

Liability for Breach of Tax Payment Terms

In its Letter No. 1602/11/10/14-14 dated 18 November 2014 the High Administrative Court of Ukraine (the HACU) provided clarifications regarding implementation of clause 126.1 of Article 126 of the Tax Code of Ukraine (breach of tax payment rules).

In order to ensure timely payment of amounts of monetary obligations by taxpayers, Article 126 of the Tax Code envisages liability for breach of terms thereof. Thus, if a taxpayer fails to pay a relevant amount of monetary obligation and/or advance payment of corporate income tax within time limits set forth by the Tax Code, they are subject to liability in the form of fine in the following amount:

- in case of delay of up to 30 calendar days following the deadline for payment of monetary obligation – in the amount of 10 percent of the repaid tax debt;
- in case of delay exceeding 30 calendar days following deadline for payment of monetary obligation – in the amount of 20 percent of the repaid tax debt.

As noted by the HACU in its Letter of 18 November 2014, this provision is a universal rule, which is applicable in any cases of failure to timely pay the respective tax obligation.

Therefore, regardless of reasons of untimely repayment of the respective monetary obligation by a taxpayer, the latter, after actual repayment of the tax debt, shall be subject to a fine in the amount which depends on the length of delay.

In the opinion of the HACU, the provision of clause 126.1, Article 126 of the Tax Code should be also applicable in cases, where repayment of the tax debt took place due to enforcement based on the court judgment in accordance with clause 95.3, Article 95 of the Tax Code. This is because liability in the form of fine, as specified by the Tax Code, is applicable due to the mere fact of late repayment of the tax debt and the amount of such liability depends exclusively on the period of delay, and not on the way or procedure of repayment of the tax debt (voluntary or by enforcement, fully or in parts).

Moreover, the HACU states that in case of deferral of court judgment enforcement, a taxpayer is not released from liability specified in clause 126.1, Article 126 of the Tax Code.

It is worth mentioning that upon expiry of the period for repayment of the respective monetary obligation, as specified by the Tax Code, a

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penalty is charged on the amount of tax debt. A penalty specified in sub-clause 129.1.1, clause 129.1, Article 129 of the Tax Code is charged on the sum of tax debt in the amount of 120 percent per annum of the interest rate of the National Bank of Ukraine, which is valid at the time of occurrence of such tax debt or on the date of its repayment, depending on which of the two is higher, for each calendar day of payment delay.