

Greece rationalises the criminal procedures on tax matters

Law 4745/2020, which was enacted in November 2020, is the most recent stepping stone to the rationalisation of Greece's legislative framework on the prosecution and punishment of tax crimes, which had suffered a setback in 2015, following the introduction of law 4337.

Discussion

At a first glance, law 4337/2015 seemed to rationalise the tax evasion rules in that it increased the monetary thresholds in regards to the constitution of the crime. On the other hand, it abolished the requirement that an ongoing tax dispute on the matter must first be resolved at the administrative courts before criminal proceedings kick off. This resulted to the piling up of reported cases, submitted by the tax authorities to the prosecutors for the immediate initiation of criminal proceedings, on the mere basis that the amount of the tax audit assessment exceeded the relevant monetary

threshold¹. As a result, legal representatives of entities were summoned to the examining magistrate's office to respond to tax evasion charges, even if the related tax dispute was likely to be won.

Art. 32 of the new law 4745/2020 provides that the hearing of the criminal case shall be postponed until the administrative courts, including the Supreme Administrative Court, render their irrevocable ruling on the tax case or the taxpayer fails to timely challenge the underlying tax or penalty assessment. In parallel, it stipulates that the statute of limitation of the criminal case shall be suspended for as long as the case is still pending for irrevocable judgement before the administrative courts.

Nevertheless, its temporal effect requires a more accurate definition.

¹ € 100,000, per year, for the punishment of the tax evasion crime as misdemeanor and € 150,000 for its punishment as felony (respectively € 50,000 and 100,000 in regards to VAT).

Specifically, the relevant provision stipulates that it shall apply for acts committed after the entry into force of this new law (i.e. after 6 November 2020). Literally taken, it would mean that it shall apply to fiscal periods starting after 6 November 2020 and, effectively, not before these fiscal periods undergo a tax audit resulting to

a tax evasion claim, which may take 6 years, or, in certain occasions, longer.

Below are presented the milestones of the rationalization of the criminal prosecution rules following tax audit assessments.

Date	Development	Effect
Dec. 2017	In its circular POL 1209/2017, IAPS (Independent Authority of Public Revenues) confirms its prior position, which it had expressed under the previous regime of L. 2523/1997, that ordinary tax audit adjustments, which also include transfer pricing adjustments, do not justify criminal prosecution.	The relevant cases, which constitute a major category of tax audit assessments were excluded from those which were justified to be reported by the tax offices for prosecution.
March 2019	With the circular E. 2045/2019, IAPS clarified that stamp duty related audit assessments can not lead to prosecution for tax evasion.	Another controversial field, i.e. stamp duty, is removed from the scope of cases reported for prosecution.
July 2019	The new Criminal Code enters into force. Art. 469 acknowledges the principle "ne bis in idem" in regards to criminal sanctions in tax matters.	In its circular E. 2125/2019 IAPS acknowledges that tax audit cases presenting tax evasion elements should not be criminally prosecuted under the criminal rule for large aging tax debts (art. 25 Law 1882/1990), as such cases are relevant for tax evasion prosecution and based on this rule they cannot be sanctioned twice.
Nov, 2020	Law 4745/2020 is enacted	Pursuant to its art. 32, the criminal prosecution authorities suspend criminal proceedings until the tax dispute is irrevocably resolved by the administrative courts. Equally, the statute of limitation of punishing the crime is suspended during the same period.

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