

## **11.**

# **ADMINISTRATIVE TAX SANCTIONS**

## 11.1 PRINCIPLE OF LEGALITY

**art. 3, D.LGS., n. 472/97:**

- No one may be affected by tax sanctions if a law is not came into force before the violation:
  - Type of sanctions (monetary and ancillary)
  - Analogy is not allowed;
  - The law into force during the time of the violations is applied
  - Retroactivity *abolitio criminis* (comma 2) and *favor rei* (comma 3).

Transgressor: the sanctions are issued to the natural person who has committed (or helped) the violations;

- Legal entities and partnership shall be liable for guarantee basis [art. 11]
- Sanctions are not transmitted to the heirs [art. 8]

**PERSONAL MODEL [art. 2, co. 2]:**

- The transgressor is who determines a violation with violence or persuading other person to make an error;
- It is liable in place of the person who has committed the error

**Mediated Author [art. 10]:**

## 11.2 SUBJECTIVE ELEMENTS

### **IMPUTABILITY [art. 4]**

- Fitness to plead

### **GUILT [art. 5]:**

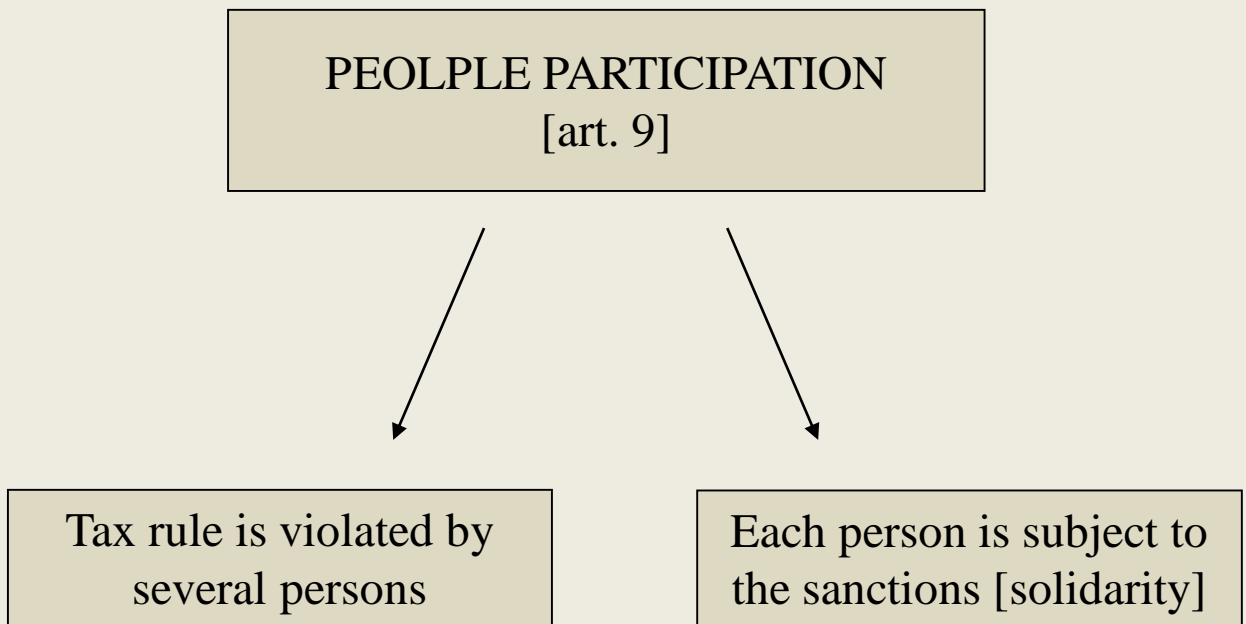
- Liability for own cognizant actions and omissions (involuntary and fraudulent)

### **GROSS NEGLIGENCE:**

Indisputable negligence:

- The meaning of the rule can not be doubtful
- The violations of tax obligation is evident
- It is residual with a limited effectiveness [eg, advisor can be liable only for intentional or gross negligence behavior]

## 11.3 PARTICIPATION IN CRIME



## OFFENCES PARTICIPATION [art. 12]

### MATERIAL

Plurality of actions —→ several violations of the same tax law

- Penalty treatment:  
as many penalties as the violations

### FORMAL

- **Homogeneous:** One action or one omission
  - Plural violations of the same tax rule
- **Heterogeneous:** Same action or omission
- More rule violated
- Penalty treatment:  
one increased penalty *ex art. 12*

## CONTINUATION [art. 12, co. 5]

More violations of the same nature for different fiscal year

- Penalty treatment:  
The applied penalty is the base value increased from the half to the triple

## 11.4 GROUNDS FOR EXEMPTION FROM CRIMINAL LIABILITY

Intentional or gross negligence is necessary :

- Advisor;
- Author of the violation who has no vantage from the action committed;
- Innocent on the fact:
- Tax rule is not clear or the information requested in tax compliance models are undefined;
- Inevitable ignorance of the tax law;
- The fact is committed in case of *force major*;
- Respect of the continuity of fiscal value and correct application of the GAAP
- Violations with no effect on the tax audit and on the calculation of the taxable base
- It may be demonstrated that the payment is not performed because of an authority denunciation

## 11.7 PENALTIES PROTECTION

### CIRCUSTAMCES

Principle of cooperation and good faith between taxpayer and administration.:

- Compliance to successive administrative practice;
- Formal violation with no tax liability;
- Error on the tax rule, art. 8, D.Lgs. 546/92;
- Objective uncertainty of the rule application



## 11.10 PARTICULAR CASES

### **LIABILITY OF LEGAL BODIES/PERSONS [art. 11]:**

Solidarity with right of recourse if the violation affects the taxable base or the taxes to be paid;

Art.. 7 DL 269/2003: Exclusive reference to the legal entity of the administrative penalties:

1. Administrative penalties related to tax position of the legal entities are exclusively referred to them.
2. Regulation in the par. 1 applies both to the unclaimed violations and to the violations which can not be imposed because of the Decree 269/2003 is not came into force
3. Hard coordination; the D.Lgs. 472 is applicable because it is compatible

## **COMPANY SALE [art. 14]:**

Responsibility for the committed violations both in the sale year and in the previous two year as well as for the imposed violations in the same fiscal year of the sale;

Solidarity of the transferee within the value of the company  
Benefit of preventive discussion is applicable

The limitation does not work

- If the sale is in order to rip off the tax authorities;
- If the sale is occurred within 6 months from the tax crime claim;

Pending proceedings certification with liabilities discharge effect.

## **M&A [art. 15]:**

Debt succession;

Solidarity in case of company scission