Global Guide to Criminalization of Tax Offenses - Chile

International Guide on Criminalization of Tax Offenses

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# 1. Please define provide details of criminal tax fraud offence in your jurisdiction

For a criminal tax fraud offence to be punished, it must be expressly stated and duly described in the law.

As a general rule, fraud tax offences are described in article 97 of the Chilean Tax Code, which contains a broad catalogue of tax criminal conducts, such as the use of fake invoices for reducing expenses or for obtaining tax refunds, informal commerce, use of malicious procedures for reducing the tax burden, etc.

# 2. What are the typical trigger points that could lead to criminal investigations? Can the application of certain tax penalties trigger criminal proceedings?

Criminal proceedings for tax fraud do not depend on tax adjustment, but on gathering the facts set forth in the law, one of which may be a fiscal detriment.

# 3. Can a certain amount of tax adjustment trigger criminal proceedings for tax fraud?

Criminal proceedings for tax fraud do not depend on the application of tax penalties, but on gathering the facts set forth in the law. A criminal proceeding may conclude with the application of a tax penalty.

# 4. Is criminal intention a requirement, or can mere negligence be the basis of a criminal offence?

Yes, criminal intention is a requirement for configuring a criminal offence.

# 5. Does the spontaneous filing of an amended tax return (either through a self-disclosure mechanism or not) have an impact on the initiation of criminal proceedings? Is full payment of tax required?

Amendment of a tax return and full payment of applicable tax may mitigate the criminal liability but does not prevent the tax authority to initiate a criminal proceeding.

# 6. Can the prosecutor, on their own initiative, prosecute the tax fraud offence?

For a tax fraud to be prosecuted, the Chilean Tax Code requires a legal action from the tax authority. Once this legal action is exercised, the Chilean prosecutor is able to pursue the tax fraud offence.

# 7. What is the statute of limitation period applicable to the tax offences in your country?

Statute of limitation depends on the nature of the criminal offence, which is associated to the sanction stated for each criminal conduct. In this sense, statute of limitation in the case of crimes is a 10 year term, and in the case of simple crimes is a five year term.

# 8. When does the statute of limitation period start to run e.g., filing of a tax declaration, failure to pay tax by deadline, tax assessment as a result of a tax audit, etc.?

Statute of limitation starts from the date of commission of the crime (e.g., when the taxpayer files the tax return).

# 9. What criminal sentences [e.g., custodial, criminal fines or others ] may be incurred in case of a conviction for tax offenses in your jurisdiction?

Sentence associated to tax crimes are normally imprisonment ranging from 61 days to 15 years, depending on the nature of the criminal offence and the penalty associated thereto. These sentences are applied with criminal fines which vary depending on the entity of the crime (e.g., 50% to 300% of the tax evaded).

# 10. Can having a compliance or risk mitigation program in place mitigate criminal liability for a Company in your jurisdiction?

Criminal liability only falls on the individual who committed the tax fraud or who has been involved in that commission. Therefore, having a compliance or risk mitigation program does not mitigate criminal liability by itself, but my serve for the Company to opportunely detect cases of tax fraud.

# 11. Is there a formal or informal program allowing individuals or entities to self-disclose criminal conduct and block prosecution? If not, does such a disclosure mitigate the likelihood of prosecution or reduce the potential sentence and fines?

No, there is no a self-disclosure program in Chile. Self-disclosure may mitigate the criminal liability if it is deemed as a cause of collaboration with the tax / judicial authority.

# 12. Once the criminal proceeding has been initiated is there an impact in terms of liability in case of full payment of a tax assessment issued by the tax authorities (first-time offender rule)?

Full payment of a tax assessment is not an exemption but it may mitigate the criminal liability.

# 13. Does criminal prosecution of a tax offence have an impact on the tax authorities' statute of limitation period?

Yes, the statute of limitation is suspended once the tax offence is prosecuted.

# 14 Can the tax authorities assess and collect underpaid taxes even if the case becomes criminal

Yes, collection of underpaid or unpaid taxes is always possible even in parallel with a criminal prosecution.

# 15. Is it possible to reach a tax/criminal settlement with the tax authorities/public prosecutor/judge?

Yes, there are alternative settlements in the context of the criminal procedure.

# 16. Who can be prosecuted: just individuals/directors or also companies?

Individuals

Only individuals, as companies cannot commit tax fraud offences, subject to criminal sanctions. However, companies may be subject to fines imposed by the Tax Court.

# 17. Can foreign employees/directors be prosecuted?

Yes, provided the employees / directors committed a tax fraud offence or have been involved in the commission of a tax fraud.

# 18. In case of an employee / director being prosecuted in connection with the lack of payment of Company's taxes, is the Company liable for the amounts claimed to such individual?

Criminal liability only falls on the individual who committed the tax fraud or who has been involved in that commission. Therefore, the company is not liable for the amounts claimed to such individual but may be liable for tax deficiencies derived from the commitment of the tax fraud.

# 19. Have you seen an increase of criminal prosecution for tax offenses over the last five years in your jurisdiction? If so, in relation to what topics?

As of the assumption of the new government in 2022 (and the arrival of a new tax authority administration) the IRS has defined the criminal prosecution as one of its main actions for combating tax fraud. Therefore, criminal cases may be increased considerably in the next months, as part of this strategy.

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