

# Circular on administrative fines and penalties

Posted 14.09.2021

Nearly 5 years after the 2017 tax reform amending provisions of the General Tax Law of 22 May 1931 (*Abgabenordnung*, "**AO**") with a view to reinforcing the coercive power of the tax authorities, an administrative circular LG - A n ° 67 was released on 28 July 2021 ("**Circular**") providing guidance to the tax offices on the application of these provisions.

## 1. Breaches subject to administrative fines

The following breaches are subject to administrative fines:

- Intentional defaults or inaccuracies committed by the taxpayer in its tax return or wilful failure to file the tax return are subject to a fine ranged from 5% to 25% of the evaded taxes (§166 (3) AO).
- Simple tax fraud (an undue tax advantage fraudulently obtained for the taxpayer or someone else's benefit or intentional reduction of tax revenues) is subject to a fine ranged from 10% to 50% of the evaded taxes or undue reimbursement (§396 (1) AO).
- Involuntary tax fraud (undue tax advantage or reduction of tax revenues obtained negligently) is subject to a fine ranged from 5% to 25% of the evaded taxes or non-due reimbursement (§402 (1) AO). The fine can be imposed on the taxpayer itself but also on tax advisers which act as intermediaries between the taxpayer and the tax authorities ("TA").

In order to ensure uniform application of these fines, the Circular provides the following guidance:

- Although the application of these fines and the determination of their amount is at the discretion of the TA, the latter must, however, for that purpose, consider all circumstances of the case so that the fine must be proportionate to the breach caused and the taxpayer's ability to pay.
- The date when the decision to impose a fine based on art. 166 (3) AO, art. 396 (1) AO and art.

402 (1) AO is notified is relevant for: (i) the deadline to pay the fine (one month); and (ii) the deadline to file an appeal (*réclamation*). As fines are notified by registered letter, notification takes place on the third day (not the third working day) after the date of posting.

## 1. Criminal frauds subject to penalties

Luxembourg law provides for two types of criminal tax fraud:

- Aggravated tax fraud (when the amount of tax evaded or non-duly refunded is higher than (i) 25% of the tax due but not less than EUR 10,000 or (ii) EUR 200,000) is punished by 1 month to 3 years of imprisonment and penalties ranging from EUR 25,000 to up to 6 times the amount of evaded taxes or undue refund (§396 (5) AO ).
- Tax fraud (when a fraud involves (i) a significant amount of tax evaded - either in absolute terms or having regard to the annual taxes due and (ii) the systematic use of fraudulent actions to conceal information from the TA or to mislead the TA) is punished by 1 month to 5 years of imprisonment and ranging from EUR 25,000 to up to 10 times the amount of taxes evaded or unduly refunded (§396 (6) AO).

If the criteria of the criminal frauds mentioned above are met, the competent tax officer shall bring the case to the Public Prosecutor who will initiate prosecution. The Circular recalls that Article 16 of the Law of 19 December 2008 allows the tax authorities to disclose information to the judicial authorities by exception to the general tax secrecy set forth in §22 AO. In this respect, the Circular provides guidelines on cases where the cooperation between the competent tax offices and the judicial authorities should take place (e.g. when the competent tax office must comply with requests from judicial authorities or report crimes and offences to the Public Prosecutor or report suspicious transactions in accordance with the Anti-Money Laundering and Anti-Terrorist Financing Law, etc.).

For any further information please contact us or visit our website at [www.elvingerhoss.lu](http://www.elvingerhoss.lu).

The information contained herein is not intended to be a comprehensive study or to provide legal advice and should not be treated as a substitute for specific legal advice concerning particular situations.

We undertake no responsibility to notify any change in law or practice after the date of this newsletter

## ELVINGER HOSS PRUSSEN

Société anonyme, Registered with the Luxembourg Bar, RCS Luxembourg B 209469, VAT LU28861577