

CMS Romania: Constitutional Court of Romania: green lights for absolving tax-fraudsters

On 17 February 2021, Romania's Constitutional Court rejected, as ungrounded, the plea of non-constitutionality raised by the High Court of Cassation and Justice, the Romanian government and the Romanian Ombudsman over Draft Law No. 241/2005 on the prevention and fight against tax evasion.

This means that the Draft Law now only needs the approval of the Romanian President to enter into force, which is expected to happen soon.

The main change brought about by the Draft Law is a new impunity article for all persons charged with tax evasion if one or all fully pay damages caused by the act increased by 20%, plus interest and penalties, before a final decision is ruled in the case. The impunity clause applies to all participants in the offence, whether or not they contributed to the payment of the damage.

The other important change brought by the Draft Law is the fine penalty as an alternative to imprisonment for the offences if the defendants fully pay the damage caused from the commission of the act. The fine penalty can be mandatory or optional and will be applied by the court depending on the amount of damage caused, as follows:

- for damage up to EUR 100,000, the court may apply the fine penalty or imprisonment; and
- for damage up to EUR 50,000, the court is obliged to apply the fine penalty, and not imprisonment.

No matter the amount of the damages, the court can apply the fine penalty also in case of related tax evasion, such as the offence of establishing tax in bad faith by the taxpayer.

The Draft Law is a positive development for persons charged with tax evasion and makes room in Romania's already cramped prison system while making it easier for the Romanian state to recover damages (plus an additional 20% in certain cases) resulting from this offence.

For more information on tax evasion or general advice on criminal defence issues in Romania, contact your local CMS experts **Mihai Jiganie-Serban** and **Anca Elena Ion**.