

CMS | Romanian High Court rules on amount to be covered to benefit from impunity in tax evasion crimes

On 29 September 2021, the Romanian High Court of Cassation and Justice (HCCJ) issued Decision no. 66/2021, ruling that the interest and penalties referred to in article 10 par. (11) of Law no. 241/2005 for the prevention and combatting of tax evasion are to be applied only to the damage caused through the perpetration of the crime, without taking into consideration the 20% increase in the calculation base.

This decision came after the Bucharest Court of Appeal requested that the HCCJ give a preliminary decision on this question of law in order to resolve whether:

1. the interest and penalties are to be based on the damage caused through the perpetration of the crime and increased by 20%; or
2. the interest and penalties are to be calculated only in relation to the damage caused by perpetrating the crime.

According to article 10 par. (11) from Law no. 241/2005, if the full damage of a tax evasion crime, increased by 20% of the calculation base, with interest and penalties added, is covered, this crime is no longer punishable. To benefit from impunity, the payment must be made during the criminal investigation phase or any time during trial until the court issues a final decision.

The HCCJ's decision will help prevent Romanian courts from delivering contrary decisions given the legal provision's lack of clarity. The decision is binding for the courts once published in the Official Gazette.

For more information on this ruling and general advice on criminal defence in Romania, contact your CMS client partner or local CMS experts Mihai Jiganie-Serban and Cosmin Cretu.