



«Lower and lower»

Amendments to the Code of Administrative Offenses of the Russian Federation reducing liability for currency offences entered into force

A general trend of liberalization of currency legislation and currency controls is currently ongoing. An example of this is the newly adopted Federal Law No. 218-FZ of 20 July 2020 "On Amendment to Articles 3.5 and 15.25 of Code of Administrative Offenses of the Russian Federation" (the "**Amending Act**").

As the name implies, the main amendments concern Article 15.25 of the Code of Administrative Offenses of the Russian Federation (the "**Administrative Code**"). The Amending Act provides for a decrease in liability for non-repatriation if the monetary amount that is to be repatriated is less than 100 million rubles. The Amending Act also introduces liability reliefs for other currency offences.

The abovementioned amendments entered into force on 31 July 2020.

Below you can find information about the most important amendments.

Brief reminder about the obligation to repatriate funds under currency legislation

The obligation to repatriate funds can be defined in one the following ways depending on the role played by a Russian resident in a foreign trade contract^[1]:

- 1) The Russian resident's obligation to return to its Russian bank account the monetary amounts paid to a non-resident counterparty under a foreign trade contract for assets (goods, services, intellectual property etc.), if the assets were not received by the resident
- 2) The Russian resident's obligation to receive funds on a Russian bank account from a non-resident counterparty for assets transferred to the non-resident under a foreign trade contract
- 3) The Russian resident's obligation recover funds to a Russian bank account under loan agreements with a non-resident borrower

[1] Article 19(1) of Federal Law No. 173-FZ of 10 December 2003 "On Currency Regulation and Currency Control"





In other words, the obligation to repatriate funds involves circumstances in which authorities could suspect the resident for unjustified withdrawal of assets from the Russian Federation. In order to avoid possible prosecution, the resident must take all measures in his power to fulfill the obligation to repatriate.

Why do we describe the current situation as a trend of liberalization of currency legislation and reduction of liability for violations thereof?

The most recent amendments are part of a consistent trend in recent times, with the legislature having passed a number of reforms liberalizing currency legislation and reducing liability for violations thereof.

On 1 January 2020, the obligation to repatriate funds was repealed for or export contracts denominated in rubles and where payment is also carried out in rubles (subject to the obligations being discharged in accordance with the Civil Code of the Russian Federation). However, the legislature did not define liability if the obligations were not duly discharged.

Furthermore, in April 2020, amendments entered into force providing relief for administrative and criminal liability^[2].

Administrative liability for violation of the repatriation obligation has undergone the following changes. Firstly, a warning was introduced as an alternative penalty. Secondly, disqualifying an official acting in its professional capacity is now a punishment only available if this person has previously been fined. Thirdly, separate liability rules were introduced if the amount to be repatriated exceeds an established threshold of 100 million rubles (on a single instance or aggregated within one year). Once this threshold has been exceeded, liability as a warning cannot be imposed on the resident, and officials can be disqualified without having earlier been fined.

As for criminal liability, since April 2020 prosecution under Article 193 of the Criminal Code is only possible if administrative liability under Article 15.25(5.2) of Administrative Code (failure to repatriate over 100 million rubles) has previously been imposed on the accused. In other cases, prosecution under Article 193 of Criminal Code is only possible only subject to additional elements (a group of co-conspirators, an especially large transaction, etc.).

What has changed since 31 July 2020

I. Reduction of liability for failure to repatriate

Article 15.25 of Administrative Code as amended provides for a significant reduction of liability for failure to repatriate, as the maximum fine amount is reduced from 100% to 30% of the monetary amounts not repatriated by the resident (if the contract is in foreign currency) or 10% (if the contract and means of payment are both denominated in Russian rubles)^[3]. If the funds were received on Russian bank accounts, but with a delay, then liability remains the same as before: 1/150th of the base interest rate of the Russian Central Bank times the amount of funds credited with a delay to Russian accounts for each day of delay.

^[2] Federal Law No. 72-FZ of 1 April 2020 and Federal Law No. 73-FZ of 1 April 2020 .

^[3] Articles 15.25(4) and 15.25(5) of the Administrative Code.



It should be noted that the abovementioned relief only applies if the amount to be repatriated is less than 100 million rubles or its equivalent in foreign currency (as a one-off or aggregated within one year). If amount subject to repatriation exceeds the threshold of 100 million rubles, liability rules remain unchanged, and it is therefore still possible to impose fines of between 75% and 100% of the non-repatriated funds[4].

In addition, a new provision has been introduced stipulating that all abovementioned liability for non-repatriation applies only once 45 days have passed after expiration of the statutory deadline to repatriate the funds[5].

It is also worth paying attention to the fact that the clause is supplemented with a provision according to which administrative liability does not apply to a resident acting as exporter who has not fulfilled the obligation to repatriate, if the amount of a the foreign trade contract does not exceed 200 thousand rubles or the equivalent in foreign currency[6].

Finally, noteworthy provision was introduced that regulates situations where a resident acting as exporter received funds under a foreign trade contract from a non-resident to a bank account held abroad, rather than in Russia (in violation of currency legislation). If the exporter in such a situation transfers the funds from its foreign account to a Russian account within 45 days after receiving them, it will not be held liable. This provision also applies to unlawful currency transactions that involve funds being transferred to foreign account bypassing a Russian account in violation of currency legislation, or in cases not regulated by currency legislation[7].

II. Introduction of liability for failure to perform or discharge obligations under export contracts denominated and paid for in rubles

As mentioned above, the obligation to repatriate funds from for export contracts denominated and paid for in rubles was repealed starting from 1 January 2020. The only obligation in this regard is that the contractual obligations are duly discharged (for example by receiving payment for an export to a foreign bank account). And though liability for failure to duly discharge obligations was earlier not specified, starting from 31 July 2020 companies can be fined by an amount of 5 to 30 percent of the amount due under the export contract, and officials can be fined by up to 20 to 30 thousand rubles. Apparently, this provision was introduced so that residents act in good faith and really carry out foreign trade activities, and do not abuse the new provisions to withdraw assets abroad under cover of export contracts.

III. Introduction of special rules on liability for professional participants in foreign economic activity

The Amending Act provides for special rules on liability for persons included in the list of professional participants in foreign economic activity. This list shall be adopted under a procedure established by the Government of the Russian Federation in agreement with the Central Bank[8]. Currently the list has not yet been drafted.

[4] Article 15.25(5.2) of the Administrative Code

[5] Note 9 to Article 15.25 of the Administrative Code

[6] Note 8 to Article 15.25 of the Administrative Code

[7] Note 9 to Article 15.25 of the Administrative Code

[8] Article 1(1)(6)(b) of Federal Law No. 173-FZ of 10 December 2003 "On Currency Regulation and Currency Control"



There is a publicly available draft Decree of the Government of the Russian Federation "On the procedure to approve the list of professional participants in foreign economic activity"^[9], which is planned to enter into force on 21 January 2021. Among the proposed criteria that such participants would need to fulfil, among others: carrying out foreign economic activity for at least 3 years, the absence of any unpaid fines under Article 15.25 of the Administrative Code, as well as conducting foreign trade contracts in the last three years for a total of over 1 billion rubles.

As regards administrative liability for such professional participants, Article 15.25 of the Administrative Code has been supplemented with subsections 4.2 and 5.3, according to which if such participants violate their obligation to repatriate, they could be fined by up to 5 percent of the amounts not received (instead of 10 percent for ruble contracts or 30 percent for foreign currency contracts). These rules are not applicable if the amount to be repatriated exceeds the threshold of 100 million rubles. In that case a fine of up to 75 to 100 percent of the funds not received can be imposed^[10].

IV. Changes in the procedure for liability for failure to report foreign currency transactions

Until 31 July 2020, article 15.25 of the Administrative Code stipulated the resident's liability for failure to submit reports about foreign currency transactions (for example, supporting documents for registered contracts), in proportion to the delay in submitting reports, with longer delays leading to bigger fines. From 31 July 2020 this approach applies only to reports on the movement of funds on foreign accounts. For failure to submit reports on foreign currency transactions, liability only arises if the delay is longer than 90 days after the deadline: for officials fines of 4 to 5 thousand rubles, and for companies from 40 to 50 thousand rubles^[11].

Who are these changes aimed at?

These amendments are intended to support participants in foreign economic activity and partly relieve them of some burden associated with significant fines in the field of currency regulation. This will also allow participants not to be intimidated by potential fines caused by minor discrepancies when receiving money from a non-resident counterparty, including minor delays on their part due to various business-related issues. At the same time, the remaining penalties are aimed at persons who do not actually carry out foreign economic activity, but only the appearance thereof to withdraw assets abroad.

What are practical guidelines?

First of all, it is necessary to understand whether the company carrying out transactions is subject to the new provisions of currency regulation. If the answer is yes, it is necessary to assess other risks associated with compliance with the requirements of currency legislation and to be ready to protect the company's rights and interests in its relations with supervisory authorities.

^[9]

^[10] Article 15.25(5.2) of the Administrative Code

^[11] Article 15.25(6.3-1) of the Administrative Code

Questions:

Eversheds Sutherland's Russian practice is well-equipped to advise on all issues related to currency regulation, offering a comprehensive range of services to assist our clients and defend their interests. This includes consulting, interactions with supervisory authorities, assisting in case of investigations, and acting in litigation if necessary. If you have any questions about the application of the new provisions in this area, please do not hesitate to get in touch with our attorneys, who will be glad to help.

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