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Circular
No. 30/2024

Bolzano, 5 August 2024

Subject: Reform of tax penalties from 1 September 2024

As already communicated, Legislative Decree No. 87 of 14 June 2024 (published in the Official Gazette of 28 June 2024) has, in the course of the ongoing tax reform, also revised the provisions on administrative tax penalties and criminal tax offences. We have already informed you of the effects on input VAT deduction in the field of VAT. The above-mentioned legislative decree entered into force on 29 June 2024, but on the basis of a special rule in Art. 5 of the legislation the changes to the administrative penalties apply only to offences committed from 1 September 2024. It should be noted that the changes to the administrative penalties apply strictly to offences committed from that date, particularly since the usual "favor rei" rule (that is: where the new rules are more favourable, they also apply to the past) is expressly excluded. As regards criminal tax law, by contrast, the changes also apply retroactively. Of particular importance for day-to-day practice are the effects on voluntary corrections (ravvedimento operoso).

1. Lower administrative penalties for failure to pay

Evaded income taxes are currently penalised with an administrative penalty ranging from 90% to 180% of the tax, although it should be noted, in fairness, that as a rule only the minimum

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penalty is imposed. From 1 September 2024 an administrative penalty of 70% applies in principle. And where today penalties of between 120% and 240% are threatened for failure to file tax returns, a single penalty of 120% applies from 1 September 2024.

For tax returns that have been filed but are inaccurate, as well as for invoices and till receipts that have not been issued, the proportional administrative penalty is likewise reduced to 70%. For the supplementation of an inaccurate return filed in any event before the commencement of an audit, the administrative penalty is reduced to 50% (twice the administrative penalties for failure to pay). The additional increase of one third for undeclared foreign income is abolished. The various fixed penalties for failure to file reports are also reduced slightly.

2. Lower administrative penalties for late payment

The administrative penalty for late payment is reduced from the current 30% to 25%. This is again reduced by half, that is to 12,5%, where the delay does not exceed 90 days. For delays of up to 15 days, the administrative penalty is 0,833% per day. The existing possibility of a reduction by way of voluntary correction remains (see the next point).

The amount of the administrative penalty for failure to file tax returns remains unchanged (120%; previously from 120% to 240%). However, provision is made for the possibility of subsequently filing an omitted return, with an administrative penalty of 75% applying where the filing takes place before the commencement of an audit. Voluntary correction remains excluded here, because it is only possible in the case of a tax return filed within the deadline.

3. Voluntary correction with the possibility of cumulation

Voluntary correction (“ravvedimento operoso”) within the meaning of Art. 13 of Legislative Decree 472/1997 makes it possible, as is known, to correct omissions and delays in tax payments and returns voluntarily against payment of a reduced administrative penalty. As a consequence of the above-mentioned reductions in administrative penalties, the penalties applicable to such voluntary supplementary filings and back payments are now also considerably reduced from 1 September 2024. In addition, so-called legal cumulation also applies.

3.1 Lower penalties for voluntary back payments and supplementary filings

As is known, for a voluntary correction the taxes must be paid subsequently together with interest at the statutory interest rate (2,5% since 01.01.2024) and, at the same time, reduced administrative penalties must be paid. In this respect the following reductions apply from 1 September 2024:

- For payments up to 14 days late, an administrative penalty of 0,083% per day applies on a pro rata basis (precisely: 1/10 of ½ of 25%/15), that is 1,1667% in the case of 14 days; up to 31 August 2024 a penalty of 0,1% per day still applies.
- For payments late from the 15th day and within 30 days, the halved administrative penalties are reduced to 1/10 of the minimum penalty of 25%, so that in this case administrative penalties of 1,25% arise for the correction (up to 31 August 2024 still 1,5%),
- For corrections made from the 31st day and within 90 days of the offence or of the due date of the returns, the administrative penalties are reduced to 1/9 of the halved minimum penalty, that is 1,389% for late payments (up to 31 August 2024 still 1,67%).
- For corrections made within the year in which the offence was committed or within the deadline for the tax return for the tax period in which the offence occurred, the minimum penalty is reduced to 1/8 of the minimum penalty, that is to 3,125% for late payments (up to 31 August 2024, by contrast, still 3,75%).
- Up to 31 August 2024 a reduced penalty of 4,29% is additionally permitted where the remedy takes place within the deadline for filing the tax return for the following year. This type of back payment is abolished from 1 September 2024.
- For corrections made after the above deadline (that is, after the deadline for the tax return), but within the limitation period, the administrative penalty is reduced to 1/7 of the minimum penalty, that is 3,571% for late payments (up to 31 August 2024 5%).
- Where a control notice within the meaning of para. 3 of Art. 6-bis of Law 212/2000 has already been issued in respect of the failure to pay, but no assessment notice has yet been served at the time of payment and no audit report exists, the settlement may be made with a reduced penalty of 4,167% (1/6 of the minimum penalty) (up to 31 August 2024 6%).
- Where the offence has already been recorded by way of an audit report, but no notification of settlement has yet been issued, the back payment may be made with a reduced penalty of 5%.
- Finally, a new scenario is also provided for: even where an audit report and a control notice exist, settlements may be made with a reduced penalty of 6,25% up until the submission of an application for assessment by agreement (“accertamento con adesione”) and up until the service of an assessment notice.
- Lastly, tax returns filed late within the deadline of 90 days are penalised with an administrative penalty of 1/10 of the minimum penalty.

For all the deadlines set out above, the following continues to apply unchanged: where the deadline for the back payment or for the intended correction falls on a Saturday or a public holiday, the respective penalty reduction may still be claimed on the following working day.

3.2 Cumulation

Until now it has in many cases been advantageous to forgo a voluntary correction of tax offences, because in the event of a subsequent assessment the penalty for the most severely penalised offence was applied, but not, in addition, the penalties for ancillary offences. This disadvantage is now finally being removed: from 1 September 2024 it will no longer be necessary, for the purposes of voluntary correction, to remedy the individual breaches separately and accordingly to pay the reduced administrative penalties several times over for what is in substance the same error. By way of example, in the case of an inaccurate VAT return one may cite the preceding failures to issue invoices as well as the incorrect periodic VAT computation and the corresponding incorrect periodic payment; today, in the case of a voluntary correction, the penalties for four offences must be paid in such a case. From 1 September 2024 the cumulation of the individual sets of facts will also apply to voluntary correction, and the reduced penalty is owed (only) for the most serious error.

A relief also applies to so-called repeated errors (for example the repeated failure to issue invoices); here too, in the case of a voluntary correction, each individual offence is no longer penalised, but rather the administrative penalty for the most serious error is applied once, increased by one quarter. Since the corresponding calculations are somewhat difficult, the Italian Revenue Agency will make dedicated software available for this purpose.

4. Definition of tax credits

In the past there have repeatedly been serious challenges because tax credits were offset by means of Form F24 which, in the view of the tax authorities, were not (yet) capable of being offset. The decree finally draws a clear distinction between non-due (or not yet offsettable) credits and non-existent credits:

- Credits are regarded as non-existent where the objective and personal requirements for the credit are lacking, that is, where there is no set of facts giving rise to the relevant incentive. This applies in particular to cases in which circumstances are presented in a fraudulent manner or by means of falsified documents. The administrative penalty for offsetting such credits currently ranges from 100% to 200%; from 1 September it is 70% and, unlike today, a voluntary back payment is possible.
- The use of non-due credits concerns cases in which the prescribed formal requirements are not complied with, the documentation is incomplete or certain requirements are not met. Here an administrative penalty of 25% applies in the event of incorrect offsetting, whereby in some cases an administrative penalty of 250 euro is even to be imposed.

The new rules may, where more favourable for the taxpayer, also be applied retroactively for criminal law purposes alone. Significant differences may therefore arise between the administrative and the criminal law treatment of one and the same case in dispute.

5. Criminal tax offences for failure to pay

The set of facts constituting a criminal tax offence for failure to pay VAT as well as payroll and withholding taxes now arises only at a later point in time, namely only from 31 December of the year following the filing of the tax return. The thresholds themselves remain unchanged (250.000 euro for VAT, 150.000 euro for payroll and withholding taxes). It follows that, in so far as the payments in respect of the tax return for the year 2023 are still made by December 2025, there is at least no criminal offence. Likewise, no criminal offence arises where the unpaid amounts are made good by means of an approved payment in instalments, or where the failure to pay is attributable to an inability to pay “through no fault of one's own” in the case of a liquidity crisis that is not merely temporary and that was triggered by insolvency proceedings or the insolvency of a third party or by an amount due from a public body.

We remain at your disposal for any further information.

Yours sincerely
Josef Vieider