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Ukrainian Business Entering the US Market: Legal and Tax Structuring and Compliance

Nataliia Strutovska

Co-Founder & Managing Partner of Omega Tax Group.

Abstract

Within the framework of the study, a comprehensive academic and applied analysis of the legal, tax, and regulatory instruments ensuring the integration of Ukrainian companies into the economic system of the United States of America was conducted. The analytical perspective is shaped on the basis of practice-oriented expertise in the field of international tax planning, relying on a comparable understanding of the Ukrainian and U.S. legal orders. The work summarizes empirical materials from recent years, including updated indicators of business relocation and the dynamics of exports of IT services; in parallel, it provides a detailed examination of U.S. legislative changes that entered into force in Q1–Q2 2025. A central place is given to the FinCEN temporary final rule of March 2025, which substantially transformed the architecture of corporate transparency, as well as to the establishment of the United States–Ukraine Reconstruction Investment Fund (USURIF) in April 2025 as a significant institutional element of the investment infrastructure. As the final result, a scientifically substantiated methodology for selecting a jurisdiction for incorporation is formulated; approaches to reducing the tax burden within the GILTI and Section 367(d) IRC regimes are described; and mechanisms for counteracting banking de-risking are systematized.

Keywords: *Entry into the U.S. Market, Corporate Structuring, FinCEN BOI Reporting, International Tax Planning, GILTI, Section 367(d) IRC, Banking De-Risking.*

INTRODUCTION

The period 2024–2025 produced a qualitative shift in the development trajectories of Ukrainian companies, moving foreign economic practices from a predominantly export model to institutional entrenchment in Western markets. The continuation of the full-scale war, damage to the energy system, and persistent logistics constraints necessitated the search not only for sales channels, but also for legal spaces capable of ensuring predictability of asset protection, resilience of corporate governance, and security of decision-making centers. Within this configuration, the United States of America, while maintaining the role of Ukraine's strategic partner, simultaneously serves as a high-capacity market and a source of capital; however, it is characterized by an increased density of entry barriers determined by national security requirements, compliance practices, and financial monitoring regimes.

According to Tech Ukraine, despite a 4% decline in volumes in 2024 associated with wartime factors, the IT sector demonstrates pronounced adaptability; for 2025, revenue formation of approximately 10 billion US dollars is projected [1]. At the same time, the United States retains the status of a key importer of Ukrainian technological services, generating about 2.4 billion US dollars in export revenue [1]. Materials of ISE Group additionally record that Ukrainian-American companies generate approximately 60 billion US dollars in annual turnover and support about 300,000 jobs in the United States, which reflects a structural transition from outsourcing to the creation of value added within the U.S. economy [2]. Simultaneously, a layer of systemic risks and domestic Ukrainian turbulence remains: according to Opendatabot, in 2025 the number of internal business relocations stabilized at 8,345 cases—below the indicators of the early period of the war, but sufficient to state the ongoing migration of companies [3]. Against this background, 51% of IT company executives plan to expand overseas offices, which indicates the consolidation of internationalization as a sustainable strategy for maintaining operational continuity [4].

The key research vector is formed around the contradiction between U.S. political and economic support for Ukraine and the parallel complication of the regulatory architecture for foreign business. The signing on 30 April 2025 of the agreement establishing the United States–Ukraine Reconstruction Investment Fund (USURIF) expands

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access to capital and institutional investment channels [5]. At the same time, the introduction of the Corporate Transparency Act (CTA) and the subsequent modification of FinCEN rules in March 2025 increased uncertainty for nonresident beneficial owners with respect to the scope of disclosure, reporting criteria, and compliance risks. At the practical level, company registration in states such as Delaware or Wyoming is associated with the need for a legal qualification of the status of a Domestic Reporting Company, taking into account the moratorium on reporting for U.S. companies announced by FinCEN in March 2025; in parallel, a need arises to harmonize the rules for repatriation and monetization of intellectual property under Section 367(d) IRC with Ukrainian transfer pricing regimes and evidentiary standards of business purpose; additionally, the situation is complicated by the banking practice of de-risking, under which Ukrainian citizenship of the ultimate beneficial owner may be perceived as an elevated risk factor for the compliance departments of U.S. financial institutions.

The purpose of the study is to develop and substantiate an applied methodology of legal and tax structuring and compliance for Ukrainian companies in achieving institutional entrenchment in the U.S. market under the changes of 2024–2025.

Scientific novelty is expressed, first, in a detailed analysis of the legal consequences of the FinCEN 2025 Interim Final Rule for Ukrainian beneficial owners, with the identification of conflicts between tax residency and financial monitoring requirements [8]. Second, in the development of a matrix for selecting a state of incorporation with account taken of the parameters of franchise taxes and licensing fees updated in 2025, as well as the anonymity factor as a variable of regulatory and compliance risk [10]. Third, in the synthesis of an approach to tax structuring with account taken of changes to the GILTI (Global Intangible Low-Taxed Income) regime and the provisions of the Protocol to the Convention for the Avoidance of Double Taxation between Ukraine and the United States, which makes it possible to reconcile the objectives of tax efficiency with the requirements of legal certainty and verifiability of economic substance.

The author's hypothesis is reduced to the assumption that if a Ukrainian company, when entering the United States, uses a two-tier architecture (a Delaware C-Corp as a holding/IP holder + Ukrainian R&D as a cost center) and in advance builds demonstrable substance and compliance contours (KYC/AML, sanctions screening, documentation of ownership), then it simultaneously reduces CTA/FinCEN regulatory uncertainty, limits fiscal losses from GILTI/367(d), and reduces the risk of bank refusals due to de-risking.

MATERIALS AND METHODS

The study was conducted within the framework of qualitative analysis of legal and economic data. As the basic methodological toolkit, a comparative legal approach was applied to corporate and tax regulation in the United States at the federal and state levels in comparison with the relevant norms of Ukrainian law, which made it possible to identify differences in legal constructs, law enforcement mechanisms, and compliance standards relevant to cross-border structuring.

The empirical and documentary basis of the study was formed from three complementary sets of sources. The first set consisted of regulatory acts and official clarifications, including provisions of the Internal Revenue Code (IRC), norms of the Corporate Transparency Act (CTA), FinCEN publications in the United States Federal Register (Federal Register) for March 2025 [8], as well as the text of the agreement establishing USURIF dated April 2025 [5]. The second set is represented by statistical and analytical materials: reports by Tech Ukraine, IT Ukraine Association, and Opendatabot for 2024–2025 [1], as well as overview and methodological analytics by Big 4 companies (Deloitte, KPMG, EY, PwC) devoted to tax changes and their applied consequences [15]. The third set includes academic publications from the Scopus and Web of Science databases focusing on issues of cross-border insolvency (in particular, Chapter 15 of the US Bankruptcy Code), instruments for the protection of intellectual property rights, and institutional barriers to entry into foreign markets [18].

The analytical part relied on a combination of interrelated methods. Scenario modeling was used for a comparable assessment of the tax burden through calculation of the effective tax rate (ETR) under variable ownership structures and legal forms of doing business, including C-Corp and LLC configurations. Regulatory impact analysis (RIA) was applied to measure the effects of the new FinCEN requirements in terms of administrative costs and the compliance burden on small and medium-sized enterprises (SME). Case studies ensured verification of conclusions on factual situations, including analysis of precedents of bank account closures (the Mercury case) and relevant court decisions related to cross-border insolvency.

CHAPTER 1. INSTITUTIONALIZATION OF THE PRESENCE OF UKRAINIAN BUSINESS IN THE USA: CORPORATE ARCHITECTURE, REGULATORY REQUIREMENTS, AND COMPLIANCE RISKS (2024–2025)

Within Chapter 1, the institutionalization of the presence of Ukrainian business in the United States in 2024–2025 will be examined as a transition from an export model of service provision to a format established within US jurisdiction, in which profit centers, intellectual property rights, contractual structures, and compliance procedures are transferred to the United States in order to ensure predictability of rules, protection of assets, and convenience in working with investors and corporate customers; далее the corporate architecture of market entry is analyzed through the choice of the state of incorporation (Delaware/Wyoming/Florida) with a comparison of judicial and investment infrastructure,

administrative burden, cost of ownership, and transparency/disclosure regimes; separately, the regulatory storm of CTA/BOI 2025 (FinCEN Interim Final Rule of 26.03.2025) is disclosed, which redistributed beneficiary disclosure obligations between domestic and foreign reporting companies and created incentives for incorporation instead of foreign qualification while maintaining KYC/AML requirements outside the FinCEN framework; then tax structuring is considered (strengthening of GILTI from 2025, FTC limitations, updated IRS rules under Section 367(d) for IP repatriation, application of the US–Ukraine Convention and risks of LOB/economic substance) and the consequences of choosing C-Corp/LLC/branch are compared; the chapter concludes with an analysis of compliance risks and banking de-risking in the United States, including the tightening of KYC/AML, requirements for demonstrable physical/operational substance, EDD for beneficial owners from a conflict zone, and the impact of these factors on payment infrastructure, operational continuity, and the cost of capital.

Structural Transformation of the Presence of Ukrainian Business in the USA

In 2024–2025, a qualitative restructuring of the models of international presence of Ukrainian companies is observed. Whereas previously a remote scheme of service provision prevailed with the preservation of decision-making centers and revenue generation in the national jurisdiction, the current stage is characterized by the relocation of key nodes of the value creation chain into foreign legal frameworks. The priority shifts not so much to operational remoteness as to institutional groundedness — the formation of a sustainable legal оболочка enabling the accumulation of income, the protection of intellectual assets, and the structuring of relations with investors and customers on predictable terms.

Empirical data reflect the scale and direction of these changes. According to IT Research Ukraine 2024 materials, 51% of company executives consider expanding activities beyond the country, while about 20% of specialists are already located outside Ukraine [4]. Exports of IT services, despite an expected correction of 4–6% in 2024, demonstrate resilience, and a recovery of volumes to the level of approximately 10 billion USD is projected for 2025 [1]. At the same time, high internal business mobility persists: in 2025, 8,345 company relocations between regions were registered, indicating adaptability and the capacity for rapid reorganization of operational frameworks [3]. However, when entering external markets, decisive factors include not only human or technological resources, but also access to capital, payment infrastructure, and large sales markets, which makes the US jurisdiction a central point of attraction for the technology segment.

Structural transformation in the USA is, as a rule, formalized through the legal закрепление of profit centers and rights to the results of intellectual activity. In practical terms, this means the establishment of US corporate entities, adaptation of contractual models (including the allocation of functions and risks), the development of compliance procedures, and ensuring legal protection of developments. Such a configuration increases transparency for venture and strategic capital, facilitates the conclusion of contracts with corporate clients, and reduces transaction costs arising from cross-border settlements, regulatory constraints, and heightened uncertainty in wartime.

The shift from an export format to a format of institutional presence also has a macroeconomic dimension. On the one hand, the integration of Ukrainian teams into global innovation networks intensifies, access to partnerships, acceleration programs, and specialized labor markets expands, which accelerates the commercialization of technologies and increases the stability of cash flows. On the other hand, the importance of risk controllability increases: regulatory (including requirements for data protection and export control), financial (tax qualification, transfer pricing), as well as personnel-related (distribution of functions between foreign and Ukrainian units). As a result, competitiveness is increasingly determined by the ability to build a hybrid architecture of presence, where the US platform ensures capitalization and market access, and the Ukrainian base provides depth of engineering competence and production efficiency. Below, for clarity, Figure 1 presents the dynamics of key indicators of Ukrainian IT exports and relocation.

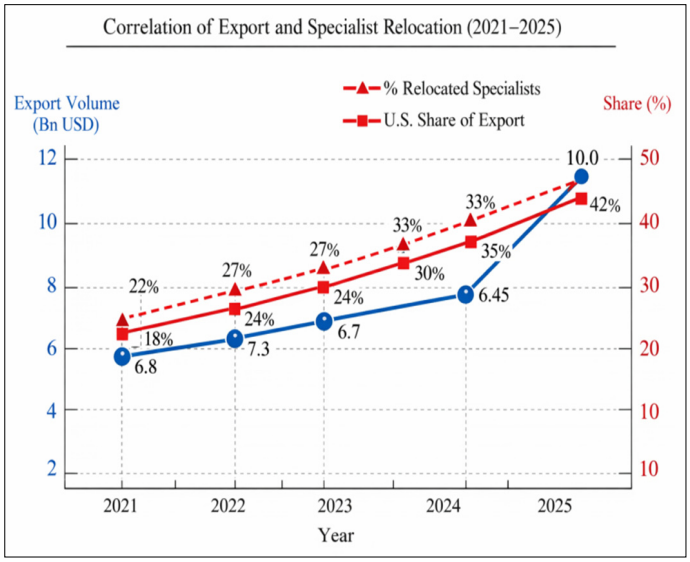

Fig. 1. Dynamics of key indicators of Ukrainian IT export and relocation (2021-2025) (compiled by the author based on [1, 4, 14]).

Figure 1 demonstrates the recovery of export volumes amid a steady increase in the share of specialists working from abroad and a critical dependence on the US market.

Based on the results of the analysis, it can be concluded that in 2024–2025 the presence of Ukrainian business in the USA undergoes a structural shift from simple export of services to institutionally закреплённое presence, where

key elements of the value creation chain (profit centers, rights to the results of intellectual activity, contractual and compliance frameworks) are transferred to the US jurisdiction for the sake of predictability of rules, protection of assets, and simplification of interaction with investors and corporate customers. Empirical evidence indicates the масштабность of this restructuring: a significant share of companies plans expansion beyond the country, some specialists already work from abroad, and exports of IT services, despite a short-term correction in 2024, remain resilient and demonstrate potential for recovery by 2025; in parallel, high internal relocation activity confirms business adaptability and readiness for rapid reconfiguration of operational frameworks. Under these conditions, the USA acts not merely as a sales market, but as an infrastructure platform for capitalization (access to capital, payments, large clients), while competitiveness is increasingly determined by the ability to build a hybrid model: the US platform provides market access and a financial and legal оболочка, and the Ukrainian base provides engineering depth and efficiency, while simultaneously managing regulatory, tax, and personnel risks.

Corporate Structuring: Selection of Jurisdiction in the Realities of 2025

The choice of the state of incorporation in 2025 has ceased to be limited to a comparison of nominal tax rates and traditional advantages of corporate law. In the current configuration, decisive importance is acquired by requirements for corporate transparency, compliance procedures, as well as mechanisms of legal protection of assets and intellectual property. In practice, this means that the criteria cheaper and simpler give way to an assessment of the total cost of ownership of the corporate structure, the stability of the legal regime, and the predictability of law enforcement when interacting with banks, investors, and counterparties. The classic opposition Delaware versus Wyoming in 2025 has been supplemented by a service factor: the amount of annual payments and fees, the cost of registered agent services, expenses for maintaining mandatory reporting, and maintaining corporate hygiene (minute-taking of decisions, updating registers, preparing filings and declarations). A separate dimension is privacy, which in modern conditions is regulated not only by state norms, but also by accompanying requirements for disclosure of beneficial ownership and identification of controlling persons. As a result, privacy should be considered as a legally constrained and multi-level characteristic, dependent on the combination of federal disclosure regimes and state administrative practice. A comparison of Delaware, Wyoming, and Florida should be constructed along several interrelated axes:

1. the quality of corporate law and judicial infrastructure for resolving corporate disputes;
2. regulatory predictability when attracting financing and issuing equity instruments;
3. asset protection regimes and permissible structuring instruments (including liability limitations and permissible forms of asset ownership);
4. administrative burden — the set of mandatory annual actions, deadlines, and sanctions for violations;
5. cost of maintenance, including not only state fees but also unavoidable professional expenses for support.

Such a methodology makes it possible to avoid oversimplifications when a choice is made on a single indicator and forms a more accurate risk profile for a nonresident structure.

On the basis of an analysis of the 2025 fee schedules and norms of corporate legislation, a comparative table is compiled reflecting key differences for nonresidents [10]. However, the table itself represents only a snapshot of formal parameters; interpretation of the results requires consideration of the context of use: whether venture financing is planned, whether the structure will act as a holder of intellectual rights, whether the opening of accounts in US financial institutions is expected, whether there is risk exposure related to claims work and obligations to clients. In particular, Delaware is traditionally associated with a high level of institutional maturity of corporate law and convenience for investor transactions, whereas Wyoming is more often considered through the prism of administrative economy and lighter maintenance; Florida, in turn, is often assessed as a jurisdiction where corporate presence may be associated with operational infrastructure and applied business tasks.

In addition to the specified parameters, in 2025 the significance of operational compliance increases: the ability of the structure to documentarily substantiate the economic rationale for the allocation of functions, expenses, and income, properly formalize relationships with affiliated entities, and withstand scrutiny with respect to proper risk management. In the absence of these elements, the formal advantages of the selected state are partially neutralized: the probability of banking delays during KYC/AML checks increases, the completion of investor due diligence becomes more complicated, and transaction costs increase when concluding contracts with large customers.

Thus, the rational choice of the state of incorporation should be considered as an element of a broader architecture of corporate governance and legal protection of assets, rather than as an isolated decision within the limits of tax optimization [10].

Table 1 presents the results of a comparative analysis of jurisdictions for Ukrainian business.

Table 1. Comparative analysis of jurisdictions for Ukrainian business (compiled by the author based on [10; 20-26]).

Criterion	Delaware (Delaware)	Wyoming (Wyoming)	Florida (Florida)
Target audience	Startups (VC-backed), large holding companies	Small business, e-commerce, asset protection	Trading companies, access to Latin America
Registration cost (LLC)	$110	$100	$125
Annual payment	$300 (Franchise Tax) fixed	Min. $60 (License Tax)	$138.75 (Annual Report)
State corporate income tax (CIT)	8.7% (only for business within the state)	0% (absent)	5.5% (benefits available)
Anonymity	Medium (Registered Agent required)	High (Nominee Managers permitted)	Low (public Sunbiz registry)
Judicial system	Court of Chancery (precedent law)	Courts of general jurisdiction	Courts of general jurisdiction
Annual Report requirement	No (for LLC), tax only	Yes (mandatory)	Yes (strict deadlines until May 1)

For Ukrainian technology startups oriented toward venture financing at the Series A level and above, Delaware retains the status of the baseline jurisdiction for corporate structuring. The decisive significance is the institutional predictability of the Court of Chancery and the standardized practice of resolving corporate disputes, which is perceived by the venture market as a minimization of legal uncertainty [28]. Within this logic, a Delaware C-Corp functions not merely as a form of registration, but as an infrastructure for investment transactions: clear models for issuing preferred classes, mechanisms for equity conversion, as well as instruments for protecting minority rights and balancing control as the company's capitalization grows, закреплённые in the documentation, form for investors a familiar risk profile [28].

At the same time, a stable segment of projects remains for which a venture trajectory (IPO or comparable-scale transactions) is not a target. For service businesses, boutique outsourcing teams, and e-commerce models operating primarily as operating companies, Wyoming often turns out to be a more rational choice by the criterion of total administrative costs. Key arguments include the absence of a state corporate income tax and the reduced cost of annual maintenance: about $60 per year versus approximately $300 in Delaware [29]. Taken together, this lowers the threshold for maintaining a legal presence and makes the structure more economical under moderate turnover and low complexity of corporate governance [29].

Florida is usually considered as a jurisdiction convenient for trade and logistics-intensive operations, where access to infrastructure, customer markets, and a counterparty network is important. However, when assessing Florida, a significant factor is the publicity of registry data, which, under elevated risks to personal and physical security, can create an additional vulnerability for beneficial owners in wartime conditions. In such cases, the question of selecting a state ceases to be exclusively financial and administrative and acquires a risk-management dimension, where the transparency of corporate data becomes an independent category of legal threat.

Within a more mature approach to structuring, it is advisable to consider not a single point of registration, but the architecture of a group of companies with a division of functions. For capital-intensive technology projects, a model is common in which a Delaware C-Corp performs the role of the holding level for investments and equity ownership, while operational processes are placed into separate subsidiary layers that optimize taxation, compliance, and contractual work. Such a configuration makes it possible to simultaneously satisfy the expectations of venture investors and reduce the operational burden where this is legally permissible.

An additional role is played by the allocation of assets and risks: intellectual property, customer contracts, and potentially disputable obligations should be segmented in such a way as to minimize the domino effect in claim scenarios. In practical terms, the choice of state should correlate with subsequent banking compliance, due diligence procedures by investors and counterparties, as well as the regime of corporate information disclosure. Priority is given not to formal savings on annual payments, but to the balance between investment compatibility, protection of participants' rights, controllability of disclosure, and the overall resilience of the corporate model over the growth horizon.

Regulatory Storm: The Corporate Transparency Act (CTA) 2025

One of the most significant events of the reporting period was the adoption by the Financial Crimes Enforcement Network (FinCEN) of the Interim Final Rule dated March 26, 2025 [8]. This act transformed the architecture of beneficial ownership information (BOI) disclosure within the Corporate Transparency Act regime, shifting the regulatory focus from universal reporting to a differentiated approach for entities associated with a foreign jurisdiction.

The key innovation was the differentiation of reporting companies into domestic and foreign, which in effect redistributed the compliance burden. As a result of excluding domestic entities from the scope of the definition reporting company, companies formed in the United States (including

LLCs and corporations), as well as their beneficial owners, are released from the obligation to file initial BOI reports and from obligations to update or correct previously submitted information [8]. The practical consequence is that a newly established US structure registered by a Ukrainian founder in the form of a Delaware LLC or Delaware corporation falls under the domestic category and, under the current version of the rule, does not produce a BOI report to FinCEN.

At the same time, the obligation for foreign reporting companies has been retained and clarified: it applies to legal entities formed under the law of another country (for example, a Ukrainian TOV) but registered to conduct business at the level of a US state through the foreign qualification procedure [9]. Thus, the regulatory construction закреплённое the principle under which the foreign origin of the corporate оболочка becomes the trigger for federal reporting on controlling persons.

Particular attention should be paid to the modification of deadlines. For foreign companies registered before March 26, 2025, an extended deadline until April 25, 2025 is established, i.e., an additional period is provided after publication of the rule; for registrations carried out after that date, a 30-day period from the moment the registration takes effect applies [8]. Such logic not only adjusts the compliance calendar, but also increases the significance of the date of entry into the US market as a legal factor affecting the compliance profile.

A collision has emerged that has direct significance for Ukrainian business. The establishment of a subsidiary in the USA in the form of a domestic structure can remove the project from BOI reporting under the current version of the Interim Final Rule, whereas registration of branch presence or qualification of a foreign parent company establishes the obligation to disclose beneficial owners [8, 9]. In institutional terms, this creates a pronounced regulatory incentive to incorporate new legal entities instead of opening representative offices, even in situations where, from an operational point of view, the branch model might seem simpler.

At the same time, exemption from BOI reporting does not eliminate the need to disclose controlling persons in other compliance frameworks. Banking identification (KYC/AML), checks by payment infrastructure providers, requirements of corporate clients, and investor due diligence procedures continue to rely on disclosure of ultimate ownership and control structure, including confirmation of sources of funds and sanctions screening. Consequently, regulatory silence with respect to the FinCEN form should not be interpreted as an opportunity to refuse to document beneficial ownership at the level of corporate governance and contractual practice.

An additional level of uncertainty is обусловлен by the interim nature of the act itself. FinCEN accepts comments until May 27, 2025 and declares an intention to issue a final version by the end of the year [12]. Under these conditions, the stability of the current exemptions is limited over the planning horizon: the compliance model must include monitoring of the rulemaking cycle and readiness for rapid reconfiguration of corporate structures and disclosures when definitions change or reporting is reinstated for certain categories of companies.

The legal community separately emphasizes the risk of revising the broad exemption with respect to domestic structures in the part concerning foreign elements of control or ownership. Morgan Lewis lawyers indicate that the exclusion may be adjusted, especially with respect to companies with foreign participation, which the regulator may qualify as increasing the risk of money laundering [31]. Thus, already at the interim regulation stage, a potential trajectory is embedded toward a more targeted regime, where the decisive criterion will be not only the place of formation of the legal entity, but also the actual connection with foreign beneficial owners and the risk profile of the relevant business model.

Figure 2 demonstrates the algorithm for applying the CTA/BOI requirements according to the Interim Final Rule of 2025.

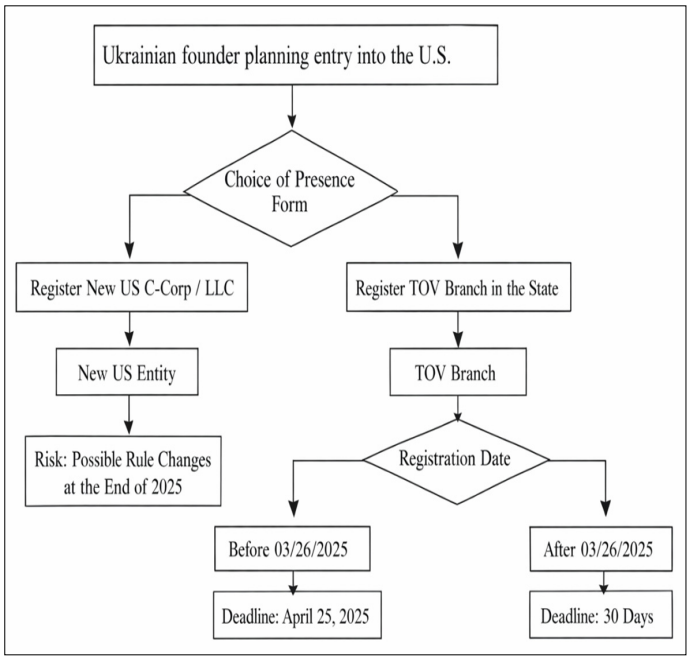

Fig. 2. Algorithm for applying the CTA/BOI requirements according to the 2025 Interim Final Rule (compiled by the author based on [8]).

Thus, the CTA/BOI storm in 2025 radically redistributed the compliance burden for Ukrainian projects in the USA: the interim final rule published by FinCEN on March 26, 2025 effectively removed from BOI reporting all entities formed in the United States (domestic entities) and their beneficial owners, while simultaneously focusing federal reporting on foreign reporting companies, i.e., companies formed outside the United States and only qualified to conduct business in the states through foreign qualification.

This creates a clear institutional incentive for Ukrainian founders to choose incorporation of a new US LLC/C-Corp

instead of registering a foreign parent company in a state, because in the latter case the BOI disclosure obligation remains, and for previously registered foreign entities a shifted deadline until April 25, 2025 is established, while for registrations after March 26 a 30-day period from the date of registration applies. At the same time, the reduction of formal reporting to FinCEN does not mean compliance silence: banking KYC/AML, payment providers, corporate customers, and investors continue to require documented disclosure of ultimate ownership and control, therefore отказ from the BOI form cannot substitute a corporate governance dossier of beneficial owners.

Finally, the interim nature of the regime and the open comment cycle (with subsequent finalization) make the benefit for domestic structures limited over the planning horizon, and legal reviews directly point to the risk of reverse adjustment, including a targeted reinstatement of reporting for US companies with foreign owners when elevated AML risks are assessed; consequently, the optimal strategy for Ukrainian business is to build the presence structure as manageable, with continuous monitoring of rulemaking and readiness to rapidly reconfigure disclosures and corporate architecture when the final version changes.

Tax Structuring and International Taxation

Taxation of global intangible low-taxed income (GILTI) continues to be one of the most significant elements of the US tax framework for Ukrainian beneficial owners controlling US CFCs. Starting in 2025, the fiscal burden within this block has increased: the effective tax rate on GILTI rose to 12.6% due to the reduction of the Section 250 deduction to 40% [32]. At the same time, the limitation on the Foreign Tax Credit (FTC) at the level of 80% remains in place, which reduces the ability to neutralize the incremental US tax burden through taxes paid abroad and makes the profile of actual foreign taxation critical [32].

For a typical model of Ukrainian IT business built as US HQ → Ukraine R&D, these changes translate into an applied risk: profit of the Ukrainian development center, especially under a low effective tax rate in Ukraine (including regimes oriented toward taxation of distributions rather than accumulation), may form tested income with features of low taxation and, as a consequence, be included in the GILTI calculation in the United States. As a result, the economic effect of local optimization in Ukraine may be partially neutralized by the US level of taxation, and in certain configurations may lead to a cascading increase in the aggregate rate while FTC limitations remain [32].

At the level of financial planning, this means the need to model not only current rates, but also the mechanics of the credit limitation, which is sensitive to the structure of flows, the share of qualified expenses, intragroup payments, and the group's ability to generate sufficient foreign tax specifically in the relevant basket and period. In practice, it is precisely the mismatch between the timing profile of income and taxes paid, as well as imperfect comparability of tax bases across jurisdictions, that often generates residual US burden even when taxes have formally been paid abroad. An additional role is played by the allocation of functions and risks between the HQ and the R&D unit: the more value-generating the foreign layer is recognized to be, the more frequently the question arises whether the tax outcome corresponds to the economic substance and whether it can be sustained under examination.

With respect to the repatriation of intellectual property, a significant shift is associated with the adoption in October 2024 of the final IRS rules under Section 367(d) [33]. Whereas previously a transfer of IP from a Ukrainian subsidiary to a US parent company was often accompanied by the risk of immediate or quasi-regular US tax consequences in the form of deemed annual payments, the updated approach allows termination of the application of Section 367(d) upon repatriation of IP to a qualified US person [34]. This reduces the likelihood of double taxation and creates more predictable conditions for moving rights to intangible assets to the level of a US corporation [34].

The described changes have not only a tax, but also a corporate and financial dimension: consolidation of IP on the balance sheet of a US company can strengthen the investment narrative due to greater transparency of legal title, better alignment with investor expectations, and potentially higher valuation [34]. However, the sustainability of the effect is determined by the quality of documentation of the value creation chain: when transferring IP, critically important elements include demonstrability of a business purpose, correctness of valuation assumptions, consistency with transfer pricing, and the absence of indicia of artificial profit shifting. Otherwise, simplification under Section 367(d) does not eliminate the risks of disputes over the economic substance of transactions and the allocation of income from intangible assets.

In parallel, the 1994 Convention between the United States and Ukraine remains relevant despite its clearly aged construction. The document continues to provide functioning relief for withholding at source: for dividends, 5% where ownership exceeds 10% or 15% in other cases; for royalties, 10%; for interest, situations are предусмотрены in which exemptions from withholding tax are possible [36]. The most sensitive element remains the Limitation on Benefits (LOB) article: in 2025 the IRS intensified control over passing LOB tests, with increased attention to companies exhibiting features of shell entities [37]. Under these conditions, the applicability of reduced rates increasingly depends on the ability to confirm an active trade or business (Active Trade or Business test) and sufficient economic substance, as well as on the consistency of the contractual structure with actual functions and personnel ensuring the earning of income [37].

Table 2 describes the types of tax burdens in various structures.

Table 2. Comparative tax burden of various structures (compiled by the author based on [38-40]).

Type of income / Tax	US C-Corporation	US LLC (Disregarded Entity)	Branch
Federal tax	21% + state tax	0% (at the entity level), paid by the owner	21% + state tax
GILTI	Applicable to subsidiaries	Not applicable (direct ownership)	Not applicable
Branch Profits Tax	No	No	30% (or 5% under DTT)
Withholding tax (WHT)	15% (under DTT) upon dividend distributions	No (tax is paid in the country of residence)	No
Compliance complexity	High (Form 1120, 5471)	Medium (Form 5472 + Pro-forma 1120)	Very high (Form 1120-F)

Thus, it can be concluded that tax structuring for the US HQ → Ukraine R&D model in 2025 shifts from local optimization toward end-to-end management of the aggregate group burden and sustainability risks: the tightening of GILTI parameters (an increase in the effective rate and the limited crediting of foreign taxes) increases the likelihood that profits of the Ukrainian layer, under a low effective tax rate, will be pulled into US taxation, partially neutralizing the advantages of Ukrainian regimes and requiring detailed modeling of cash flows, FTC baskets, and the functional profile of risk allocation. At the same time, the finalization of approaches under Section 367(d) with respect to repatriation of IP to a qualified US person opens a more predictable trajectory for consolidating intangible assets at the US level, enhancing investment attractiveness through transparency of title and alignment with investor expectations, but leaving critical the requirements for business purpose, valuation, and transfer pricing, because the economic substance of the transactions becomes the main field of potential disputes. At the level of cross-border payments, the US–Ukraine Convention (dividends/royalties/interest) continues to play a role; however, intensified LOB control increases the importance of economic substance and the Active Trade or Business test, limiting the applicability of benefits for shell constructions. In the applied choice of the corporate оболочка, this means that a US C-Corp provides a predictable corporate framework and familiarity for investors, but entails higher formal complexity and a two-tier taxation logic; a US LLC (disregarded) reduces the burden at the entity level and in a number of configurations eliminates the GILTI effect through direct ownership, but shifts taxation to the owner and requires careful compliance calibration; whereas a branch model becomes the most risky in aggregate (Form 1120-F, branch profits tax, and heightened sensitivity to contractual and permanent establishment issues), therefore the optimal strategy for Ukrainian beneficial owners reduces to building a structure in which tax efficiency is subordinated to verifiable substance, a manageable GILTI/FTC profile, and a legally clean architecture of IP ownership.

Compliance and the Banking Sector: De-risking Policy

The financial component of entering the US market in recent years has become more complicated not only due to regulatory barriers, but also due to the practice of de-risking, which has become entrenched in the banking sector as an instrument for reducing sanctions and compliance risks. US banks, assessing an increased likelihood of sanctions-regime violations and difficulties in verifying the source of funds for persons from an armed-conflict zone, often resort to preventive measures up to and including termination of service. As a result, companies with Ukrainian founders or beneficial owners face account closures and refusals to open banking relationships even in the absence of formal violations. The case of the fintech platform Mercury, which restricted service for companies with founders residing in Ukraine, is illustrative [40].

By 2025, KYC/AML requirements have taken on a stricter and more formalized character, which increases the importance of the evidentiary base of corporate presence and economic substance. One of the most significant shifts has been the trend toward requesting physical presence: the use of exclusively virtual addresses is no longer perceived as a sufficient level of Customer Due Diligence (CDD), while the practical standard becomes confirmation of a real office through a lease agreement or the presence of utility bills in the company's name [41]. This evolution of requirements reflects the general course toward reducing the anonymity of corporate structures and tying operational risks to verifiable infrastructure, which entails additional costs and organizational obligations already at the early stages of market entry.

An additional layer is enhanced due diligence (EDD), under which Ukrainian beneficial owners are often automatically qualified as a higher-risk category. This leads to an expanded scope of disclosed information, including detailing of supply chains, contractual counterparties, logistics routes, and financial flows, as well as the need to документально confirm the absence of links with persons under sanctions (including the SDN List) [42]. In such a framework, compliance ceases to be a purely procedural add-on to banking service and acquires the character of a permanent control function: requests to update documents, confirm the business purpose of transactions, and re-verify beneficial owners become regular rather than episodic.

From a practical perspective, de-risking transforms banking infrastructure from a commodity service into a critical factor of the sustainability of the operating model. Restricting access to accounts and payment instruments can disrupt contract performance, delay settlements with suppliers and employees, complicate investment raising and the execution of M&A transactions. As a result, the importance

of preliminary architecture of financial flows increases, including reserving alternative payment rails, documenting the economic substance of transactions, and ensuring consistency between the corporate structure, tax profile, and actual operations. For the investment agenda, this means that due diligence increasingly covers not only legal title and financial statements, but also the quality of AML frameworks, the level of manageability of sanctions risks, and the maturity of internal controls.

In analytical terms, a convergence of banking compliance with risk-based regulatory approaches is observed: the decision to continue servicing increasingly depends on an aggregate trust profile of the client. It is formed by the transparency of the beneficial ownership structure, a reproducible logic of income generation, non-contradictory confirmations of Source of Wealth, as well as the presence of internal policies for sanctions screening, counterparty risk management, and anti-money-laundering prevention. Under heightened attention to conflict jurisdictions, the quality of corporate governance becomes significant: the presence of authorized compliance persons, regulations for storing and updating supporting documents, procedures for responding to bank requests, and an audit trail for key decisions. Taken together, this shifts the issue of banking service from the plane of a one-time onboarding task to the plane of a systemic managerial function affecting business continuity and the cost of capital.

CHAPTER 2. INSTITUTIONAL AND TAX MECHANISMS OF THE UNITED STATES WITHIN THE FRAMEWORK OF UKRAINE'S RECOVERY: INVESTMENT FUNDS, CORPORATE QUALIFICATION, AND REGULATORY INCENTIVES

In Chapter 2, it is examined how US institutional and tax instruments are embedded into the architecture of Ukraine's recovery and how they create new parameters for Ukrainian businesses in terms of access to capital and projects: first, the impact of the agreement establishing the United States–Ukraine Reconstruction Investment Fund (USURIF) (30.04.2025) is analyzed as a mechanism for the concentration of resource rents, parity governance, and the strengthening of requirements for transparency, compliance, and project finance (including a potential linkage with the DFC and the growing importance of reporting standards and covenants); далее, the practical implementation of the Check-the-box election (Form 8832) for a US LLC is presented as an instrument of controlled choice between the Disregarded Entity regime and classification as a C-Corp, with an assessment of implications for the timing of income recognition, the overall tax burden, liquidity, WHT, reporting, and the risks of erroneous or disputable reclassification in light of nexus and sub-federal taxes; the section concludes with an assessment of the prospects of the Support Ukraine Through Our Tax Code Act (S. 4218 / H.R. 7901) initiative as a regulatory signal capable of changing the behavior of investors, banks, and counterparties in advance, raising the standards of evidentiary clean break, and reinforcing the trend of reputational taxation, under which the cost of capital and deal terms depend not only on financial indicators, but also on the geopolitical profile of the business.

Impact of the United States–Ukraine Reconstruction Investment Fund (USURIF)

On 30 April 2025, an agreement establishing the United States–Ukraine Reconstruction Investment Fund (USURIF) was formalized [5]. The fund's institutional design presupposes parity governance through a board of directors comprising three members from each side, while the financial model provides for the accumulation of 50% of royalties from new projects in the extraction of natural resources. This mechanism forms a separate channel for the concentration of resource rents, linked to the recovery agenda and to bilateral oversight procedures, which increases the predictability of revenue allocation and reduces the likelihood of fragmented decision-making at the level of individual projects.

The launch of USURIF leads to a shift in strategic reference points for market participants: the importance of projects structured to meet the parameters of US development and financing instruments increases. A potential linkage with support from the DFC (US International Development Finance Corporation) in effect implies strengthened political and institutional protection of projects and expanded access to mechanisms for insuring war and political risks, which can improve bankability and reduce the risk premium in the cost of capital. Under such conditions, projects in the natural-resource sector begin to be perceived not only as commercial initiatives, but also as elements of a broader international mandate, where requirements for transparency and risk governability are substantially higher than market averages.

The engagement of Alvarez & Marsal as the fund's investment adviser [44] serves as a marker of an orientation toward formalized standards of corporate governance, control, and reporting. This means that Ukrainian partners and contractor chains will, with high probability, be expected to demonstrate a comparable level of compliance maturity: a transparent ownership structure, verifiable origin of funds, detailed procurement and conflict-of-interest management procedures, as well as readiness for regular disclosure in line with international best practices. Accordingly, a competitive advantage becomes not only the presence of technical expertise or access to assets, but also the capacity to ensure documentable managerial discipline throughout the entire project life cycle.

An additional effect is associated with the transformation of the negotiating position and deal architecture in the extraction sector: with the participation of the fund and affiliated institutions, the role of standardized covenants, KPIs, and early-intervention conditions in the event of breaches increases, including compliance and sanctions triggers. This may accelerate the institutionalization of project finance and consortium models, raising requirements

for the quality of financial modeling, independent reserve valuation, environmental and social commitments, as well as for the contractual framework. As a result, a more stringent but more predictable environment is formed, in which the cost of errors in risk management rises substantially.

Finally, the formalization of royalty allocation in favor of the fund establishes a stable long-term incentive to structure projects with a high degree of formal legitimacy and to minimize regulatory uncertainties. For capital markets and the insurance sector, this may serve as a signal of reduced institutional risk of individual transactions, potentially expanding the pool of financing organizations and instruments available for projects in Ukraine. At the same time, expectations of verifiable compliance are strengthened—from technical assumptions and tax discipline to anti-corruption procedures and supply-chain controls—which converts corporate governance into a key factor of access to recovery resources and related financial advantages.

Practical Implementation of the Check-the-Box Election

For Ukrainian entrepreneurs, the correct configuration of the US tax classification of an American LLC through the Check-the-box election mechanism (Form 8832) is of substantial importance, because the selected classification determines the moment of income recognition, the level of tax burden, and the nature of reporting obligations in both jurisdictions. By default, a single-member LLC is treated in the United States as a Disregarded Entity (a transparent structure), whereas the filing of Form 8832 allows the LLC to be treated as a corporation for purposes of federal taxation (a C-Corporation). This decision is not a merely formal procedure, but an instrument for managing the timing of taxation and the allocation of tax risks between the corporate and personal levels.

Classification of an LLC as a C-Corp is often used to limit current income recognition at the level of the individual in Ukraine through a corporate shell and thereby to achieve tax deferral until the moment of actual profit distribution in the form of dividends. Under such a structure, profit is accumulated at the level of the US corporation, and Ukrainian taxation at the level of the beneficial owner may be deferred until the payment event, which increases cash-flow manageability and simplifies reinvestment. However, the economic effect of deferral should be assessed taking into account the corporate tax in the United States, potential withholding tax upon distributions, and compliance costs, because a transition to the C-Corp regime increases the relevance of corporate tax rules, including limitations on deductions, possible rules on the accumulation of earnings, and the risk of classifying a portion of payments as taxable distributions.

The alternative Disregarded Entity regime eliminates the corporate level of taxation in the United States, because income and expenses are considered to belong directly to the owner, which in a number of cases reduces the overall burden and simplifies the internal economics of the structure. At the same time, such transparency leads to immediate tax consequences for the beneficial owner: upon income recognition in Ukraine, an obligation arises to pay taxes at the level of the individual (18% personal income tax and 1.5% military levy) without waiting for the actual payment of dividends. Consequently, the advantage of the absence of double taxation at the company level may be offset by a liquidity gap, when taxes are due upon the existence of income on paper but without a synchronous inflow of cash.

The election under Form 8832 should also be considered through the prism of US consequences that go beyond the federal corporate tax. In particular, the classification affects the approach to the taxation of distributions, the possibility of withholding at source in cross-border payments, the qualification of certain payments (for example, compensation, interest, royalties), and the reporting framework. Additionally, issues of state taxes and the presence of nexus become significant, because depending on the nature of the activity and the geography of sales, the tax burden may be formed not only at the federal but also at the sub-federal level; this factor can change the comparative attractiveness of the C-Corp and the transparent regime even with identical operating margins.

Finally, the practical robustness of the selected model is determined not only by rates, but also by the legal and procedural correctness of implementation. The Check-the-box election is subject to rules on effective dates, permissible retroactive effect within regulated periods, as well as restrictions on repeated changes of classification within an established term. Errors in the timing of filing, inconsistency of corporate documents with the declared classification, and a divergence between the economic substance of operations and their formal оболочка are capable of leading to disputable reclassifications and to the accumulation of compliance risks. Therefore, the choice of regime should be linked to the full tax picture of the group, including the nature of income, the planned dividend policy, investment horizons, the requirements of banks and investors regarding the corporate character of the structure, as well as to Ukrainian rules on the control of foreign structures and the moment of income recognition by the ultimate beneficial owner.

Prospects for the Adoption of the Support Ukraine through Our Tax Code Act

The bill Support Ukraine Through Our Tax Code Act (S. 4218 / H.R. 7901) [45], introduced in the US Congress, is conceptually aimed at tightening the tax regime for groups that maintain economic activity, primarily through the denial of eligibility for certain tax benefits associated with the crediting of foreign taxes and the application of other elements of the international tax regime. The regulatory logic of the initiative is built around increasing the cost of presence

in toxic markets by excluding the ability to reduce the US tax base and to neutralize the burden through mechanisms traditionally used in cross-border structures.

From the perspective of the legislative trajectory, publicly available trackers indicate that the relevant versions of the initiative in the 117th Congress were introduced in May 2022 and are reflected as being at the stage of introduction rather than having completed passage through a chamber; at the same time, the very framing of the issue in the US political and tax discourse retains significance as an indicator of the direction of regulation.

It is precisely the presence of regulatory intent, even prior to becoming effective law, that is capable of changing the behavior of financial institutions, investors, and counterparties, because US compliance models in many cases respond not only to the risk of violating existing norms, but also to the risk of their probable tightening.

Although the initiative does not construct direct preferences for Ukrainian companies, its potential adoption de facto forms a competitive shift in favor of business: within investors' and lenders' decision-making chains, uncertainty regarding future tax effects decreases, while for corporate buyers and partners the reputational costs of interacting with suppliers that retain exposure to the aggressor are reduced. At the same time, for competitors that continue to operate in toxic markets, the risk of negative screening, the revision of covenants in financing, and the deterioration of deal terms increases due to the heightened probability of tax and sanctions triggers in due diligence.

A separate practical dimension is associated with the fact that such initiatives usually raise the standards of evidentiary support for a clean break: a mere declaration of exit is insufficient if licenses, service contracts, settlements through affiliated intermediaries, or indirect revenue through distributor channels are preserved. This increases the role of internal control and documentation: confirmation of the cessation of supplies, termination of service provision, closure of representative offices, assignment or termination of long-term agreements, as well as the elimination of beneficial ownership and governance links that may be interpreted as a continuation of economic participation. In macro perspective, discussion of such bills strengthens the trend toward reputational taxation, in which the cost of capital and access to markets are determined not only by financial metrics, but also by the geopolitical profile of the business.

CONCLUSION

The conducted analysis identifies a pronounced regulatory asymmetry актуализированную in 2025: while disclosure requirements for US domestic companies are relaxed under the FinCEN Interim Rule, tax pressure on multinational groups is simultaneously intensified through the GILTI mechanisms and the provisions of Section 367. The combination of these trends forms institutional incentives in favor of deploying full-fledged US legal entities (Domestic C-Corp), whereas the use of a branch model proves less preferable from the perspective of aggregate compliance and fiscal costs. With respect to the choice of the jurisdiction of incorporation, a stable division by objectives persists: for technology startups oriented toward attracting venture capital or an exit, Delaware continues to function as a de facto non-alternative venue, whereas for small businesses focused on improving cash-flow efficiency, Wyoming provides a more advantageous operating economics due to the absence of a state tax and low registration fees. An additional factor capable of changing the positioning of Ukrainian companies in the US direction is the investment impulse associated with the formation of USURIF: the corresponding instrument shifts Ukrainian business from the role of a recipient of support to the status of a participant in partner reconstruction projects, primarily in the segments of energy and critical materials.

In applied terms, the construction of a two-tier group architecture appears optimal, under which a US C-Corp (Delaware) performs the functions of a holding company and holder of intellectual property rights, while a Ukrainian R&D Center under the Diia.City regime is structured as a cost center. Such a configuration makes it possible to manage taxation parameters more precisely within the logic of GILTI and simultaneously to leverage the возможностей of Section 367(d) in IP transfers, reducing the risk of disputability of the approach and increasing the predictability of tax consequences. Under de-risking conditions, a compliance strategy oriented toward creating a material presence in the United States acquires priority importance: leasing a physical office and engaging a local director strengthen the evidentiary base for passing banking KYC procedures and reduce the likelihood of refusals by financial institutions. The reporting regime requires separate control: it is critically important to correctly qualify the company's status for purposes of BOI reporting; when registering a branch of a Ukrainian company, submission of a report to FinCEN within a 30-day period is required, because missing the specified period is transformed into a significant compliance risk. The final element is the intellectual property strategy: it is advisable to use the updated rules of Section 367(d) for the legal and tax pain-free transfer of software rights from the Ukrainian developer to the US parent company, which, with proper фиксация of terms and documentation, contributes to the growth of the group's capitalization and increases the investment attractiveness of the structure.

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