



Decriminalisation of fictitious business activity and other innovations in criminal law

In this issue of our newsletter, we discuss some of the most significant business-related advances in the humanisation of criminal law in Kazakhstan

Dear friends,

On 4 July 2017, the President signed a Law on amending a number of legislative acts of Kazakhstan to improve the law-enforcement system (the "Law"), including the Criminal, Criminal Procedural and Administrative Violations Codes. The amendments enter into force from 15 July 2017.

The main goal of the Law is to humanise criminal law and decriminalise financial and economic crimes, and is the result of two years' work by a state and business community working group, including the valuable input of Deloitte, monitoring and consolidating application of Criminal and Criminal-Executive Code standards.

In this issue, we will be covering the key changes accompanying adoption of the Law:

Decriminalisation of fictitious business activity

Cancellation of article 215 of the Criminal Code ("Fictitious Business Activity")

It is clear that the removal of fictitious business activity as a criminal offence promises positive benefits for business, some of the most important of which include:

- *the indemnity of law-abiding businesses that had hitherto been subject to criminal prosecution*

Previously, fictitious business activity included creating a private business without any intention of *performing business activities to "... avoid taxes or "... generate other material gains.*

At the same time, it was not always possible in practice to establish a cause and effect relationship between the creation of a fictitious business and any consequences considered a threat to society. The damage caused by a company's registration remained practically unprovable, because, as a rule, any such damage can only be caused as a result of unlawful activities.

- *the potential tax effect for law-abiding businesses in contractual relations with fictitious businesses*

Under article 115 of the Tax Code, the tax authorities generally required that all parties dealing with fictitious businesses exclude CIT deductions and VAT offsets in transactions with those fictitious businesses for their entire period of activity.

Thus, law-abiding taxpayers were responsible for excluding CIT deductions and VAT offsets in transaction settlements with fictitious businesses.

It appears that the removal of fictitious business activity from criminal law should bring about the corresponding effect from a tax perspective for law-abiding businesses.

The corresponding draft law amending the Tax Code in line with the humanisation of criminal law is currently under development.

Change to the threshold for bringing an entity to criminal accountability

The Law increases the threshold for damage caused to an individual, organisation or the state, to be recognised as criminally punishable

Individuals are criminally liable for evading tax and (or) other obligatory budget payments (article 244 of the Criminal Code) and organisations for the same criminal offence (article 245 of the Criminal Code) if unpaid taxes and (or) other budget payments *exceed 20,000 times the MCI.*

The previous amount triggering criminal accountability was *2,000 times the MCI.*

Clearly this introduction will be viewed positively by medium-sized and large businesses, who previously frequently exceeded the old 2,000 MCI threshold.

Exemption from criminal liability

The Law frees an entity from criminal liability if it voluntarily returns damage caused by an act committed for the first time

Entities committing the following actions stipulated by the Criminal Code for the first time will be exempt from criminal liability if they voluntarily return damage caused:

- 1) illegal business activity, unlawful bank or collection activities (article 214)
- 2) the illegal receipt of credit or incorrect use of a budget loan (article 219)
- 3) the illegal use of trademarks (article 222)
- 6) an individual's evasion of tax and (or) other budget payments (article 244)

7) corporate evasion of tax and (or) other budget payments (article 245)

Furthermore, for a crime under article 245 of the Criminal Code by a criminal group or one committed on an extremely large scale, instead of imprisonment or the removal of the right to take up specific positions or engage in specific activities, the Law introduces an alternative sanction in the form of a fine of *3 times any amounts due*. Likewise, the Law reduces imprisonment time for any such crime to *5 to 8 years* (from the previous 6 to 10 years).

The same article 245 of the Criminal Code provides for an exemption from criminal liability for officials if they voluntarily pay overdue taxes and (or) other obligatory budget payments, and late payment interest.

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client support in state tax, customs and ecological audits



representing client interests in court and out of court to dispute state acts and tax, customs and ecological audit results, and on any other issues, such as administrative, contractual, investment, labour or other disputes

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Contact us:

Almaty/Astana

Agaisha Ibrasheva

Tel: +7(727) 258 13 40

Fax: +7(727) 258 13 41

Email: aibrasheva@deloitte.kz

Olessya Kirilovskaya

Tel: +7(727) 258 13 40

Fax: +7(727) 258 13 41

Email: okirilovskaya@deloitte.kz



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