INFORMALIZED Engagement

 in Economic, Commercial, Financial or Professional Activities:

WHAT LIABLITY TO APPLY?

The questionnaire

Chapter XXXI (“Crimes and misdemeanors against the economy and business order”) of the Criminal Code of the Republic of Lithuania[[1]](#footnote-1) (thereafter Criminal Code) contains Article 202, Part 1 establishing criminal liability for an “Unauthorised Engagement in Economic, Commercial, Financial or Professional Activities”, that is for a person who undertakes economic, commercial, financial or professional activities in the form of a business or on a large scale[[2]](#footnote-2) without holding a licence/authorisation to engage in the activities for which it is required or by other unlawful means.

According to Lithuanian court practice, “other unlawful means” may include the following situations:

1. Undertaking activities that are legally reserved for legal entities without registering such an entity;

2. Undertaking individual economic, commercial, financial or professional activities without registering them or obtaining a business license.

3. Clearly exceeding the scope of activities authorized by the license or permit;

4. Obtaining a license or permit by submitting false information to the responsible authority; and similar cases.

The criminal case currently under review by the plenary session of the Criminal division of the Supreme Court of Lithuania involves the second situation mentioned above. In particular, an individual is accused of undertaking individual activities in the construction sphere during one and a half year without registering them or obtaining a business license. Therefore the activities and respective income earned were concealed from the tax authority (tax administrator), making also negative impact to the fair competition.

For the purposes of this case, we are performing the comparative legal analysis in order to identify and compare the legal practices of European countries regarding the application of criminal liability for similar acts and the approaches to the confiscation of property in this context. Therefore, we kindly request you to answer the following questions:

1. Is engagement in individual economic, commercial, financial or professional activities without formalizing it according to the law (registration in the tax authority, obtaining a business license etc.) and thus concealing respective activities and its income from the tax authorities considered as a criminal offence under the law of your country? If yes, what are the definition of the offence and sanctions provided for?

1.1. If the answer to the Question 1 is positive, is this criminal offence considered as an offence against the tax system? Or is it also regarded as an offence affecting other legal interests, such as fair competition, etc.?

1.2. If the answer to the Question 1 is negative, what legal liability (administrative, tax-related, other) is provided for such acts?

1.3. If both criminal and other types of liability (administrative, tax-related, etc.) may be applicable to such acts, what are the criteria to distinguish the criminal offence from less serious offences (e. g. administrative, tax offences)? 2. If the criminal liability is provided in such cases, what property is considered to be the result of the criminal act – all income received from the respective activities, the net profit, unpaid taxes, any other assets?

2. If the criminal liability is provided in such cases, what property is considered to be the result of the criminal act – all income received from the respective activities, the net profit, unpaid taxes, any other assets?

3. Is confiscation of the result of the criminal actmandatory? What are the criteria applied in deciding on confiscation of the result of the criminal act? Is the principle of proportionality relevant in this context? (if yes, please provide case-law examples if possible).

1. English translation of the Criminal Code: [VIII-1968 Republic of Lithuania Law on the Approval and Entry into Force of the Criminal Code. Criminal Code](https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/28b18041843311e89188e16a6495e98c?jfwid=oj3ecp01m) [↑](#footnote-ref-1)
2. The income (revenue) or the income (revenue) of the last twelve months exceeds EUR 25,000. [↑](#footnote-ref-2)