Debate & Analysis

KEVIN AQUILINA

When crime pays

The Various Revenue Laws (Amendment) Act, 2025 – Act No XXX of 2025 – a recently enacted law, raises grave criminal justice sentencing policy issues.

If A commits the crimes of, say, forgery of documents, money laundering, false declarations, (hereafter non-tax evasion crimes) together with tax evasion, if the tax, additional tax, interest thereon, and an additional fine are all paid to government, the latter turns a Nelson's blind eye and absolves A from the criminal punishment of imprisonment and/or a criminal fine, as the case may be, for the non-tax evasion crimes even these are more serious than tax evasion.

The 2025 enactment changes the nature of these non-tax evasion crimes, when accompanied by tax evasion, from criminal offences into administrative offences. This is done through the payment of an additional fine such that all non-tax evasion crimes become extinguished. The legitimate conclusion to be drawn from this law is that crime pays and to be an honest tax paying citizen post-2025 law is counter-productive once the state provides a carte blanche to tax evaders who receive only a slap on their wrist instead of the award of imprisonment and/or a criminal fine if they pay an additional tax for the non-tax evasion crimes. Government is no longer on the side of the honest citizen but of the fraudulent, deceitful tax evader.

Whilst these non-tax evasion criminal punishments are intended for protecting society and the common good from fraudsters, the 2025 enactment extinguishes criminal punishment for these offences once committed with tax evasion. Government is thereby giving the tax evader a bonus, an incentive, to commit more crimes but be awarded a lesser punishment. Commit four crimes but be punished for one.

This type of legislation is typical of a mafia state where it is the interests of criminals that prevail over the interest of honest taxpayers, very much in breach of the rule of law, political integrity, sound fiscal policy, and correct responsible, proper, ethical and moral behaviour. It is morally wrong to abuse the law to circumvent proper legal safeguards against criminal behaviour and for the state to become indirectly complicit in crime by providing criminal immunity from imprisonment to would-be criminals.

When the government resorts to administrative offences and to out of court settlement, instead of imposing criminal punishments of imprisonment for extremely serious misbehaviour, to enforce the law, it is weakening the rule of law. One cannot let off would-be criminals by introducing measures that lighten their criminal burden and moral responsibility and allow the state to profit through the payment of an additional fine from that money laundering, forgery, false declarations. Such laws render the state complicit in the breach of the law through the legislative measures taken to rubber stamp criminal and immoral behaviour by paying an additional fine. Government prospers from criminal conduct and partakes in the spoils of crime.

First, a person who has committed tax evasion with non-tax evasion crimes is treated differently from a person who has committed only the non-tax evasion crime. The former ends up paying an additional tax; the latter imprisonment and/or a criminal fine. In the latter case, there is different treatment that is meted out for one and the same punishment. Concretely, if a person makes a false declaration, forges documents, or commits money laundering, the punishments can be of imprisonment but if these crimes are accompanied with tax evasion, one would presume that a higher punishment is awarded. But, instead, there is no imprisonment but only the payment of an additional penalty. Government is advising money launderers and others that it is better for them to evade tax as well as in that case they will avoid a punishment of imprisonment through the payment of an additional penalty. There is therefore discrimination in the punishment meted out for the same crime.

Second, there is no sense of proportionality in the punishment meted out because the tax evader who commits money laundering is punished by a pecuniary penalty whilst the money launderer who does not evade tax is punished by imprisonment and/or a criminal fine. Equality in the criminal justice system has been breached as the same crimes are not punished in the same manner.

Third, the 2025 law breaches the principles of the criminal justice system where the administrative offence (tax evasion) prevails over a more serious criminal offence (money laundering, forgery, etc.).

Fourth, a criminal justice policy is not built around finding way and means how to evade the provisions of the law but how to enforce it better. For the 2025 law, it is not the common good of society that prevails but the individual good of those tax evaders who have committed money laundering and other crimes and are given a discount in punishment for so doing.

Fifth, the additional tax cannot be effective, proportionate and dissuasive to curb criminal offences commission. On the contrary, they are disproportionate, ineffective, and encourage – through impunity from imprisonment and criminal fines – the further repeated commission of these crimes. Being an administrative fine, there is no additional punishment for recidivists. This is in breach of EU Law. EU Commission: please note and act.

Sixth, the principal offence should not be tax evasion – that is an administrative offence punished by a fine, but money laundering, forgery, and false declarations that carry criminal punishments. Once the administrative penalty is paid, the criminal punishments are waived. What ludicrous criminal justice policy is this?

Seventh, this law is a most unfair and immoral law. Fundamentally, it sweeps away the disciplinary and rehabilitative values of prison in relation to crimes connected to tax evasion, replacing them with a mercenary payment and perpetuates discrimination between the rich criminal – who has the money to pay – and the poor criminal – who has no money to pay and, thus, ends up in prison. Furthermore, it differentiates and discriminates in favour of the tax evader as distinct from other offenders who are not allowed to buy with money their way out of prison. It is a law that advantages the rich and castigates the poor – inequality in treatment at its best.

In its frenzy to appease would-be criminals, government has lost its moral compass. The inevitable message that this law conveys is that crime pays and that the state is there to bail out the would-be criminal. At the end of the day, it is the honest taxpayer who foots the bill whilst ending out defrauded, deceived, and manipulated through an unjust law.

Kevin Aquilina is Professor of Law at the Faculty of Laws of the University of Malta