



## Tax and Legal News

### Amendments to humanize liability for economic activity violations

On 17 January 2012, Law of Ukraine "On Amendment of Certain Legislative Acts of Ukraine on Humanization of Liability for Violations in the Sphere of Economic Activity" No. 4025 of 25 November 2011 took effect (hereinafter the Law). The law amends the Criminal Code of Ukraine (hereinafter the CCU), the Criminal Enforcement Code of Ukraine, the Criminal Procedural Code of Ukraine, the Code of Ukraine on Administrative Offences, the Customs Code of Ukraine and other legislative acts.

The Law, *inter alia*, provides for the following changes:

- ▶ Decriminalization (in this case - abolishment of criminal liability in favor of administrative sanctions) of a number of offences in the sphere of economic activity, namely: carrying out forbidden types of economic activity, evading return of revenue in a foreign currency, illegally opening foreign currency accounts outside of Ukraine and using them, sham bankruptcy, deceiving customers and clients and others.
- ▶ The Law retains criminal liability for certain economic crimes (including tax evasion), but from now on the CCU envisages financial penalties instead of imprisonment. Meanwhile, penalties significantly increase. For instance, the maximum penalty for tax evasion increases from 2,000 non-taxable minimum citizen incomes (hereinafter NMCI), which as of now equals UAH 34,000, to 25,000 NMCI (UAH 425,000).
- ▶ Nevertheless, the amended Criminal Enforcement Code and CCU allow courts to replace the penalty with imprisonment if the convicted person has failed to pay a penalty exceeding 3,000 NMCI (UAH 51,000). The amended CCU establishes that courts will apply the monetary equivalent of one day of imprisonment if a convicted person fails to settle a financial penalty. Pursuant to article 53 of the CCU, in the case of failure to settle a fine that exceeds 3,000 NMCI, the court substitutes sanctions with a period of imprisonment the duration of which shall be determined as one day per every unpaid eight NMCI (UAH 136).

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- ▶ The Law also changes customs legislation. It abolishes criminal liability for contraband (with certain exceptions). However, financial sanctions for contraband violations increase. According to the amended Customs Code, the minimal penalty for contraband constitutes 100% of the goods' value, plus their mandatory confiscation. Repeated violation of customs rules will result in application of a penalty of 200% of the goods' value. The Law also retains the provision regarding confiscation of vehicles that were directly used for the transportation of such goods.
- ▶ The Law clarifies the list of crimes (including those related to economic activity) for which a person can be liable only if an aggrieved person has filed a claim. This procedure provides that a court shall dismiss the case once the aggrieved person has achieved conciliation with the accused person. This can happen (with certain exceptions) before the court leaves the courtroom to decide on a sentence.
- ▶ Pursuant to the changes to the Criminal Procedural Code, a court shall not apply detention as a restraint in regard to a person with a clean record who has been accused or suspected of committing a crime that foresees imprisonment for up to five years (unless the person evades or escapes from the investigating authorities, interferes with the investigation of the crime or continues in criminal activity).
- ▶ The Law extends the list of instances when using bail as a measure of restraint is allowed. The Law establishes maximum bail amounts, depending on the gravity of the crime. From now on the maximum bail will be 17,000 NMCI (UAH 289,000). A court, however, is eligible to increase bail in exceptional circumstances.
- ▶ The Law amends the list of measures of restraint unrelated to imprisonment. It adds such measures as: prohibition of communication with a certain person, prohibition on visiting specified places and others.

The Transition Provisions Section of the Law establishes special rules for changing the type of punishment for persons who have already been sentenced to corrective work, arrest or imprisonment for crimes that foresee only a penalty. The Law also provides for redetermining detention measures that a court has applied for such crimes. A suspected or accused person, a defendant or a prosecutor can submit an appropriate petition.

If a restraint measure is replaced by bail, the person shall be released when the bail is paid.

On 11 January 2012, the Cabinet of Ministers adopted Resolution No. 15 "On Approval of the Order for Depositing Money into a Special Account in Case of the Use of Bail as a Measure of Restraint." It took effect on 23 January 2012.