



## dispute resolution - legal changes published in January 2022

**Decision of the High Court of Cassation and Justice no. 66/2021 regarding the request that forms the object of Case File no. 1.059/98/2018 on the examination of the referral submitted by the Bucharest Court of Appeals – Criminal Section II, in order to issue a preliminary ruling was published in the Official Gazette Part I no. 87 dated January 28, 2022 and it is applicable from the same date.**

The High Court of Cassation and Justice has been referred to issue a preliminary ruling in relation to article 10 paragraph (1<sup>1</sup>) of Law no. 241/2005 for the prevention and combating against tax evasion which establishes that, in the event the damage caused by a willful misconduct of (i) a withholding and not payment, collection of income and not payment, in maximum 60 days since the maturity date, as provided by the law, of the taxes and/or contributions, (ii) a bad faith settlement by the taxpayer of the taxes and contributions, having as a result a no right achievement of money amounts as a refund or reimburse from the general consolidated budget or compensations due to the general consolidated budget, as well as (iii) a willful misconduct of the actions provided by article 9 of Law no. 241/2005 shall not exceed the amount of Euro 100,000, in the equivalent of national currency and during the criminal prosecution proceedings or during the trial proceedings, until the delivery of the final decision, the damage, as increased by 20% of the calculation basis, to which are added the interest and the penalties, have been paid in full, the misconduct shall not be punished.

The matter of law subject to referral is the following: *"If the interest and the overdue interest shall be applicable to the damages caused by the willful misconduct, increased by 20% of the calculation basis or the interest and the overdue interest shall be calculated only to the damage caused by the willful misconduct"*. More specifically, Bucharest Court of Appeals requested to the Supreme Court to clarify the calculation method of the fiscal accessories of which payment, accrued to the criminal damage payment and increased by 20% of the criminal damage, shall be subject to the application of the non-punishment clause.

The High Court granted the referral submitted by the Bucharest Court of Appeals – Criminal Section II, in order to issue a preliminary ruling and consequently, determined that, *the interest and the overdue interest related to the provisions of article 10 paragraph (1<sup>1</sup>) of Law no. 241/2005 for the prevention and combating of tax evasion shall be applicable only to the damage caused by the willful misconduct, without taking into consideration the 20% increase of the calculation basis.*