

THE TAX AUTHORITY AND INTEREST IN FAVOUR OF TAXPAYERS.



**NEWS,
LATEST,
CURRENT TOPICS**

“A RECENT RULING BY THE SUPREME ADMINISTRATIVE COURT ADDRESSED THE QUESTION OF WHETHER AGGRAVATED DEFAULT INTEREST IS DUE WHENEVER THERE IS ANY DELAY IN THE RETURN, OR WHETHER IT SHOULD ONLY APPLY WHEN COMPENSATORY INTEREST IS ALSO DUE.”

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In the case of payment of a tax debt in excess of the amount owed, the General Tax Law stipulates that the Tax Authority (AT) must pay two different types of interest, calculated on the capital to be repaid.

Firstly, the so-called compensatory interest, which the AT is obliged to pay, at a rate of 4%/year, in the following situations:

- a) Existence of an error attributable to the services;
- b) When the legal deadline for the unofficial refund of taxes has not been met;
- c) If the tax act is cancelled at the AT's initiative, from the 30th day after the decision;
- d) When the revision of the tax act at the taxpayer's initiative takes place more than one year after the taxpayer's request (unless the delay is not attributable to the AT);
- e) In the event of a final court decision declaring or judging the unconstitutionality or illegality of the legislative or regulatory rule on which the assessment of the tax instalment was based and ordering its return.

Secondly, the AT bears aggravated default interest, at a rate currently set at 16.618%/year, whenever:

- a) A final court decision is issued ordering the refund of overpaid tax; and, cumulatively,
- b) The deadline for spontaneous enforcement of a final judgement is exceeded.

A recent ruling by the Supreme Administrative Court addressed the question of whether aggravated default interest is due whenever there is any delay in the return, or whether it should only apply when compensatory interest is also due.

This issue has generated two opposing interpretative currents:

- From one side, it was argued that aggravated default interest is due whenever there is a delay in returning the amounts, regardless of whether or not the tax authorities have made a mistake.
 - The emphasis of this position is on the purpose of the rule, which is to guarantee speed in the execution of judicial decisions by penalising the tax administration's delay with a penalty for failure to comply with the deadlines to which it is bound.



- The opposing view holds that aggravated interest should only be applied when the tax administration has made a mistake or acted unlawfully in collecting taxes.
 - According to this view, aggravated interest would function as additional compensation for the taxpayer, for damages caused by the administration's illegal actions, and not as a simple penalty for the delay.

Given the apparent divergence of interpretations between the lower courts, the Supreme Administrative Court (STA) ended the dispute and standardised the jurisprudence on this issue.

In Ruling no. 1/2025, the STA ruled that the aggravated interest provided for in Article 43(5) of the LGT is always due when the tax administration exceeds the deadline for returning the amount unduly paid, even if there is no error on the part of the tax administration or any other ground for applying compensatory interest.

“IN RULING NO. 1/2025, THE STA RULED THAT THE AGGRAVATED INTEREST PROVIDED FOR IN ARTICLE 43(5) OF THE LGT IS ALWAYS DUE WHEN THE TAX ADMINISTRATION EXCEEDS THE DEADLINE FOR RETURNING THE AMOUNT UNDULY PAID, EVEN IF THERE IS NO ERROR ON THE PART OF THE TAX ADMINISTRATION (...)”

The STA's standard-setting decision made it clear that aggravated interest has a purely sanctioning function, i.e. it is a compulsory measure designed to put pressure on the tax administration to fulfil its obligations on time, regardless of whether or not there has been an administrative error. This means that even if the tax administration has acted without intent or negligence, it will still be penalised for the delay in enforcing court decisions.

Therefore, even if compensatory interest does not have to be accounted for in the specific case, the AT may nevertheless be forced to pay aggravated default interest.

This understanding strengthens taxpayers' rights and imposes greater responsibility on the tax administration in the fulfilment of its obligations, urging it to practise the principle of good administration.