

# Legal Alert

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- Tax incentives, respectively the possibility of rescheduling tax liabilities
- Enforcement procedures and legal remedies to suspend this procedure
- The precautionary measures
- The procedure for solving the tax appeal
- Collaboration between the tax authorities within the EU

## Tax Procedure Code: The impact of the most recent amendments for the taxpayers

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### 1. Third party's joint liability with the debtor

#### Main changes:

According to the new provisions, the joint liability concerns:

- Entity that issued the letter of bank guarantee/insurance policy in the event that it failed to transfer the amounts covered by the bank letter of guarantee/insurance policy to the state budget at the request of the tax authorities (subject to the fulfillment of the provisions regulating the suspension mechanism by the bank letter of guarantee);
- Person (either natural or legal) that, with bad faith generated the accrual of liabilities of the insolvent debtor (for which such a procedure was started).

#### Note:

We anticipate that the banks will become more cautious and quite reluctant in providing such guarantees given the exposure. Also this might generate an increase of the related costs.

With respect to the insolvency matters, the new provisions are aimed to ease the engagement of joint liability of the shareholders (natural/legal person) and directors of the insolvent debtor. As such, it is expected a slight growth of the decisions issued by the tax authorities in this respect.

### 2. The liability of the persons with liberal activities

As regards, the persons with liberal activities, their liability may be triggered in relation with fiscal obligations with the special patrimony dedicated to performing such activity. Only if the special patrimony is insufficient for covering the tax liabilities, the tax authority is entitled to enforce the other assets of the natural person in addition to the once that are part of the special patrimony.

### 3. Interaction between the tax authorities and the taxpayers during administrative procedures

#### Main changes:

##### Translation of the supporting documents

Precise rules have been enacted in relation with the translation of the documents presented by the taxpayer to the tax authority.

Therefore, in the event the tax authority expressly request the taxpayer to submit the proofing documents, certificates or other relevant document in the Romanian language and the taxpayer does not comply with this request none of the submitted documents will be taken into account by the tax authority.

### **Fiscal domicile**

New provisions are introduced regarding a change of the domicile/headquarter. If this domicile/headquarter is identical to the fiscal domicile, the transfer of the taxpayer between the tax authorities will take place ex officio within 15 days, without any additional formalities performed by the taxpayer.

### **Communication of the tax deeds**

The new provisions alter the process of communicating the tax deeds (including tax assessment decisions) by allowing the tax authorities a more expeditious communication in case the tax payer does not have a physical headquarter in Romania or in the event that tax payer is not found at the declared headquarters.

New provisions are enacted in order to allow the tax authority to communicate via electronic correspondence the tax deeds (subject to the taxpayer prior consent in this respect).

Though:

- In the event the communication procedure could not be performed under the general rule (i.e. via the post mail with proof of recipient), the communication will be performed by publicity. The change consist in the considerably diminished interval required from the moment of publishing the deed and the moment the communication procedure is considered fulfilled. The previous interval consisted in a period of 60 days from the moment the deed was published until it was considered communicated. However the new interval consist in a timeframe of only 15 days.
- A new procedure of communication was introduced, represented by the communication of the deed directly by the tax authority representatives. If the taxpayer receives the deed, the communication date is considered the date when the deed was presented to him. In the event the taxpayer does not receive the deed, the tax authority representative issues a notification that is posted at the taxpayers door, triggering two possible outcomes:
  - If the taxpayer was not found at his domicile, the taxpayer is entitled to present himself before the tax authority within a 15 days period to receive the deed. The moment when the taxpayer receives the deed is considered the communication date. If the taxpayer does not come before the tax authority, the deed is considered communicated at the expiry of the 15 days interval;
  - If the taxpayer declines to receive the tax deed, the communication date is considered the moment when the tax representative issued and posted the notification at the door of the taxpayer.
- The tax deeds issued in relation with a taxpayer undergoing the insolvency or liquidation procedure, will be communicated to the judicial administrator/liquidator.

### **Note:**

Additional precaution is required when receiving a tax deed or expecting to receive a tax deed in order to prevent any failure to observe the legal deadline and to take appropriate actions in due course (i.e. submitting bank letter of guarantee to suspend the enforcement, submitting the administrative appeal, etc.)

### **Fiscal secret**

The public notaries and the judicial bailiffs have been excluded from the category of professionals that can decline to provide information to the tax authority with respect to the relevant information obtained during their activity.

### **Non-resident taxpayers**

The banking institutions will submit an application to the tax authorities in the event a non-resident natural or legal person that does not hold a Romanian fiscal

identification code that opens a bank account or rents a value box. The assignment of the code will be performed in a 5 days period.

### **Submitting a tax declaration to a tax body that lack the competence of administration**

The tax declaration submitted by the taxpayer to a tax body that lacks the competence, from an administrative point of view, in relation to that particular taxpayer, will be considered submitted by the taxpayer at the moment when the declaration was registered by this tax body. This tax body will proceed with transmitting the tax declaration to the competent body within 5 working days.

### **Payment deadline**

In the event that the tax authority issues a tax assessment decision ex officio, due to the taxpayer failure to submit a tax declaration the payment deadline is set under the general rule provided by art. 156 (i.e. 5th or 20th of the following month).

The payment deadline for the additional tax liabilities resulted from a rectified tax statement submitted by the taxpayer, shall be represented by the date when statement was submitted.

### **Tax ancillary decisions**

Communication of the tax ancillary decisions will be performed by the central tax bodies taking into account the ageing process and the amount of the tax ancillary as well as the judicial status of the taxpayer.

If the tax payer does not submit a tax declaration, only the penalty for not declaring shall be applied and no late payment penalty shall be assessed. The penalty for not declaring shall also be applied in case of auditing a natural person.

## **4. Tax inspections**

In the case of a tax audit, the fiscal body will indicate the verified activities, relevant documents and representative transactions, but also the fiscal periods for which the tax obligations are to be checked. On the occasion of the sampling survey, the fiscal body will take into account the degree of fiscal risk presented by the taxpayer. The old regulation stipulated that verification would begin from the last inspected period.

## **5. Tax facilities, i.e. the possibility of paying the tax liabilities in installments**

### **Main changes:**

As a general note, there is a new approach with respect to this tax facility, as granting such tax facility is no longer at the sole discretion of the tax authorities, but merely a right/benefit for the taxpayer that can be acquired subject to certain conditions.

According to the amendments:

- the instalments can be adapted in consideration of the tax payers fiscal profile;
- In order to maintain the facility the tax liabilities that are not subject to the facility and were not payed at the moment of obtaining the facility can be payed within an 180 days period (i.e. increased from the previous 90 days term);
- in the event that the tax payer cannot provide collaterals/guarantees to secure the outstanding tax liabilities (as per the law), the facility can still be granted. However in this case the late payment interest will be included in the instalments and the adjournment of the payment of such penalties will be annulled (or not issued);
- the tax facility decision will be modified in the event that the tax assessment decision (setting the tax liability) is fully or partially annulled (either by the tax settlement body or by the court of law). In the past this possibility of modifying the tax facility decision was not provided;
- In the event the tax payers fails to comply with the conditions requested in order for the tax facility decision to produce effects, the tax payer can

request once a year to the tax authority to prolong/maintain the effects of the tax facility (in the past the possibility was allowed only once during the entire period of the tax facility period and not once a year);

- the tax facility cannot be granted for the tax liabilities based on which an authorization/ permit is granted (i.e. excise duty permit/authorization). The liabilities due to a different Romanian authority (other than ANAF – Romanian Tax Authority Administration) or fines, irrespective of the fact that are required to be paid in order to obtain a permit/authorization shall not be exempted from the possibility of obtaining a tax facility decision.
- the tax liabilities cannot be older than 1 year (in comparison with a 6 month period as provided in the past).

With respect to the benefits brought by accessing such facility, we underline that:

- in the event that the tax payer fulfills the mandatory conditions provided by the law and provides a guarantee for the tax liabilities due, the tax authority will set a payment graphic of the tax liabilities, and will adjourn the payment of a part of the tax ancillary (i.e. late payment penalty/penalty for not declaring in the amount of 75%). In the event the tax facility is finalized with success (i.e. the instalments are paid in due time), the ancillary tax liabilities adjourned will be annulled.
- There will be deferred (and cancelled in case of the successful completion of the facility) also 50% of interest rate for late payment, in addition to the late payment penalty / non-payment penalty of 75%). This provision will only apply to the low fiscal risk taxpayers.
- all the ongoing tax facilities representing payment in instalments the tax liabilities shall be adjusted in accordance with the new provisions automatically by the tax authorities within 30 days period from the entry into force of the Government Ordinance no. 30/2017.

## **6. The enforcement proceedings and the legal remedies for suspending such procedures**

### **Payment summon and the applicable deadlines**

The new law provides shorten timeframe between the moment the summon of payment is received and the moment when the tax authority might proceed forward with the garnishment measures over the taxpayers bank accounts (i.e. 15 day instead of 30 days, according to the previous provision, from the expiration of the 15 days from the moment of communication of the summon).

### **Suspension of the tax deed ordered by the court of law**

In case the court of law suspends the enforcement of the tax assessment decision, all the effects of such decision are suspended and no outstanding tax liabilities shall be registered within the fiscal certificate of the debtor. The suspension shall concern both the main tax liabilities determined within the suspended administrative deed, as well as any ancillary tax liabilities (late payment charges), notwithstanding whether such liabilities are determined through a tax assessment decision or not.

The mandatory bail, requested by the court in order to adjudge a suspension claim, shall be considered already posted in the event the bail was submitted to the court when lodging a claim under the provisions of article 14 of Law no. 554/2004 and a new suspension claim is lodged under the provisions of article 15 of Law no. 554/2004.

### **The provision of guarantees. Letter of bank guarantee**

The enforcement proceedings are suspended or not initiated with respect to the tax liabilities determined through a tax assessment decision in case the debtor duly notifies the tax authorities, after being served with such decision, upon its intention to procure a letter of bank guarantee covering the tax liabilities (to be challenged).

The enforcement proceedings shall continue/be initiated in case that the debtor does not submit with the tax authorities the letter of bank guarantee within 45 days upon the communication of the tax assessment decision.

**Note:**

Due to the current provisions the tax payer will have the possibility of notifying the tax authority that it intends to submit a bank letter of guarantee and therefore the enforcement procedure will be suspended/stayed for 45 days. The 45 days allow the recovery of this remedy for the entire duration of the term for formulation of the tax appeal and eliminates the shortcoming resulted in practice from the non-synchronization of the payment deadline of the tax decision with the deadline for the administrative appeal.

If no letter of bank guarantee is submitted prior the expiry of the 45 days term, the taxpayer is subject to a fine of RON 2,500 – 10.000. This will be considered a misdemeanor.

**7. The precautionary measures**

The new law expressly provides the moment when the precautionary measures (i.e. seizure, garnishments) may be enforced (i.e. 15 days from the moment when the tax payer is summoned in respect to an outstanding tax assessment decision).

Under the previous law, the tax authorities were de facto allowed to enforce such precautionary measures right from the moment the tax assessment decision became enforceable.

Another change concerns the effects of a criminal complaint filed by the tax authorities. Under the previous law, in case of a criminal investigation, the fiscal precautionary measures had to be replaced by equivalent penal precautionary measures. The new law provides that the fiscal precautionary measures will remain in place with no further proceeds required.

As such, the maximum 6 month term for which the fiscal precautionary measures could have been maintained (after the expiration of such period, the precautionary measures ceased as per the law) is no longer in place. In fact, the fiscal precautionary measures will exist until the criminal case will be settled (either by the prosecutor or the criminal court of law).

In exchange, the new law provides that the fiscal precautionary measures are annulled (totally or partially) in the event the grounds for which the measures were set are no longer applicable.

Last, but not least, the new law provides that no precautionary measures can be established in relation with an insolvent debtor.

The new law upholds the possibility of providing the tax authorities with certain guarantees (i.e. similar assets with the ones seized, letter of bank guarantees, etc.) for certain periods (i.e. 6 months, 1 year, until the settlement of the criminal investigation as the case might be applicable).

**8. Settlement of the administrative appeal**

In the event the taxpayer request an oral hearing before the tax settlement body with respect to the administrative appeal, the tax body shall only summon to the hearing the taxpayer, the taxpayer's representatives and the parties introduced in the appeal, and will no longer also summon the tax body representatives that issued the deed challenged by the administrative appeal.

In case the tax settlement body invalidates the tax assessment decision and orders a recheck, this decision shall be executed by the competent tax audit body differentiated in a 60 days period for the large and medium taxpayers and in a 30 days period for the other taxpayers.

In case the administrative appeal against the tax assessment decision is not solved within 6 month upon its submission with the tax authorities, the taxpayer may ask (directly to) the court of law to annul such decision. However, the 6 month term shall be suspended in case a criminal investigation is initiated.

Moreover, the 6 month term shall be prolonged in case additional evidences might be required in order to solve the administrative appeal (e.g. the law provides specific periods for gathering such documentary evidences).

### **9. Collaboration between the tax authorities within the EU**

The new provisions implement various EU regulations and other conventions regarding the collaboration between tax authorities within the EU. The scope of the “international collaboration procedure” is more precisely regulated, including the tax liabilities that are subject to the chapter of the Romanian Tax Procedure Code.

For further questions, please contact us.



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