

Sanctions in Tax Law and their relation to Sanctions in Criminal Law

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Countries

- ▶ Austria
- ▶ Bulgaria
- ▶ Croatia
- ▶ Estonia
- ▶ Finland
- ▶ Greece
- ▶ Lithuania
- ▶ The Netherlands
- ▶ Portugal
- ▶ Slovenia



Question 1

- ▶ **Are there any separate sanctions established for violation of tax laws (due to unpaid taxes) in your country?**
- ▶ YES – All countries.
- ▶ *Croatia*: There are separate sanctions for civil and criminal offence. Next to civil and criminal liability in the case of tax law violation, the regulation (General Tax Act) stipulates that the tax authorities have a right to charge taxes, interests and other public charges in accordance with the calculated debt.



Question 2. Infringements (1)

- **What kind of infringements are involved?**
- Criminal infringements
- Civil infringements
- Administrative infringements
- Tax infringements



Question 2. Infringements (2)

- ***Criminal infringements***
- Tax avoidance, tax evasion, tax fraud (*Bulgaria, Croatia, Finland, Slovenia*)
- Infringements concerning book-keeping (falsification, negligence, fraud) (*Bulgaria, Greece, Lithuania*)
- Non-payment of VAT, debts to public sector (*Greece*), tax violation (*Finland*)



Question 2. Infringements (3)

- ***Civil infringements***
- Inappropriate running of business books (*Croatia*)
- Disruption in the control of business (*Croatia*)



Question 2. Infringements (4)

- **Administrative / Tax infringements**
- Failure to declare (*Estonia, Finland*)
- Failure to provide information (eg., register) (*Estonia, Lithuania, the Netherlands, Portugal, Slovenia*)
- Failure to fulfill other obligations (withhold taxes, book-keeping requirements) (*Croatia, Estonia, The Netherlands, Portugal*)
- Reduction of tax payable / increase of tax return (*Estonia, Finland, Lithuania*)



Question 2. Sanctions (1)

- What kind of sanctions are established?
- **Taxes?**
- **Punitive tax increase**
- **Fines**
- **Imprisonment**
- **Special sanctions**



Question 2. Sanctions (2)

- **Taxes**
- Croatia: taxes or other public charges, interest.
- **Punitive tax increase:**
- **Finland:** from EUR 150 to 30% of the added income, i. e. income taxation of which a taxpayer tried to avoid;
- **Lithuania:** increased tax rate in case of exceeding the set amount of emission of pollutants or for concealing the amount of pollutants and/or taxable goods or taxable packaging (pollution tax).



Question 2. Sanctions (3)

- **Fines:**
- **Austria**
- **Bulgaria** (up to BGN 10 000)
- **Estonia**
- **Finland** (criminal)
- **Lithuania** (10-50% of tax calculated + criminal + administrative)
- **The Netherlands** (Minor offences – fines up to EUR 4950, more severe offences – up to 100% of tax involved),



Question 2. Sanctions (4)

- **Fines** (continuation)
- *Portugal* (some fixed – from EUR 300 to EUR 37000, others – percentage of the tax due),
- *Slovenia* (Tax offences – fines (depending on the severity of the offence (tax offence or serious tax offence) EUR 200-125000; for particularly serious offences – fine up to EUR 375000 for legal person, sole proprietor or self-employed individual; fines for particularly serious offences are higher (applied in cases when offences are of particularly serious nature due to the amount of damage caused or acquired illegal proceeds or intent of unlawful gain).



Question 2. Sanctions (5)

- **Imprisonment:**
- *Austria*
- *Bulgaria* (from 1 to 8 years)
- *Finland* (from 4 months to 4 years)
- *Lithuania* (up to 10 years)
- *The Netherlands* (up to 6 months (culpable offences) or 4 years (premeditated))
- *Slovenia* (up to 12 years)



Question 2. Sanctions (6)

- ▶ **Special sanctions:**
- ▶ **Austria:** Subsidiary penalty for failure to pay the fine (*Ersatzfreiheitsstrafe*).
- ▶ **Bulgaria:** deprivation of rights to hold a certain state or public offices and to exercise a certain vocations or activities; confiscation of a part or the whole property of guilty person.



Question 3. Late payment interest

- ▶ **Austria** – delay agio – 2% of the not at the due date paid tax; until 10% of the tax claim;
- ▶ **Bulgaria** – Basic Interest Rate + 10;
- ▶ **Croatia** – yes (in accordance with the provisions of Obligatory Relations Act depending on the subjects of the obligatory relations);
- ▶ **Estonia** – 0,06% a day;
- ▶ **Finland** – ~ 0,02% a day (8% per annum (2011), 7% per annum (2010));
- ▶ **Greece** – ~ 0,03% a day (1% a month);
- ▶ **Lithuania** – 0,03% a day;
- ▶ **The Netherlands** – rate is adjusted every three months to the market rate;
- ▶ **Portugal** – 1) late assessment interest – ~ 0,010% a day (4% a year);
2) late payment interest – ~ 0,019% a day (7,007% a year);
- ▶ **Slovenia** – 0,0274% a day



Question 4 (1)

- Could it be possible that the same action of taxpayer could give ground to two kinds of sanctions: imposed according criminal (administrative) procedure and separate tax procedure?
- **YES:**
 - *Austria* - e. g. tax evasion.
 - *Croatia*
 - *Estonia* - infringements overlap, the line between these procedures runs according to the extent of damage to the society.
 - *Finland* - criminal sanction and punitive tax increase.
 - *Greece* - e. g. separate criminal and administrative sanctions in case of non-payment of VAT.
 - *Lithuania* - fine in accordance to Tax Laws and punishment in accordance to Criminal Laws for essentially the same offence.



Question 4 (2)

- *Lithuania* - fine in accordance to Tax Laws and punishment in accordance to Criminal Laws for essentially the same offence.
- *Portugal* - e. g. lack or delay in payment of VAT (tax procedure and criminal procedure (crime of tax abuse)).
- *Slovenia*
- **NO:**
 - *Bulgaria*
 - *The Netherlands* - “una via” (one way) system is applied. An administrative sanction, i. e. fining by tax authorities, excludes a criminal charge. When a fraud is to be charge by the public prosecutor, no fines are imposed.



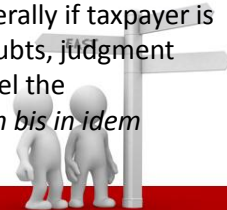
Question 5 (1)

- **How those two procedures and sanctions interact with each other (could it be the violation of *non bis in idem* principle involved)?**
- **Austria** – they interact, e. g. *Zwangsstrafe* (tax law) and tax summary offence (criminal law) for the intent omission of tender of an annual declaration.
- **Bulgaria** - the court and other criminal authorities act in order to determine the perpetrator's guilt and (if any) penalties given in accordance with the Criminal Procedure Act.
- **Croatia** – the court and other criminal authorities act in order to determine the perpetrator's guilt and penalties.



Question 5 (2)

- **Estonia** – at a certain extent of damage to the society the administrative procedure develops into a criminal procedure. The administrative procedure is suspended and replaced with a criminal procedure and there occurs no violation of *non bis in idem* principle.
- **Finland** – if a punitive tax increase is deemed a sufficient sanction, the report of prosecution for or punishment for petty tax fraud and tax violation may be waived. *Judicial practice* – punitive tax increase imposed to a taxpayer can prevent prosecution for tax fraud (if it is final).
- **Greece** – absolutely separate sanctions, i. e. generally if taxpayer is proved innocent by the criminal court due to doubts, judgment does not bound the administrative court to cancel the administrative act – sanction. No violation of *non bis in idem* principle.



Question 5 (3)

- *Lithuania* – according to the legislation and senior judicial practice these two types of sanctions (imposed as for tax liability and criminal/administrative liability) were separate, but new judicial practice confirmed possible violation of *non bis in idem* principle in such cases.
- *Portugal* – distinctive and autonomous both procedures and sanctions, the criminal procedure is suspended if the tax judicial procedure is going on (taxpayer's guarantees).
- *Slovenia* – separate procedures.



Question 6 (1)

- **Are there any special kinds of infringements of tax laws facing special kind of measures (sanctions) in your country?**
- **YES:**
- *Austria* - 10% of the tax claims of audits, if the whole tax claim is under EUR 33000 and under EUR 10000 for one year. If the taxpayer pays the tax claim and the above mentioned payment in a final date from 1 month after the tax assessment - no penal procedure.
- *Bulgaria* - 1) failure to issue statement or misrepresentation of information about giving/ taking loans – fines to 10% of non-stated amounts 2) failure to issue tax documents, other violations (VAT) – fine (natural person) or proprietary sanction (legal person). More Severe punishment in case of repeated violation. Possible compulsory administrative measure closing the commercial site for a period of up to one month (e.g. failure to report daily about turnover of sales).



Question 6 (2)

- *Lithuania* - increased tax rate in case of exceeding the set amount or concealing the amount of emission of pollutants and etc. (pollution tax).
- *The Netherlands* - system of ultimate responsibility in case of VAT carousel fraud (VAT can be obtained from any link in the chain of entrepreneurs), the reversed burden of proof.
- *Portugal* – lack of filing of TP documentation, delay in obtaining certificates of residence, creation, transfer or trade of software conceived with purpose of preventing or changing the assessment of the taxpayer's situation and etc. Punished with fines.



Question 6 (3)

- **NO:**
- *Croatia*
- *Estonia*
- *Finland* – only mentioned as criminal.
- *Greece*
- *Slovenia*



Question 7 (1)

- **Is there a possibility for exemption from exercising sanctions (paying fines or lay payment interests) legitimately imposed for failure to pay taxes?**
- **YES:**
 - *Austria* - 1) Delay agio: no assessment, if there is no gross negligence. 2) Self-incrimination: the taxpayer has to declare and to pay the tax claim. In case of a second self-incrimination for the same period – he has to pay an addition of 25% of the tax claim;
 - *Bulgaria* – *force majeure* (a deferral or rescheduling of the obligation). Also if unpaid taxes are paid until completion of judicial inquiry at 1st instance court – reduced penalties.



Question 7 (2)

- *Finland* – if a punitive tax increase is deemed a sufficient sanction.
- *Lithuania:*
 - 1) no fault
 - 2) force majeure
 - 3) no damage to the budget
 - 4) wrong tax consultation provided by the tax administrator.
- *The Netherlands* - “absence of malice”. Also fine could be reduced regarding the financial capacity of the fined.
- *Slovenia* – self announcement (Tax Procedure Act) and rectifying errors from previous tax period (VAT Act).



Question 7 (3)

- **NO:**
 - *Croatia*
 - *Estonia*
 - *Greece*
 - *Portugal* (but the right to reduction in the amount of fine exists (up to 75%)). Also possibility of the advance payment of fine.



Thanks for Your attention!

Vielen danke!

