

Litigation Newsletter

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In this issue of the Litigation Newsletter, we focus on the recent court practice in the cases related to releasing a suspect from criminal liability on the basis of part 4 of article 212 of the Criminal Code of Ukraine (the “CC of Ukraine”).

According to the mentioned article, a person who committed tax evasion can be released from criminal liability if, prior to receiving the notification on suspicion, he pays the tax assessment in full (including financial sanctions).

Court practice in this regard is quite developed and extensive. When making decisions in such cases judges first of all specifically mention that the crime was committed. Usually the court's decision on releasing a suspect from criminal liability contains certain formal elements such as the facts of the case, the amount of taxes assessed, and the prosecutor's motion to release the person from criminal liability.

In most cases, court decisions specify that the person acknowledges guilt in committing tax evasion or his guilt is established by the court. However, some court decisions do not contain this essential point (e.g. the ruling of the Pecherskyi District Court of Kyiv dated 14 May 2013 No. 757/8867/13-k).

At the same time, we are aware of the ruling of the Highest Specialised Civil and Criminal Court of Ukraine dated 05 March 2013, according to which the criminal case No. 5-5963km12 was returned for retrial based on the absence of substantiation of the suspect's guilt in the decision of the first instance court. Another reason the case was sent for retrial was that the sum of the tax assessment was recovered by the newly appointed management of the company instead of the suspect, which does not create a sufficient reason for releasing a suspect from criminal liability.

Among the grounds for releasing a suspect from criminal liability under part 4 of article 212 of the CC of Ukraine is payment of the tax assessment (including financial sanctions) in full. Usually, the payment is indicated in the court decision with reference to documents that confirm it.

To summarise the mentioned above, we can state that, if a company's official decides to seek release from criminal liability, he should know that the court will establish that tax evasion took place and the judge should establish that the official is guilty of committing the crime. However, in this case, no sanctions (fine, deprivation from occupying specific positions) will be applied to the official and he will not have a criminal record.

However, as we previously mentioned, from the standpoint of the company, a court's decision on releasing its official from criminal liability means that it will have low chances challenging tax assessments related to the criminal case in the administrative court.

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