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Chimec S.p.A.

**Organisation, Management and Control Model
pursuant to Legislative Decree 231 of 8 June 2001**

SPECIAL SECTION “N”

TAX OFFENCES

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1. - Tax offences (Article 25-quinquiesdecies of L. Decree 231/2001)

1.1 - Introduction

The reform of the tax offences, introduced with L. Decree no. 124 of 26 October 2019 (so-called tax decree), converted with Law no. 157 of 19 December 2019, has added art. 25-quinquiesdecies to L. Decree 231/2001, by virtue of which certain types of tax offences become predicate offences of the entity's liability, a brief description of which will be provided below.

The importance that tax duty has in our constitutional system is enshrined in art. 53 of the Constitution according to which "*Every person shall contribute to public expenditure*" by virtue of their ability to pay, while establishing, at the same time, criteria of progressiveness which the tax system is based on. This recognition, of constitutional significance, represents the foundation of tax criminal-law protection.

Therefore, the underlying criminal-law protection not only focuses on the mere economic recovery of the evaded taxes (or other and various conducts which harm the protected legal property, punished by L. Decree no. 74/2000), but represents a protection of such values of constitutional rank, fundamental for the very existence of the State.

In this regard, the Constitutional Court affirmed that "*in the light of constitutional principles, (...) tax evasion constitutes in any case a particularly serious hypothesis, for the simple fact that it represents, in each of its manifestations, the rupture of the bond of minimum loyalty that binds citizens together and therefore involves the violation of one of the mandatory duties of solidarity, on which, pursuant to Article 2 of the Constitution, a civil coexistence ordered to the values of individual freedom and of social justice is founded*" (sentence no. 51/1992).

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1.2. - The offences referred to in art. 25-quinquiesdecies of L. Decree 231/2001

- *Fraudulent tax return by means of invoices or other documents for non-existent transactions (Article 2, paragraphs 1 and 2-bis of L. Decree 74/2000)*

The provision in question punishes, in the **first paragraph**, with imprisonment from four to eight years whosoever, in order to evade income or value added taxes, by using invoices or other documents for non-existent transactions, indicates fictitious passive elements in one of the [annual] tax returns relating to said taxes.

Paragraph 2-bis requires that if the amount of fictitious passive elements is lower than one hundred thousand euro, imprisonment from one year and six months to six years applies.

Art. 2 of L. Decree 74/2000 falls within the category of a mere conduct offence; it is an offence with an instantaneous nature which occurs with the presentation of the annual tax return (the time of perpetration of the offence).

In close connection with this circumstance, art. 6 of the same L. Decree 74/2000 excludes that the offence may be punishable by way of attempt.

The prevailing case-law reconstructs the offence in question according to a two-phase structure:

1. the first is characterised by a preparatory conduct consisting in the acquisition of invoices for non-existent transactions or other equivalent false tax documentation (criminally irrelevant *ante factum*);
2. the second phase completes the offence and takes place through the presentation of the fraudulent documentation as it is accompanied by the indication of fictitious passive elements.

With reference to the subjective element, the offence is punished because of wilful intent as it is characterised by the purpose of evading income or value added taxes.

The active subject of the offence can only be the person who is the taxpayer for the purposes of direct taxes and VAT, or who is the administrator, liquidator or representative of the taxpayer subject to taxation.

An objectively non-existent transaction occurs in two hypotheses:

- when the invoices document a transaction that was never completely carried out (objective non-existence, i.e. so-called absolute or total);
- when the invoices document a transaction which was never carried out but only partially, that is, in quantitative terms that are different and lower than those represented on paper (relative or partial objective non-existence).

In the aforementioned hypotheses, the transaction, although totally or partially non-existent on a material level, allows the user to obtain an undue tax advantage (both for direct tax and for VAT purposes), through the indication in the relative tax return statement of fictitious passive elements, which will ensure the income is minimised

The transaction, on the other hand, qualifies as subjectively non-existent when it has actually been put in place, but between subjects other than those listed on paper as parties to the relationship. This, as even the false indication of the issuer and/or recipient of the invoice invalidates the truthfulness of the documentary evidence of the transaction, allowing the user to deduct costs actually incurred and, however, not officially documented or not documentable for various reasons.

Precisely, the case of "interposition", both "fictitious" and "real", falls within the field of subjective non-existence. The first case occurs when the transaction actually took place, but between other parties than those declared, and all parties involved want the effects of the transaction to be produced in respect of a party other than the one which appears in the document. Fictitious interposition therefore takes place when the parties have actually set up a transaction, but the latter has been the subject of what, in civil terms, is defined as subjective relative simulation (which occurs when the parties reach an agreement which is de facto different from that resulting *based on the contract*, so as to disguise the actual contractor).

- *Fraudulent tax returns by means of other artifices (art. 3 of L. Decree 74/2000)*

The provision in question punishes, outside the cases provided for in Article 2, with imprisonment from three to eight years whosoever, for the purpose of evading income or value added taxes, by carrying out objectively or subjectively simulated transactions or using false documents or other fraudulent means capable of hindering the assessment and of misleading the tax authorities, indicates in one of the tax returns relating to said taxes active elements for an amount lower than the actual one or fictitious passive elements or fictitious credits and withholdings, when, jointly:

a) the tax is higher, with reference to some of the individual taxes, than thirty thousand euro;

b) the total amount of the active elements subtracted from the taxation, also through the indication of fictitious passive elements, exceeds five percent of the total amount of the active elements indicated in the tax return, or in any case, exceeds one million five hundred thousand euro, or if the total amount of the receivables and of the fictitious withholdings for reducing the tax is greater than five per cent of the amount of the tax itself or in any case than thirty thousand euro.

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The offence is considered to have been committed using false documents when these documents are recorded in the obligatory accounting records or are held for evidence towards the tax authorities.

For the purposes of applying the provision of paragraph 1, the mere violation of the obligations of invoicing and recording the active elements in the accounting records or the mere indication in the invoices or records of active elements lower than the real ones does not constitute fraudulent means.

The offence of fraudulent tax return occurs when the tax statement is untrue due to the following conduct:

- carrying out objectively or subjectively simulated transactions;
- using false documents or other fraudulent means capable of hindering the assessment and of misleading the tax authorities.

The standard uses the disjunctive "or"; it follows that carrying out one of the above-mentioned behaviours is already sufficient to integrate the offence.

Moreover, the "double" threshold of punishment, which occurs when the tax evaded is greater than thirty thousand euro and when the set of active elements subtracted from the tax assessment exceeds the set of active elements indicated in the return by 5 percent (or is in any case higher than 1,500,000.00 euro), is provided for. The hypothesis of using credits or fictitious withholdings to reduce the tax was then added to this threshold, when the 5 percent threshold is exceeded or the tax evaded is in any case greater than thirty thousand euro.

With reference to the subjective element, the offence is punished because of wilful intent as it is characterised by the purpose of evading income or value added taxes.

The active subject of the offence can only be the person who is the taxpayer for the purposes of direct taxes and VAT, or who is the administrator, liquidator or representative of the taxpayer subject to taxation.

- *Issue of invoices or other documents for non-existent transactions (Article 8, paragraphs 1 and 2-bis of L. Decree 74/2000)*

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In the **first paragraph**, the law punishes whosoever issues invoices or other documents for non-existent transactions in order to allow third parties to evade income or value added taxes.

Pursuant to **paragraph 2-bis** of the same provision, if the untrue amount indicated in the invoices or documents, per tax period, is less than one hundred thousand euro, imprisonment from one year and six months to six years is applied.

Art. 8 of L. Decree 74/2000 punishes whosoever issues invoices or other documents for non-existent transactions, in order to allow others to evade VAT or income taxes.

This is a criminal offence that mirrors the provision of art. 2 of the same L. Decree 74/2000.

The behaviour of the active party is, in fact, aimed at allowing third parties to evade income taxes or value added tax or to obtain an undue refund.

- *Concealment or destruction of accounting records (Article 10 of L. Decree 74/2000)*

Unless the fact constitutes a more serious offence, whosoever, in order to evade income or value added taxes, or to allow third parties to evade these, conceals or destroys in whole or in part the accounting records or documents which must be kept, so as not to allow the reconstruction of the income or turnover, is punished with imprisonment from three to seven years.

Article 10 of L. Decree 74/2000 punishes whosoever conceals or destroys accounting records in order to hinder the tax authorities' assessment: the legal property protected by criminal law is the state's interest in the tax transparency of the taxpayer, as the law sanctions the obligation not to remove mandatory records and documents from the assessment.

This is a common offence as it refers to subjects who, although not obliged to keep their accounting records for tax purposes, in any case have documents that are required to be kept.

Like the other incriminating cases, for the offence of concealing and destroying accounting records, specific intent, consisting in the purpose of evading income or value added taxes, or for the purpose of allowing third parties to do so, is also required.

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- *Fraudulent evasion from the payment of taxes (Article 11 of L. Decree 74/2000)*

Whosoever, in order to avoid the payment of income or value added taxes or interests or administrative fines concerning said taxes for a total amount exceeding fifty thousand euro, simulates or carries out other fraudulent acts on their own or on others' assets in order to make the compulsory collection procedure totally or partially ineffective, is punished with imprisonment from six months to four years. If the amount of taxes, penalties and interests exceeds two hundred thousand euro, imprisonment from one year to six years applies.

Whosoever, in order to obtain for themselves or for others a partial payment of taxes and related accessories, indicates in the documents submitted for the purposes of the tax settlement procedure active elements for an amount lower than the actual one or fictitious passive elements for a total amount exceeding fifty thousand euro, is punished with imprisonment from six months to four years. If the amount referred to in the paragraph above exceeds two hundred thousand euro, imprisonment from one year to six years applies.

The fraudulent evasion of the payment of taxes is to be considered a dangerous offence. Although the legislator uses the term "whosoever" in the text of the law, the offence is specific to certain classes of offenders, as it can be committed by the taxpayer burdened by a tax obligation towards the tax authorities: in fact, the scope of application of the law is limited to the evasion regarding the payment of income tax and value added tax only.

Responsibility for the offence in question arises should the taxpayer engage, even alternatively, in one of the following conducts:

- fake sale;
- carrying out other fraudulent acts.

In order to define the offence of fraudulent evasion from the payment of taxes, the subjective element of the specific fraudulent evasion is required, i.e. the awareness of the existence of a duty to pay according to the wealth possessed and to the interests and fines due as a result of the non-payment or late payment.

2. - Risk areas

The areas considered more specifically at risk in relation to the offences detailed above, by way of example, pertain to the processes indicated below:

- personnel selection;
- personnel management;
- business management;
- selection of suppliers of goods, providers of services, works and intellectual work, as well as the negotiation, stipulation and management of related contracts;
- stipulation and management (including the invoicing phase) of active contracts;
- selection of intermediaries, negotiation and stipulation and management of related contracts;
- handling of relations with commercial partners;
- warehouse management;
- management of receipts and financial flows;
- intra-group transactions;
- extraordinary transactions and transfers of company branches;
- share capital transactions;
- management of tax obligations, preparation of tax returns and pertinent relations with the Tax Authorities, also for any resulting audits/assessments;
- accounting management and budget preparation;
- financial transaction management;
- credit management;
- purchase and sale of real estate.

3. - Recipients of the Special Section

This Special Section refers to the behaviours of the Recipients defined in the General Section, i.e. the persons responsible for the representation, management and direction of the Entity or the persons who effectively exercise management and control functions (Senior Executives), as well as the persons subject to the direction or supervision of any of the above mentioned parties (Subordinates), as well as the *Partners* and external collaborators, as defined in the General Section.

4. - General rules of conduct and implementation of the decision-making process in the risk areas

The Recipients of the Model must carry out all business activities in accordance with the laws, regulations, or other binding provisions of the Italian State, or, should these activities be carried out abroad, of the State in which the business is carried out.

Furthermore, they are prohibited from:

- a. engaging in, collaborating with or causing the carrying out of behaviours which - considered individually or collectively - directly or indirectly integrate the types of offences included among those considered above;
- b. breaching the rules contained in the Model, the procedures and protocols adopted to implement the Model and related documentation (organisational provisions, operating instructions, etc.);
- c. breaching the principles and rules which are provided for in this Special Section and the Code of Ethics;
- d. declaring false, affected, incomplete data, or which are in any case not true, for processing or entering tax document data;
- e. preparing false documents, capable of providing a false accounting representation of the taxpayer's tax situation;
- f. creating invoices or other documents for non-existent transactions;
- f. using and recording invoices or other documents for non-existent transactions in the mandatory accounting records;
- h. keeping invoices or other documents for non-existent transactions for evidential purposes in relations with the Tax Authorities;
- i. declaring fictitious passive elements or active ones lower than the real ones in the annual tax return, substantiating these circumstances with the previously recorded documents;
- j. entering into de facto agreements other than those resulting from the relative contract, in order to conceal the actual contractor;
- k. attributing fees or services to external parties (e.g. consultants, auditors or other professionals) which are not justified by any type of assignment, as well as paying fees for services never performed;
- l. carrying out sales transactions or other fraudulent transactions aimed at the Company's avoidance of income taxes and value added tax or of interests or administrative fines relating to said taxes.

With specific reference to the offences examined here, **the Company must:**

- select the contractor and evaluate the offers on the basis of regulated and objectively valid criteria;
- verify, in commercial relations, the actual existence and reliability of the counterpart (by way of example, through the chamber of commerce registration, the website, the databases);
- ensure that the selection of suppliers and consultants takes into account objective criteria of professionalism and integrity;
- implement specific procedures that allow not to initiate or to promptly terminate business relationships with parties for which it is not possible to verify the existence and/or reliability;
- when signing the contract, define the methods and parameters for determining the price, evaluating its congruity with respect to market references, providing, in the event of any deviation, the obligation to provide reasons;
- provide for the necessary approval of the contract by adequate levels of authorisation and signature, previously identified, which may also access the financial resources of the Company;
- provide that the material execution of the payment should be subordinated to authorisation by a specific function who first checks compliance with the procedures established in relation to the choice of the contractor and the type of contract signed, also ensuring that the checks on the actual execution and the adequacy of the performance should be carried out. Authorising the cash outflow and recording the invoices in accounting will only be possible after this check has been carried out;
- verify the effectiveness of the contractual negotiation, paying particular attention to the quantitative and qualitative congruity between the service and/or the supply of goods or services for which the accounting document and the invoice itself have been issued; the assessments must be carried out both as concerns the actual provision of the service and the equivalence between what is shown in the accounting documents and what is actually available to the Company. By way of example, random checks on the allegedly purchased goods and the quantitative correspondence in the warehouse may also be arranged, or the congruity check between the amounts invoiced for certain services and their average market prices;
- verify that payment recipients/transferrers and the counterparties actually involved in the transactions fully coincide;
- keep the documentation supporting the transactions (payments, purchase requests, evidence of communications, etc.) which must be duly filed and stored;

- provide for suitable information flows to the Supervisory Body such as to allow it to identify anomalies which may subsequently be investigated;
- pay attention to the operating methods with which all the formalities concerning the payment of income taxes and VAT are carried out in order to ensure, compatibly with the company organisation, adequate control measures such as traceability of activities, segregation of roles and cross-checks;
- provide for traceability procedures for the corporate financial flows, identifying the persons authorised to access resources;
- provide for the obligation to verify that the issue of accounting documents corresponds to an effective cash movement: financial outflows must be carried out using methods which allow their traceability, consequently each movement will be accompanied by the correct documentation which will enable the possible ex-post reconstruction of the flows;
- carry out suitable preventive checks on potential partners and require a shared sensitivity by members of the ATI/RTI or by consortium members or intermediaries on issues relating to the correct application of L. Decree 231/2001;
- acquire from the partners information on the system of safeguards they have implemented, as well as information flows aimed at feeding management monitoring, or periodic declarations concerning the 231 relevant areas of interest (e.g. declarations issued periodically in which each partner declares not to be aware of information or situations which may, directly or indirectly, constitute the offences envisaged by the Decree);
- provide for internal reporting to favour cross control systems and for managing any anomalies between the various company functions;
- provide for the organisation of adequate training programs, modulated according to the levels of the recipients.

5. - Duties of the Supervisory Body

Save as specified in the General Section of the Model, with regard to the establishment, functions and powers of the Supervisory Body, regarding this Special Section Chimec S.p.A. shall:

- promptly report to the SB all the cases in which breaches or non-compliances with this Special Section, the Code of Ethics and company procedures are found;
- promptly inform the SB of any investigations by the supervisory authority and be informed of the outcome through appropriate documentation;
- ensure a constant and periodic flow of information between the Supervisory Body and the corporate functions in order to provide the Supervisory Body with any further information and clarifications and/or documentation where requested by the latter.

The SB shall:

- check the issuing and updating of the standardised instructions relating to the conduct to be adopted in the Risk Areas, as indicated in this Special Section;
- carry out periodic audits on compliance with internal procedures and periodically assess their effectiveness in preventing the offences referred to in this Special Section;
- examine any reports received of alleged violations of the Model and carry out the necessary and expedient evaluations;
- ensure effective information flows with the top management.