

# Tax Flash Law 4337/2015

October 2015

On October 17<sup>th</sup> 2015, Law 4337/2015 “**Measures for the implementation of the agreement on budgetary targets and structural reforms**” was enacted. The Law introduces amendments on the Code of Tax Procedures (CTP), within the context of the measures that are set as a prerequisite for the implementation of Memorandum III. The amendments introduced are directed towards the decrease of the penalties imposed by the CTR.

## A. Penalties for procedural infringements

**Procedural infringements with respect to the non-issuance of tax records**

- The infringement of non-issuance or inaccurate issuance of tax records is no longer treated as a separate procedural infringement and therefore falls under the general infringement of non-maintenance of accounting records.

*According to the Preamble of the Law, the non-issuance or the inaccurate issuance of a tax record usually results to tax evasion triggering thus the imposition of the substantive penalties.*

## B. Transfer Pricing (TP) penalties

**Penalties for intra-group transactions**

- The penalties imposed for the delayed filing/non-filing/ filing of inaccurate Summary Information Table as well as for the delayed submission/ non-submission of the TP Documentation File, are rationalized, as under the new regime, such penalties are calculated based on the value of intra-group transactions and not on the entities' gross profits. In particular:

TP Infringements	Amount of penalty	Conditions for the imposition of the penalty
• Delayed submission of Summary Information Table	1/1000 of value of intra-group transactions (not below 500€ and not exceeding 2,000€)	In case the difference resulting from the amended transactions exceeds 200,000€
• Submission of inaccurate Summary Information Table	1/1000 of value of intra-group transactions (not below 2.500€ and not exceeding 10,000€)	In case the inaccuracy is higher than 10% of the transactions
• Non-submission of Summary Information Table	1/1000 of value of intra-group transactions (not below 2.500€ and not exceeding 10,000€)	
• Delayed submission/	5,000€	Between the 31 <sup>st</sup> -60 <sup>th</sup> day
	10,000€	Between the 61 <sup>st</sup> -90 <sup>th</sup> day

non-submission of the TP Documentation File (imposed upon the expiration of the one-month deadline)	20,000€	After the 90 <sup>th</sup> day or the non-submission in general
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### C. Penalties imposed following audit by the Tax Administration

*Penalties for the inaccurate filing/ non-filing of a tax return (except for withholding taxes and VAT)*

Infringements detected following a tax audit	Amount of penalty	Conditions for the imposition
<ul style="list-style-type: none"> <li>• Inaccurate tax return</li> </ul>	10% on the amount of the difference	In case the amount exceeds 5% to 20% of the tax arising according to the tax return
	25% on the amount of the difference	In case the amount exceeds 20% to 50% of the tax arising according to the tax return
	50% on the amount of the difference	In case the amount exceeds 50% of the tax arising according to the tax return
• Non-filing of a tax return	50% on the amount of tax corresponding to the non-submitted tax return	

- To be noted that the abovementioned penalties shall not be imposed in cases of non-filing or filing of inaccurate VAT or withholding tax returns, where the below penalties should be imposed.
- A new article regarding the infringements relating to VAT is introduced, imposing specific penalties applicable only to VAT infringements detected following a tax audit.

*Penalties on VAT infringements (following a tax audit)*

VAT infringements detected following a tax audit	Amount of penalty
• Non-issuance of a tax record/ issuance or receipt of an inaccurate tax record for a transaction subject to VAT	50% on the VAT that would incur from the non-issued record or of the difference respectively
• Filing of an inaccurate tax return/ Non-filing of a tax return	50% on the tax that would incur from the non-submitted return or of the difference respectively
• Commencement of business activity without the filing of the return for the commencement of business (despite the relevant obligation)	50% on the VAT that would have been paid during the performance of business activity
• Issuance of tax records bearing VAT by persons not liable to the filing of VAT returns	50% on the tax amount not paid

- The penalties imposed in cases of non-filing/ filing of an inaccurate withholding tax return detected following a tax audit are replaced as follows:

**Penalties on infringements regarding withholding taxes (following a tax audit)**

<b>Withholding tax infringements detected following a tax audit</b>	<b>Amount of penalty</b>
• Inaccurate tax return	50% on the amount of the difference
• Non-filing of a tax return	50% on the amount of the tax corresponding to the non-submitted tax return

*It follows from the review of the new provisions that the penalties imposed following a tax audit have been decreased to 50% in most of the cases.*

**Entry into force of the new penalties**

- The new penalties apply to tax assessments of any tax, penalty, duty or contribution issued as from 12.10.2015 which relate to obligations of fiscal years ending after 31.12.2013 or cases as of 1.1.2014, for which art. 58 (Penalties for the filing of inaccurate return/or non submission of return) and 59 (Penalties for the non payment of the withholding taxes due) of the CTR was applicable, if their application results to a more favorable treatment for the liable person.

These new provisions apply also to any pending cases before the tax authorities or courts, on condition that an irrevocable declaration of unconditional acceptance of the infringement and waiver of any further claim by the tax payer is submitted within the provided deadline.

**Estimated tax assessment**

- The provisions regarding the penalties imposed in case of an estimated tax assessment for the non-filing of a tax return are abolished.

**D. Special provisions regarding false and fictitious tax records**

- The enacted Law seems to abolish, as of 1.12.2015, the specific penalties in case of issuance/receipt of false and fictitious invoices (apart from substantive penalties outlined above).

*It remains uncertain whether the real intention was the abolition of these penalties, while the transitory provisions (outlined below) create a lot of uncertainties in this respect. A close follow up of the application of the provisions is, therefore, required.*

- For infringements relating to the issuance or receipt of false and fictitious tax records, which have incurred until 31.12.2013 under the provisions of Code of Tax Books and Code of Tax Reporting of Transactions and for which offences no audit mandate had been issued until 12.10.2015 or as of 1.1.2014 until 17.10.2015 based on the pre-existing provisions of the relevant articles of CTP the following penalties are provided:

<b>Infringements</b>	<b>Amount of penalty</b>
• Issuance of false tax records	50% on the value of the tax record
• Issuance or receipt of fictitious tax records or falsification of tax records or posting of expenses in the accounting books without tax records	40% on the value of the tax record or the part of the fictitious value in case the value of the tax record is partly fictitious or 20% on the value of the tax record in case the determination of the partly fictitious value is not feasible.
• The fictitiousness is exclusively attributable to the person issuing the tax record	20% on the value of the tax record

<ul style="list-style-type: none"> <li>Receipt of a fictitious record</li> </ul>	10% on the value of the tax record for each infringement provided that the receipt of the fictitious record had not resulted to the reduction of the income tax of the corresponding fiscal year
<ul style="list-style-type: none"> <li>Issuance or incorrect issuance of a record or other infringements resulting in the concealment of a transaction or part thereof for a value exceeding 1,200€</li> </ul>	25% on the value of the transaction or the concealed transaction for each infringement
<ul style="list-style-type: none"> <li>For other infringements (not mentioned above)</li> </ul>	1/3 of the penalty imposed based on the provisions of article 5 of L. 2523/1997 for each infringement

These new provisions apply also to pending cases before the tax authorities or courts, on condition that an irrevocable declaration of unconditional acceptance of the infringement and waiver of any further claim by the tax payer is submitted within the provided deadline.

## E. New provisions for tax evasion crimes – Criminal sanction

### Definition of tax evasion crime

- The definition of “tax evasion” crime is provided, which applies to most of the tax objects. In particular, the tax evasion crime is committed by persons who **intentionally avoid the payment of taxes** (e.g. income tax, uniform tax on the acquisition of ownership, special real estate tax, VAT, turnover tax, premium tax, withholding and imputable taxes, fees or contributions, shipping tax etc.).

### Criminal sanction for transactions other than false and fictitious tax records

Criminal sanction	Infringement of tax evasion
Imprisonment at least 2 years (offence)	<p>If the tax corresponding to the concealed taxable income or assets exceeds 100,000 per fiscal year and per type of tax</p> <p>If the amount of the tax, fine or contribution that had not been paid or had been paid incorrectly or reimbursed or set-off or deducted or withheld exceeds per tax or fiscal year:</p> <ul style="list-style-type: none"> <li>50,000€ for VAT, or</li> <li>100,000€ per each kind of any other tax, fine or contribution</li> </ul>
Imprisonment over five years (felony)	<p>If the abovementioned amount of tax, fine or contribution exceeds per fiscal year:</p> <ul style="list-style-type: none"> <li>100,000€ for VAT, or</li> <li>150,000€ per each kind of any other tax, fine or contribution</li> </ul>

### Criminal sanction for false and fictitious tax records

Criminal sanction	Infringement of tax evasion regarding false and fictitious tax records
Imprisonment at least 3 months	Persons who issue false or fictitious tax records as well as persons who receipt fictitious tax records or alterate such records, irrespective of whether they evade paying taxes or not
Imprisonment at least 1 year	If the total amount of the fictitious tax records exceeds the amount of 75,000€
Imprisonment up to 10 years	If the amount exceeds 200,000€

### Perpetrators and accomplices of tax evasion crimes

- The number of persons who are considered as perpetrators or accomplices of tax evasion crimes is expanded, as, under the new regime, the persons that fall within this definition are all those engaged, either temporarily or permanently,

with the effective management, administration, representation (either by private consent or directly by law or by a court decision or by any other case).

- Persons who knowingly sign inaccurate tax returns as well as persons who provide direct assistance in the commission of tax evasion crimes are punished as direct accomplices.

*The wording of the provision as regards the “direct assistance” is general and leaves a wide scope of interpretation by the Tax Administration.*

*Under the previous regime of L.2523/1997, there was an explicit reference to the criminal liability of the Chief Accountant as a direct accomplice of the tax evasion offence. Said explicit reference is abolished.*

### ***Independence of the criminal proceedings***

- The filing of the administrative recourse as well as the judicial recourse before the Administrative Courts does not affect the criminal proceedings. However, the criminal court may by its decision suspend the criminal proceedings until the issuance of the final decision of the Administrative Court if it is considered that this decision is critical to its own judgment.

*Based on press releases, a complimentary Opinion was issued by the Attorney General of the Supreme Court with respect to the issue of the immediate prosecution by the tax authorities of the persons who commit tax crimes. More specifically, based on the recent Opinion (4/25.9.2015), on the basis that the current applicable provisions of the CTP do not provide for the option of the out-of-court settlement of the disputes with the tax authorities, the acceptance by the tax payer of any decision for the imposition of penalties and the actual payment of the latter, does not, as such, preclude any criminal prosecution or, interrupts the respective process, if such criminal prosecution has already commenced. With the complimentary Opinion it is clarified that for tax crimes that have been committed prior to 1.1.2014, irrespective of when those crimes are identified and become definite, the former more lenient regime, which provides for the option of an out-of-court settlement and as a result the cease of any criminal sanctions, should still apply.*

### **F. Extension of the Statute of Limitation**

- The Statute of limitation is extended for one year for cases expired on 31.12.2015 and for which cases prosecutors orders, audit mandates, investigations etc. have been issued by 10.17.2015 or will be issued by 31.12.2015.

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