

### PROTECTION CONCERNS RELATED TO LAND TAXATION IN EASTERN UKRAINE



#### BACKGROUND

- The conflict in eastern Ukraine has exposed people to security risks and decreased their livelihood opportunities. While urban areas of the Donbas region are associated with heavy industry, rural areas of Donetsk and Luhansk regions are traditionally agricultural.
- Agricultural production is a key contributor to the food security and incomes of the population living in rural areas and is linked to land ownership and the availability of land. More than 60% of households in rural areas of Donetsk and Luhansk regions are involved in agricultural activities<sup>1</sup> and 32% of household members living in rural areas within 5-20km to the contact line are working in the agricultural sector.<sup>2</sup>
- As a result of the conflict, access of the local population to their land plots has been restricted due to security reasons and military presence. The land plots located in proximity to the contact line are used by military personnel for the construction of military fortifications. According to the State Fiscal service in Donetsk region, only legal entities have restricted access to around 3,000 hectares of agricultural lands.<sup>3</sup> For example, in Mykolaiivka settlement, which is located within 5-km from the contact line, 43% of lands cannot be used by people due to restricted access.
- In addition to the impact of active hostilities, large areas of the Donetsk and Luhansk regions are affected by mine and unexploded ordnance of war (UXO) contamination. This includes not only the area along the contact line but also locations further from the contact line, which were contaminated during hostilities. According to the estimations of Ukrainian national authorities, about 7,000 km<sup>2</sup> of land in government-controlled areas is contaminated by mines, UXO and explosive remnants of war (ERW)<sup>4</sup>.
- The security situation, use of land for military fortifications and significant mine contamination prevent local residents and businesses from using land plots they own or rent. As a result, people are not able to conduct agricultural and animal husbandry activities, such as growing crops, raising, grazing and breeding animals, and harvesting timber.

#### KEY CONTACTS

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#### LEGISLATION

- Everyone who possesses a registered land plot or leases it to a state or local community is required to pay for the use of land. Payments are made in the form of land tax by the owners of land plots, or rent by those who rent state or communal land plots. According to the Tax Code, the owners and renters of the land plots located in the non-government controlled area (NGCA) and in the settlements along the contact line defined by the [Cabinet of Ministers Decree № 1085-p](#)<sup>5</sup> are exempt from the taxation. The only exception is agricultural land plots, which are still subject to taxation.

<sup>1</sup> FAO Socioeconomic impact and needs assessment Donetsk and Lugansk regions – Ukraine, 2017

<sup>2</sup> REACH Economic Security Assessment, Government-controlled areas of Donetsk and Luhansk oblasts within 20 km of the contact line, March 2019

<sup>3</sup> DRC roundtable "Inability to use agricultural lands for the purpose due to mine contamination, occupation or restricted access due to JFO", 18.09.2019.

<sup>4</sup> According to estimations of the Ministry of Defense

<sup>5</sup> CMU Decree "On approval of the list of settlements where the state authorities do not temporarily exercise their powers, and the list of settlements located on the line of contact".

- Tax exemption is applied during the period from 14 April 2014 until 31 December of the year when the Anti-Terrorist operation (ATO) is terminated<sup>6</sup>. On 23 November 2018, this provision was amended and the tax exemption was extended until ATO and/or Joint Forces Operation (JFO) are terminated. Thus, the Tax Code provides safeguards in relation to the ATO termination, linking ATO and JFO through unified “ATO and/or JFO” term. For land owners and renters, it means that tax exemption is still in force irrespective of the name of the ongoing operation.
- The ATO was introduced on 14 April 2014 by Presidential Decree #405/2014 “On urgent measures to overcome the terrorist threat and preserve the territorial integrity of Ukraine”. On 30 April 2018, the President signed two Decrees on ATO and JFO with the texts of both decrees classified. The Decree “*On the start of a Joint Operation on ensuring national security and defense*” gave the start to the Joint Forces Operation. At the same time, the open part of the Decree 116/2018 “*On the large-scale ATO in Donetsk and Luhansk regions*” does not contain any provisions clarifying whether the anti-terrorist operation was terminated, which creates legal uncertainty.
- Analysis of court cases reviewed by first- and second-instance administrative courts of Donetsk region and the Supreme court of Ukraine shows full support of the claimants’ position on tax exemption. The court decisions are based on the provisions of the Law #1669 “*On temporary measures for the period of the ATO*” and the Tax Code.

## CRITICAL ISSUES AND CONCERNS

- There are no official statistics on the percentage of agricultural lands in Donetsk and Luhansk regions, but 70% of all-Ukrainian land fund constitute agricultural lands. This means that the share of conflict-affected lands still subject to taxation is significant. Tax debt of individuals in Donetsk region reached 2,7 million UAH. Some people have a tax debt of around 20 000 UAH, which is ten times more than the minimum living wage in Ukraine.
- People, whose agricultural lands are used by the military, cannot apply for a write-off of tax debts, referring to *force majeure*, as only certificates issued by local authorities could confirm this. At the same time, the military does not provide any documents proving that these lands are being used by the military. Moreover, this mechanism does not provide a sustainable solution as immediately after the debt is written-off, new tax payments will start to accumulate.
- As part of the decentralization process, local authorities were granted greater powers to manage local affairs. Thus, the land payments for owned and rented land plots are allocated to the local budgets and constitute a significant share of the whole budget revenue. If agricultural lands are exempted from tax payments, local budgets would lose a large share of their sources of revenue, which could have a negative impact on providing basic services to the local population.
- Since 2019, an increasing number of people, owning or leasing non-agricultural lands, which are exempt from land tax payment, are being asked to pay land tax. In its response to the official inquiry from Donetsk State Civil-Military Administration, the Ministry of Finance explained that the exemption from the land tax was applicable only until 31 December 2018, as the Presidential Decree “On large-scale ATO in Donetsk and Luhansk regions” terminated the ATO on 30 April 2018.<sup>7</sup>
- Owners of non-agricultural lands eligible for tax exemption are not fully aware of their rights. Enjoying tax exemption, they still have to submit a tax declaration, stating that they own or rent the land without paying taxes. They are under risk of paying taxes by mistake without any possibility to get their money back.

## KEY RECOMMENDATIONS

- **Amend the Tax Code of Ukraine:** Parliament should amend the Tax Code of Ukraine to exempt from taxation agricultural lands located in the settlements listed in the Decree №1085-p, as they cannot be used for their original purpose due to use by the military and mine/ERW contamination.
- **Support local authorities:** The Cabinet of Ministers should consider an option to provide subventions and/or governmental subsidies for local budgets, which will be directly affected by the tax exemption for owners of agricultural lands, which cannot be used due to the conflict.
- **Write-off the accrued tax debts:** State Fiscal Service should write-off the tax debts for agricultural lands located along the contact line accrued since the start of the conflict and review tax debts accrued for other lands exempt from taxation until termination of ATO and/or JFO.
- **Coordinate with central level authorities:** Humanitarian organizations should inform the Cabinet of Ministers and the State Fiscal Service about the problems related to taxation in the settlements along the line of contact, highlighting the link between the end ATO and start of JFO in the Tax Code of Ukraine.
- **Raise awareness about tax exemptions:** Humanitarian organizations and local civil-military administrations should raise awareness among land owners and renters eligible for tax exemptions about their rights.

<sup>6</sup> p.38.7 part 10 “Transitional provisions” of the Tax Code of Ukraine

<sup>7</sup> According to a letter from the Ministry of Finance of Ukraine to the Donetsk Regional State Administration