type of activity you can conduct under the visa-free regime.

Over the last year or so, some of the Ukrainian consulates have even refused to issue business visas to US and EU citizens because they can enjoy the visa-free regime. Unfortunately, the consulates don't always know the law and what types of activities can be undertaken under a business visa as opposed to private visa or to the visa-free regime. Again, the visa types will change in 3 months and there most likely won't be a business visa. Then, we'll most likely see transit, short-term and long-term visas. Based on your original purpose, if it is just to start a business, the Ukrainian Consulate may decide to initially issue a short-term visa and only later issue long-term visas.

**Question:**

If I did some investing here, such as purchasing real estate to buy, fix up and sell, I probably wouldn't take on any partners for quite a while. I've heard that if I invest 100,000 dollars in Ukraine, then I could get permanent residency. This is actually from the official Ukrainian government website. I've also heard that this is not true, unless my investment is a flat out donation to the Ukrainian government.

**Scott Brown:**

You can find this provision in the law, but it is very difficult to get permanent residency. Honestly, I know very few people that get permanent residency without having relatives or a Ukrainian spouse.

**Alex Frishberg:**

A few of my acquaintances tried to get permanent residency by buying a flat in Kiev. They had great inside connections through the right people that would be able to issue permanent residency, but the answer is that buying a flat is not a business investment.

**Question:**

Would you speak briefly both about the theoretical part and the practical part of the legal grounds for getting permanent residency in Ukraine?

**Sergei Potabenko:**

It is possible to get permanent residency. Only a certain category of citizens can get permanent residency in Ukraine. There are also limitations connected with quotas. There is a certain category of citizens, who are not subject to a quota and are allowed permanent residency; for example, those with Ukrainian family members and close relatives. The biggest problem in this procedure is to submit the necessary package of documents that would clear review. Let's suppose the documents you submit confirm investment of 100,000 dollars. The question becomes: where will you invest it? The law states that such investment must be investment into the economy of Ukraine. Arguably, entrepreneurial activity could be considered investment into the country. The main obstacle is the enormous amounts of documents you must gather to prove you have the right to permanent residency.

If you are able to gather the required documents to obtain the right to permanent residency, pay all of the required fees and are fortunate enough to achieve one of the categories for permanent residency, then it will take at least 1 year to obtain a permanent residency permit. As a matter of practice, you will not be able to independently do this without legal counsel and good connections. Moreover, it will more likely take about 2 years because the decision to be included into a quota is taken at the very top level of the government.

**Question:**

I really appreciate this very practical and informative session for foreigners, like me, who are living here. I am the Head of a Representative Office of a foreign company. I have been living here for the last 8 years. I would like to know whether the new law [visa rules] can change the situation. I have been going through the difficulties of bringing my family here on multiple visas. In fact, my colleague has gone to OVIR to apply for a private invitation for my children. So, can this new law [resolution] help my children get long-term stays? My children study in Kiev and cannot leave for pleasure or any other reason because they don't have multiple entry visas.

**Scott Brown:**

On its face, as it is currently written, yes. I believe that one of the purposes of making the changes to the visa regimes is to accommodate foreign employees of representative offices. You should be able to get temporary residency and, on this basis, register your children and



wife as dependents in OVIR. They should be able to come back and forth with you, provided that the Consulate will issue to them long-term visas. Without a temporary residency permit, it is difficult to move your family around with you. There will be changes to other supporting laws; so, I think that if the new resolution and the associated legislation is properly implemented, they will cover these current problems.

The new resolution says that the long-term visa can be issued up to 3 years. However, you may still need to renew your work permit each year. I hope that they will change this rule and the rule that OVIR extension is cancelled upon exit after 90 or more days. Again, we'll see in 3 months how the new resolution will bring about changes to the other immigration rules (temporary residency, work permit terms, etc.). It would be nice to be able to get 3 work permits on one visa. It is starting to work like this now. I have 2 extensions spots on my work

permit and I was able to avoid leaving to get a new IM-1 visa because my work permit was extended and its serial number stayed the same. Therefore, the serial number on the work permit still matches my original IM-1 visa. Hopefully, this will be a possibility under the new rules, only in a more transparent and obvious manner.

**Question:**

Mr. Potabenko mentioned a 100,000 dollar investment into the economy of Ukraine to obtain permanent residency. If I do get the advice of a good lawyer, can it be done within shorter than 2 years?

**Sergei Potabenko:**

There are certain procedural norms, which can not be avoided. In the current situation, it would be much better to simply wait.

If you are the Head of a Representative Office and you have a wife and young children (until 18 years of age children are not subject to registration in OVIR – they are automatically registered with their parents), you will only have your wife to worry about. If the new legislation is adopted as written, you will have the right to temporary residency, which will give you the right to remain as long as you want and travel without any limitations. In addition, you will officially have the right to issue invitations for your wife. This will be the basis for you to attempt to obtain temporary residency for your wife, although she will have no relation to your business whatsoever. Again, this will depend on the possibly upcoming changes to the immigration-related laws, not just the new visa rules.



**Question:**

I am one of your colleagues from another law firm. I have a couple of questions on the matter of quotas and permanent residency permits. As far as I remember, each year there is a list of quotas approved and there are a specific number of persons for each type of quota, which are approved each year as well. But, the quota for the 100,000 dollar investment is empty. Thus, it seems that there is no quota for this category. How do you understand this?

**Sergei Potabenko:**

The law itself has seven categories of people, who receive permission to immigrate. On the basis of this permission, these people also receive temporary residency. A 100,000 dollar investor is included in these categories, but is not included in the non-quota categories. Thus, the investor situation is reviewed on a general basis with no special

benefits. In this situation, the investor is not giving 100,000 to give to the inspector's pocket. Rather, the investor is almost participating in a tender. For example, one category includes artists and gifted individuals and these are the investor's competitors.



**Question:**

But, in fact, there is no clearly stated limit for the number of such investors.

**Scott Brown:**

There is no clearly stated limit, but the thing that interests me is that the "100,000 dollar investment" is not clearly defined. How does it have to be invested? For example, can you invest it into real estate? Can it be invested into the authorized capital of a locally registered company? There is no clearly stated answer.

**Sergei Potabenko:**

It is very difficult to determine the goal of investment under which you will be able to obtain the benefits. As far as I recall, there are only a few and these cases are resolved through central administrations, connections, etc. It is difficult to find the volume of these investments that have passed the test. The investment must be approved, all documents must be disclosed, the source and method of investment must be confirmed (i.e., it can't come in in suitcases), etc.



**Question:**

I have a question on the new order of obtaining visas. Does it contain any provisions on the matter of obtaining temporary residency permits? There currently is no order of obtaining a temporary residency permit approved by any authority. It is only a list of documents.

**Scott Brown:**

No, the new Resolution only mentions visa types and the visa processing procedure. These are basically the

rules for entering and exiting Ukraine. The new Resolution does not contain any provisions about temporary residency, which is the competence of OVIR.



**Question:**

Can we see this new Resolution?

**Alex Frishberg:**

We found it over the Internet. It should become available in any legal database, including the Parliament's website. It will be officially published as well.

**Question:**

I have a question regarding taxation. For example, a foreigner has obtained a permanent residency permit and he wants to be taxed in Ukraine, but because of a large amount of business trips he is unable to stay in Ukraine 183 days. Is there a way that this foreigner can pay taxes in Ukraine?



**Inna Ignatenko:**

This norm has not yet been implemented in the legislation, but the tax inspection anyway insists on applying this rule. The tax laws contain the definitions of "residents" and "non-residents", and one of the positions is that the taxpayer must have principal residency in Ukraine and interests in Ukraine. The fact that he travels a lot does not mean that he cannot prove these points. He has to prove his closest connection to Ukraine. For example, he may produce a document that he official resides in Ukraine and his closest personal and business connections are in Ukraine.

**Question:**

So, if the foreigner fulfills or proves these requirements, then he can pay taxes in Ukraine even without being in the country for 183 days?

**Scott Brown:**

Yes, it is a matter of convincing the tax authorities in Ukraine and the foreigner's other country (countries) with connections that the main tax base is Ukraine. I can't see why the Ukrainian tax authorities would refuse tax residency if they can get more money into their budget. You need to prove closest connection. There is a series of parameters which prove closest connection, such as permanent residency, residency of family, business interests, taxable income source, etc.

**Question:**

I have a question regarding temporary residency permits. OVIR recently issued new document requirements. One of the documents is an internal order from the company authorizing certain Ukrainian citizens within the company to apply for temporary residency permits on behalf of foreigners. In our experience, at the end, even if you provide this internal order, OVIR still requires the personal presence of each foreigner to receive the temporary residency permit. There is no way around this. How do you resolve this situation? Is there any way to avoid the foreigner's presence in OVIR by just sending the persons authorized by the company?

**Scott Brown:**

That is kind of strange. Even our firm has two individuals authorized to represent foreigners in OVIR. However, the way I solved it was just to go to OVIR and talk to them. They just want to see whether the person is actually in Ukraine and ask general questions. What are you doing here? Why does your company need a foreigner to do your job? Are you actually living where you stated in the application? It was actually a fun conversation. But, to be honest, I didn't know that they have begun to refuse to issue TRPs without the foreigner's personal visit. I mean, the company is obliged to have Ukrainian citizens as representatives. Perhaps Sergei can shed some light on this.

**Sergei Potabenko:**

In reality it is not that simple. The legislators understand two positions. One, the foreigner will not go to OVIR and do not want to go to OVIR. Second, someone has to bear responsibility for this foreign person, and these are two Ukrainian citizens with joint and severable liability. This is a new requirement, which has only recently been implemented. In the past, either a power of attorney or the enterprise's registration in OVIR was sufficient. The foreigner's presence is usually only required in specific cases. For temporary residency, the foreigner is obliged to visit OVIR because his signature is required on certain papers.

**Scott Brown:**

But this is something new because when I visited OVIR I only had to talk to the Chief of OVIR. When he passed my documents over to the executing officers, they didn't request to see me. In my past cases, I didn't have to visit OVIR. So, this is new.

**Alex Frishberg:**

I am a foreigner and I've lived here for 20 years, but I don't even know where my OVIR office is...

**Question:**

I have a question regarding Russian citizens. If they come here for a private reason and they do not have to get a private or business visa, how can they get registered here? Is the only decision to constantly go back and forth?

**Scott Brown:**

Technically, a Russian citizen can register for an extension of 90 days with OVIR. The question is how long will the extension be, as they won't be issued a visa? On the basis of mutual reciprocity, you can't go to Moscow and register with OVIR for an unlimited amount of time. In the case of Russian citizens in

Ukraine, they are allowed here for 90 days, but they can leave on the 89<sup>th</sup> day and come back to renew their 90 days. This may be inconvenient, but there is no way to do permanent registration because there is no visa. The bright side is that they are not subject to the "90 days within 180 days" rule. However, they can be employed by a company, receive a work permit and register with OVIR for temporary residency.

**Question:**

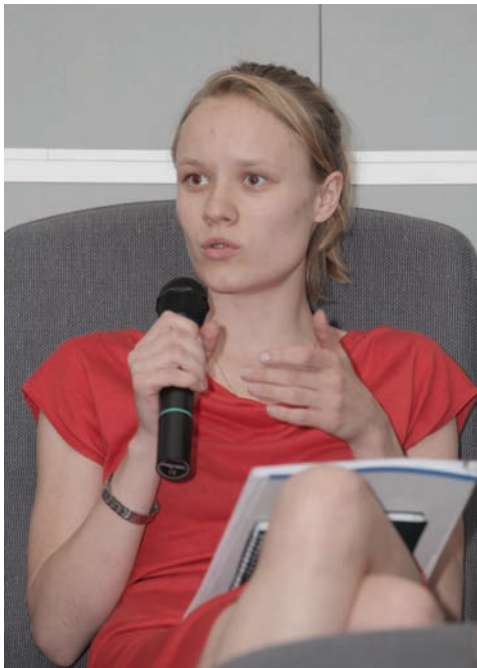
What about the family members?

**Scott Brown:**

They can register with OVIR on the basis of the Russian employee's work permit. Again, the issue is that they can only stay 90 days or apply for extensions as long as the work permit is valid.

**Sergei Potabenko:**

Let me start at the beginning. Russian citizens are the luckiest foreigners that exist on the territory of Ukraine. There is an agreement between the Russian Federation and Ukraine which exempts Russian citizens from the “90 days within 180 days” rule. In other words, they are not burdened by the second 90 days within the rule. The first 90 days, which OVIR controls, apply to all foreigners, including Russian citizens. Russian citizens can come to Ukraine without a visa and receive a work permit. However, they will not be issued a visa, even having the legal grounds for an IM-1 visa. So, they must register in OVIR like any other foreigner who needs to overstay 90 consecutive days.



**Question:**

What if I have a multiple entry business visa for two years and I go back and forth? Do I have to get a stamp in OVIR each time I go back? How soon do I have to go to OVIR to get a stamp again?

**Scott Brown:**

OVIR applies to a foreigner’s stay in Ukraine – a foreigner can be present in Ukraine 90 days within 180 days. You will only get an OVIR stamp if you extend one of your stays over 90 days. If you stay less than 90 days for short stays, then you will not get a stamp.

**Question:**

Okay, but if I got a stamp and I leave, then when I come back will I need to get another stamp and how soon?



**Scott Brown:**

You can count your 90 days out of 180 days yourself and apply to OVIR if you count over 90 days. But, upon leaving, if the border authorities count more than 90 days out of 180 days, you can be subject to a warning or a fine. So, it is difficult to stay over 90 days within 180 days without either OVIR or the border authorities catching you. So, in counting with

your business visa, if you have stayed 90 days within 180 days, then you will need to stay out of Ukraine for 90 days until the second 180 days has expired. Again, this all depends on your dates of visit, the number of times you came and left, the visa regimes, etc.



**Question:**

Russians are not subject to 90 days within 180 days. Is this for a stay in Ukraine or for entering Ukraine?

**Sergei Potabenko:**

This rule applies to a stay in Ukraine.

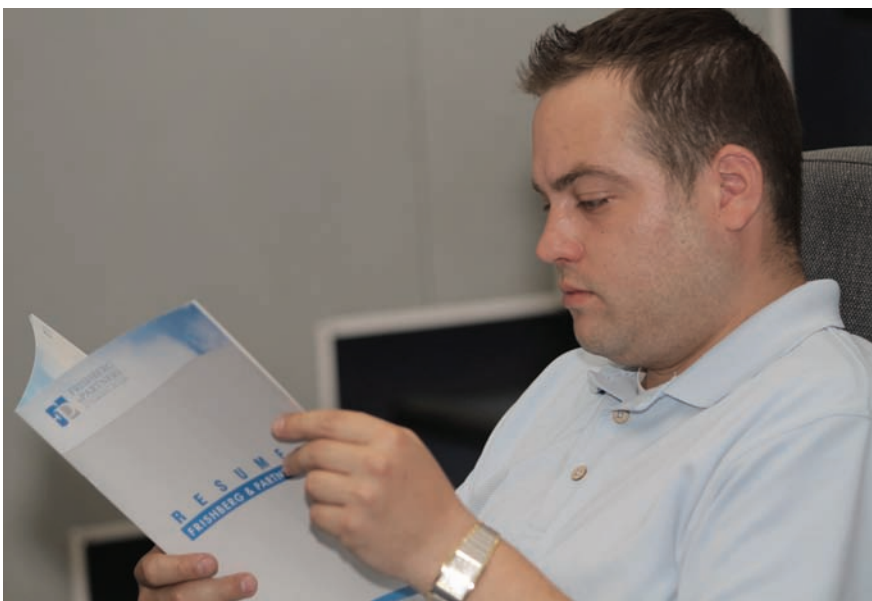
**Question:**

But, if the person quits after 90 days, then he will not be able to enter Ukraine? I mean, if he leaves after 90 days, but wants to come back, can he?

**Scott Brown:**

For Russians, yes – he can come back on the next day. For EU, US and other citizens, they would have to wait 90 more days to come back. If they use up their first 90

days within the first 90 days, then they have to wait 90 more days for a new “90 days within 180 days” period to begin.



**Question:**

Thank you for the presentation and your time. I have a question that has to do with our native speaking English teachers. It was published in Georgia that they have a special program for one year for teachers who come to Georgia. Is there any way that a group of schools, teachers and embassies could get together and ask for a special provision like

in Georgia? As I understand, the best advice for these teachers right now is to stay 90 days, go somewhere outside of Ukraine, pay 100 dollars, come back and stay 90 days and go through the process over again each time. Can they stay out of trouble?

**Scott Brown:**

While this might have worked thus far for your teachers, they are at risk of being deported or disallowed entry for a certain amount of time. Strictly speaking, they are breaking the immigration laws. You can try to slide by the law and, obviously, it does work in many cases. I know a lot of foreigners, who don't even keep track of their 90 days and they are able to come and go as they please. However, there are always the risks because you are breaking immigration laws. We know how strict it is in the US when people break immigration laws. Unfortunately, I can't recommend your method.

In terms of the first issue, this is a lobbying issue and some lobbying efforts in Ukraine are quite successful with the proper support. I haven't seen any successful cases yet for native speaking English teachers in the Parliament.

**Alex Frishberg:**

Interestingly enough, the American Ambassador here is the one who used to be the Ambassador in Georgia. He would know about the lobbying efforts put forth in Georgia. The Embassy works with the American Chamber of Commerce on issues like these. I'm sure you can call on the Embassy for support or advice.



**Question:**

There are quite a few Ukrainian citizens that have permanent residency abroad. They quite often maintain two bases. Would you recommend doing some serious tax planning and spending a certain amount of days in Ukraine because of its lower tax rate? Would you recommend keeping the US as the tax base? What if you have three bases because of the way you do business?

**Scott Brown:**

I would definitely recommend doing some tax planning. The easiest type of tax planning is picking the country with the lowest tax rate. But, you need to prove the closer ties with that country. Only one of the ways to prove closer ties is more days in that country, principal residency. There are a few factors to prove and this becomes more difficult if you spend equal time in more than two countries. Obviously, the personal income tax rate in Ukraine is much lower than in other countries.

**Alex Frishberg:**

In the US, as I recall, if you pay taxes here the rule would be to pay the differential according to the US rates in the US. I'm not sure how much global tax planning will save you if you are a US citizen or resident. US tax rules are even more stringently applied to Green Card holders. In these cases, the law and practice don't always overlap. A lot of people in Ukraine do what life allows them to get away with. This depends on whether you work for a multinational company, which will tell you where you will be paid. Sometimes, such a company will pay you in Ukraine because they can absorb all of the taxes. Then, with documentary proof that all taxes have been paid, you can take that proof to the US and have the money transferred to the US without double taxation. Smaller companies and one-man shops may have a different approach. But, still, there is a great deal of flexibility in tax planning from Ukraine.

**Comment:**

From personal experience, my husband got taxed in three countries this year – Ukraine, US and Norway. Norway's rule is that whatever you make in Norway will be taxed in Norway. In relation to the US, the most important thing we learned this year is that social tax, if you are self-employed (especially in Ukraine if you use an "SPD" – subject of entrepreneurial activity), then you will still end up paying social taxes in the US. This is quite a lot. So, sometimes paying tax in Ukraine is actually more expensive than paying tax in the US, plus you don't get any pension or social security in Ukraine.



**Alex Frishberg:**

Thank you very much for coming today, ladies and gentlemen. If you have any follow up questions, you know where to find us. We are Frishberg & Partners, and our e-mail address is [office@frishberg.com.ua](mailto:office@frishberg.com.ua). Please feel free to call us anytime!

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