**Summary to the Decision of the Second Senate of the Constitutional Court of Ukraine No. 3-r(II)/2025 dated January 21, 2025 in the case upon the constitutional complaint of Geomax-Resource Limited Liability Company regarding the compliance of an individual provision of passage 2 of Article 14.1.212 of the Tax Code of Ukraine in the wording of the Law of Ukraine “On Amendments to the Tax Code of Ukraine and Certain Legislative Acts of Ukraine on Tax Reform” No. 71–VIII dated December 28, 2014 with the Constitution of Ukraine (constitutionality)**

Geomax-Resource Limited Liability Company (hereinafter, the “Company”) appealed to the Constitutional Court to verify an individual provision of passage 2 of Article 14.1.212 of the Tax Code of Ukraine (hereinafter, the “Code”) in the wording of the Law of Ukraine “On Amendments to the Tax Code of Ukraine and Certain Legislative Acts of Ukraine on Tax Reform” No. 71–VIII dated December 28, 2014 (hereinafter, “Law No. 71”), namely: “goods specified in Article 215.3.4 of this Code” (hereinafter , the impugned provision of the Code in the wording of the Law No. 71), for compliance with Articles 6.2, 8.1, 8.2, 19, 41.1, 41.4, 42.1, 42.3, 57.1, 67.1 of the Constitution.

In accordance with passage 2 of Article 14.1.212 of the Code in the wording of Law No. 71, “the realisation by business entities of excisable goods - sale of beer, alcoholic beverages, tobacco products, tobacco and industrial tobacco substitutes, goods specified in Article 215.3.4 of this Code, directly to citizens and other end consumers for their private non-commercial use regardless of the form of payment, including for bottling in restaurants, cafes, bars, and other catering business entities.”

Paragraph 4.6 of Section I of the Law “On Amendments to the Tax Code of Ukraine and Certain Legislative Acts of Ukraine on Ensuring the Balance of Budget Revenues in 2016” No. 909–VIII dated December 24, 2015 (hereinafter, “Law No. 909”) (entered into force on January 1, 2016) amended the passage 2 of Article 14.1.212 of the Code in the wording of Law No. 71.

On January 1, 2017, the Law “On Amendments to the Tax Code of Ukraine and Certain Legislative Acts of Ukraine on Ensuring the Balance of Budget Revenues in 2017” No. 1791–VIII dated December 20, 2016 (hereinafter, “Law No. 1791”) entered into force.

The legislator improved the relevant normative regulation by Law No. 909, and by Law No. 1791 excluded the impugned provision of the Code in the wording of Law No. 71, and the impugned provision of the Code in the wording of Law No. 71 continues to be applied to legal relations that arose during the period of its validity.

The Constitutional Court is considering whether the impugned provision of the Code in the wording of Law No. 71, which has ceased to be effective but continues to be applied to legal relations arising during its validity, is compliant with the Constitution.

In the context of the rule of law principle, it is important to establish a reasonable time period between the official publication of a law and its entry into force when amending legislation.

If the legislative regulation introduces new requirements that will worsen the legal position of a certain group of persons, the legislator should provide for a sufficient transition period (reasonable time period) from the moment the law is published until it enters into force (starts to be applied), during which the interested persons would have the opportunity to prepare for compliance with the requirements established by the new legislative regulation.

Considering the impugned provision of the Code in the wording of Law No. 71 in terms of the principle of stability of the tax legislation of Ukraine, the Constitutional Court emphasises that Law No. 71 was adopted on December 28, 2014 and published on December 31, 2014 in the newspaper “Holos Ukrainy”. According to paragraph 1 of Section II “Final Provisions” of Law No. 71, Law No. 71 entered into force on January 1, 2015, i.e. on the day following the day of its publication. Accordingly, the impugned provision of the Code in the wording of Law No. 71 entered into force and produced legal consequences the day after the day of publication of the legislative act, namely with the beginning of the budget period – January 1, 2015 (in fact, immediately).

The parties to legal relations, including the Company, could not have enough time to adapt to the changes in the system of legal relations caused by the adoption of Law No. 71, which led to a violation of their legitimate expectations and non-compliance with the principle of legal certainty. By adopting Law No. 71, the Verkhovna Rada failed to establish a sufficient transition period (reasonable time period) related to the entry into force of the impugned provision of the Code in the wording of Law No. 71, thus depriving taxpayers of the possibility of any tax planning.

Such entry into force of the law, in fact, inevitably leads to bringing business entities to legal liability for failure to fulfill this new tax obligation.

The Constitutional Court finds that the transition period between the publication of Law No. 71 and the entry into force of Law No. 71 (less than one day) was insufficient for the relevant entities (in particular, the Company) to adapt to legislative novelties and adjust their actions, to amend the rules of financial and tax accounting of their activities in a timely manner. This period was also complicated by the lack of comprehensive regulation of financial and tax accounting for retail sales of the relevant excisable goods. The negative consequences of the law entering into force without observing the required transitional period could have been mitigated by various instruments, in particular by exempting legal entities from liability for failure to comply with the established requirements of the law, which in this case was not applied (provided for).

The immediate entry into force of the impugned provision of the Code in the wording of Law No. 71 resulted in an excessive tax burden on the financial activities of business entities. Such amendments in the tax legislation of Ukraine do not contribute to the state's protection of competition in business activities, as guaranteed by the first sentence of Article 42.3 of the Fundamental Law.

The Constitutional Court points out that the levelling of the principle of certainty of the tax law and deprivation of taxpayers of the possibility of any tax planning in view of the unexpected additional tax burden on taxpayers as a result of the actual immediate entry into force of the impugned provision of the Code in the wording of Law No. 71 did not contribute to the protection of the rights of business entities and the protection of competition in business activities.

The individual provision of passage 2 of Article 14.1.212 of the Tax Code of Ukraine in the wording of the Law of Ukraine “On Amendments to the Tax Code of Ukraine and Certain Legislative Acts of Ukraine on Tax Reform” No. 71–VIII dated December 28, 2014 , namely: “goods specified in Article 215.3.4 of this Code”, declared inconsistent with the Constitution (unconstitutional).

**Supplementary information:**

* First Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950;
* Report on the rule of law – Adopted by the Venice Commission at its 86th plenary session (Venice, 25–26 March 2011) [CDL-AD(2011)003rev].

**Cross-References:**

Constitutional Court of Ukraine:

* no. 1-rp/2013, 05.02.2013;
* no. 5-r/2018, 22.05.2018;
* no. 3-r(I)/2019, 05.06.2019;
* no. 6-r/2019, 20.06.2019;
* no. 1-r/2020, 23.01.2020;
* no. 2-r(II)/2020, 15.04.2020;
* no. 7-r/2020, 11.06.2020;
* no. 5-r(II)/2020, 18.06.2020;
* no. 12-r(II)/2024, 18.12.2024.

European Court of Human Rights:

* *Brumărescu v. Romania*, no. 28342/95, 28.10.1999;
* *Kruslin v. France*, no. 11801/85, 24.04.1990;
* *Feldman v. Ukraine (№ 2)*, no. 42921/09, 12.01.2012;
* Decision of the European Court of Human Rights on the admissibility of applications in the case of *Von Maltzan and Others v. Germany* dated March 2, 2005 (applications nos. 71916/01, 71917/01, 10260/02).