

TAX SANCTIONS IN LUXEMBOURG: A USEFUL SEASONAL BOOSTER SHOT

In the heart of the Luxembourgish “summer”, the local Tax Authorities published a new Circular Letter dedicated to administrative and criminal sanctions targeting certain tax breaches (LG-A n°67 of 28th July 2021).

The Circular Letter aims at standardizing the application of three different provisions of the somewhat outdated *Abgabenordnung* of 1934 after their amendment in 2017 and is a new call for a revamping of this piece of legislative archeology.

Such Circular gives the occasion to review the different types of sanctions targeting defaulting taxpayers.

1. Administrative sanctions

1.1. Incomplete, inaccurate, or non-existent tax return (§ 166 (3) AO): provided that the intentional character of the incompleteness or inaccuracy is established by the LTA, an administrative fine comprised between 5 and 25% of the tax so avoided or the reimbursement is applicable.

1.2. Intentional simple tax fraud (§396 (1) AO): has a wider scope of application than 1.1, which only targets tax returns. The taxpayer who intentionally obtains (not further defined) “*tax advantages undue*” (“*nicht gerechtfertigte Steuervorteile*”) or “*intentionally reduces his/her/its taxable income*” (“*Steuereinnahmen verkürzt*”) can be fined at 10 to 50% of the tax so avoided or the reimbursement obtained.

1.3. Unintentional Tax fraud (§402 (1) AO): targets the same obtention of “*tax advantage undue*” or “*reduction of taxable income*”, but in the absence of an intentional character. Applicable fine is comprised between 5 and 25% of the tax avoided or the reimbursement obtained.

The Circular Letter calls for a systematic application of these sanctions when the conditions of their application are fulfilled, acknowledges the discretionary character of the amount of the fine within the range set by law, and also confirms that such administrative decisions can be appealed in front of the Director of the Direct Tax Administration within three months pursuant to § 228 AO.

2. Penal sanctions

2.1. Aggravated tax fraud (§396 (5) AO): is defined (compared to the intentional simple tax fraud) by the quantum of tax avoided. If such amount exceeds 25% of the annual tax due and a minimum amount of 10,000 €, or exceeds 200,000 € in absolute figures, an imprisonment comprised between one month to three years, and a fine comprised between 25,000 € and six times the amount of tax avoided or the reimbursement obtained, will be applied. These sanctions will be applied by the Criminal Court.

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2.2. Tax scam (§ 396 (6) AO): is defined by reference to a “*substantial amount*” of tax in absolute or relative numbers and the systematic use of fraudulent maneuvers aiming at dissimulating relevant facts or create inadequate persuasion. It will be sanctioned by an imprisonment comprised between one month to three years, and a fine comprised between 25,000 € and ten times the amount of tax avoided or the reimbursement obtained. These sanctions shall be applied by the Criminal Court.

The Circular urges to increase the cooperation between the Tax Administration and the Public Prosecution Office in the scope of the Law of 19 December 2008 as amended by the Law of 23 December 2016, and the Law of 12 November 2004.

It is understood that this new Circular demonstrates the intention of the Luxembourg Tax Authorities to open a new era in terms of combating minor to aggravated tax offenses.

It will also be interesting to observe how the systematic use of the provisions examined here above will combine in practice with the newly introduced General Anti-Abuse Provision of § 6 of the same poorly coordinated *Abgabenordnung*, which does not provide for any fine nor penalty in case of tax abuse.



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