

Tax & Legal Weekly Alert

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In this issue:

Ordinance regarding the granting of tax facilities

On August 5, 2019, Ordinance no. 6 was published in the Official Gazette. It regards the granting of certain tax facilities, including the possibility of restructuring the tax liabilities for taxpayers in financial difficulty (i.e. insolvency risk), as well as the cancellation of several interest and penalties for late payment subject to the conditions provided by the Ordinance.

The current facilities are more advantageous than other reliefs provided by the Fiscal Procedure Code.

Amendments to the legislation regarding the threshold applied for the sponsorships credit

On July 26, 2019 the Law no. 156/2019 was published in the Official Gazette, amending para. (4), letter i) of art. 25 of the Law 227/2015 regarding the Tax Code.

New non-harmonized excise duty for soft drinks with high sugar content

The Ministry of Public Finance has published a draft emergency ordinance establishing a new excise duty for soft drinks with a high content of free sugars.

Increase of excise duty on cigarettes starting September 1, 2019



Ordinance regarding the granting of tax facilities

Ordinance no. 6/2019 regarding the granting of tax facilities („the Ordinance”), in force starting with August 8, 2019, provides two types of facilities:

1. **Restructuring methods for outstanding tax liabilities as at December 31, 2018, in the case of taxpayers having debts greater than or equal to RON 1 million**

Applicability

In order to avoid the opening of the insolvency procedure, taxpayers, experiencing financial difficulty with insolvency risk, have the possibility to restructure the outstanding tax liabilities as at December 31, 2018, greater than or equal to RON 1 million. It refers to the tax liabilities that are not paid until the date of issuing the tax clearance certificate, as well as interest and penalties for late payment.

The restructuring measure applies to any amount resulting from executory titles, as well as to tax liabilities declared by the debtor or imposed by the competent fiscal authority, through a decision issued after January 1, 2019, related to fiscal periods prior to December 31, 2018. At the same time, it applies as well as for tax obligations imposed by other authorities and fines of any kind, to be recovered by the central tax authorities between January 1, 2019 and the date of the tax clearance certificate.

Conditions

In order to benefit from the restructuring of tax liabilities, the debtor must cumulatively meet the following conditions:

- The rescheduling of tax payments as regulated by the Fiscal Procedure Code (for example the condition regarding the provision of a guarantee) is **not** applicable;
- To develop a restructuring plan and a test of “*the prudent private creditor*”, prepared by an independent expert, and to pass the prudent private creditor test, based on the analysis provided by the independent expert;
- To not be in the insolvency proceedings, according to Law no. 85/2014 or to Law no. 85/2006, respectively;
- To not be in dissolution procedure, according to the legal provisions in force;
- To have all tax returns submitted until the date of the issuance of the tax clearance certificate;
- To settle, until the date of submission of the restructuring request, all the budgetary obligations due after January 1, 2019, or those which are due, stated, imposed or sent for recovery between the issuance of the tax clearance certificate and the date of the restructuring request.

Main steps

The first step in order to benefit from the tax current tax facilities is to notify the competent tax authority, by September 30, 2019, confirming the intention of the restructuring plan.

Within 5 working days, the competent tax authority will issue the tax clearance certificate, which identifies the outstanding tax liabilities.

Subsequently, the debtor has a term of 6 months (starting with August 8, 2019, the effective date of the Ordinance) in order to submit the restructuring request, together with the restructuring plan and the prudent private creditor test.

The dates of submission for the notification and the restructuring request are filing deadlines, otherwise triggering the impossibility for the debtor to benefit from the restructuring of the tax liabilities.

The submission of the restructuring request implies the cessation or the postponement of the enforcement procedures for the tax liabilities, which are subject to restructuring, as well as for other tax liabilities having deadlines after the communication of the decision of payment facilities.

Other aspects

The restructuring plan must include the following:

- Description of the financial difficulties and their impact;
- Information regarding assets and liabilities position;
- Information regarding the non-fulfillment of the condition for the rescheduling of tax payments;
- Debtor's restructuring methods (including the deadlines for implementation) as well as the presentation of relevant economic and financial indicators, in order to determine the feasibility of the restructuring plan.

The restructuring measures, which can be included in the restructuring plan, are the following:

- The ease of payment for tax liabilities (i.e. rescheduling tax payments for a period of maximum 7 years including the postponement period, in order to cancel the interest and late payment penalties plus a maximum 50% of the main tax liabilities);
- Note: The ease of payment advantage is mandatory.
- Conversion into share capital (for cases where the State is a majority / sole shareholder);
- Transfer in lieu of payment of real estate.

In addition to the advantages provided under the ease of payment procedure, starting with the approval date of the restructuring plan, no interest and late payment penalties are computed for the tax liabilities subject to tax facilities.

In order to maintain the ease of payment benefits, the debtor must also comply with the terms provided by the Ordinance for declaring and paying the tax liabilities resulted after the communication date of the decision of payment facilities.

For debtors who have included in the restructuring plan the measure of cancellation of an amount of the main tax obligations, respectively between 30% and 50%, a certain part of these obligations must be paid until the submission date of the request.

If the debtors do not request the restructuring, the request is rejected or the restructuring plan fails, the tax authorities have the obligation to request the opening of the insolvency procedure against the debtor, under certain conditions.

The implementation procedure will be approved by the Minister of Public Finance within a maximum of 15 days from the date of entry into force of the Ordinance, (i.e. August 8, 2019) through an order.

2. Annulment of interest and late payment penalties

Applicability

The following categories of taxpayers can benefit from the tax facilities, if, up to December 31, 2019, their overdue tax liabilities are under 1 million RON:

- Legal entities;
- Individuals or entities without legal personality.

Moreover, the tax facilities apply to the following categories of taxpayers that have overdue tax liabilities of 1 million RON or greater, up to December 31, 2018:

- Individuals;

- Entities without legal personality;
- Administrative-territorial units or administrative-territorial subdivisions of Bucharest or public institutions.

The Ordinance is mainly applicable to the following types of tax liabilities considered overdue as at 31st of December 2018:

- Tax liabilities for which the payment deadline is overdue or the payment deadline is set until December 31, 2019 (inclusive);
- Differences of main tax liabilities imposed through tax decision, communicated by December 31, 2018 (inclusive);
- Other tax payment liabilities resulting from executory titles issued in accordance with the law and existing in the evidence of the tax authorities to be recovered at December 31, 2018;

Conditions

The interest and late payment penalties related to the overdue tax obligations as at December 31, 2018 will be canceled if the following conditions are cumulatively met:

- The main tax liabilities overdue as at December 31, 2018, are paid until December 15, 2019;
- The main tax liabilities/ the interest and late payment penalties having deadlines between January 1, 2019 and December 15, 2019, are paid until the date of the request for the cancellation of the interest and late payment penalties;
- The debtor has submitted its tax returns until the issuance date of the tax clearance certificate;
- The annulment request is submitted by December 15, 2019 (under penalty of preclusion).

Note: The debtors who intend to benefit from the annulment of interest and late payment penalties can notify the tax authorities on their intention by December 15, 2019. The application for requesting the annulment of interest and late payment penalties shall be also submitted by this date.

In case of notification, the payment of the interest and late payment penalties subject to the tax facilities is postponed, or the enforcement procedure does not start/ is suspended (until the date of solving the annulment request).

Other aspects

In addition to the above-mentioned cases, the Ordinance provides for other situations in which the taxpayers may benefit from the annulment of interest and late payment penalties (subject, however, to different conditions).

These cases concern:

- Interest and late payment penalties related to the tax liabilities due by December 31, 2018, declared by taxpayers through corrective fiscal statements;
- The interest and late payment penalties related to the tax liabilities due by December 31, 2018, imposed through tax decisions, related to the tax audits in progress at the date of the entry into force of the Ordinance;
- The interest and late payment penalties related to the tax liabilities resulting from the partial or total rejection of the refund requests (pending on December 15, 2019, inclusively, subsequently rejected by the fiscal authorities).

In addition, the Ordinance regulates the applicability of the tax facilities for the situation when debtors have refund requests that should be solved until December 15, 2019, inclusively, and which are rejected, in whole or in part by the fiscal authorities after that date, or in the case that the fiscal

administrative document is abolished in the procedure for resolving the appeal.

The tax facilities also apply to the tax liabilities due to the local budgets, overdue at 31 December 2018, if the Local Council approves it, by decision.

The procedure for applying the interest and late payment penalties annulment (for the tax liabilities administered by the central tax authorities) will be approved through an order of the Minister of Public Finance within 30 days from the date of entry into force of the Ordinance.

It is important to mention that the above tax benefits are also applicable in case of the annulment of the administrative act imposing the tax liabilities for which the tax facilities were granted, during the appeal procedure (i.e. even if the issuance of a new administrative-fiscal act was ordered).

For further guidance, we remain at your disposal to discuss the applicability of the Ordinance for your company, or to assist you with the implementation of the tax facilities.

For further questions regarding the aspects mentioned in this alert, please contact us.



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Amendments to the legislation regarding the threshold applied for the sponsorships credit

More precisely, taxpayers that are subject to corporate income tax can deduct from the corporate income tax due the sponsorships, patronage and private scholarships expenses, granted according the law, within the limits of 0.75% of the turnover, but no more than 20% of the corporate income tax due for that period. Up until now, the limit was set to 0.5%. The taxpayers can apply the new threshold limitation starting with the third quarter.

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New non-harmonized excise duty for soft drinks with high sugar content

The Ministry of Public Finance has published a draft emergency ordinance establishing a new excise duty for soft drinks and beverages with a sugar content of 5-8 grams per 100 milliliters falling within CN code 2009, 2101, 2202, 2106 and 3302 10.

Thus, the excise duty will be RON 0.8 per liter for products with a sugar content of 5 grams per 100 milliliters (50 grams per 1 liter) and 1 RON per liter for those with a content of over 8 grams per 100 milliliters (80 grams per liter).

Natural soft drinks without added sugars and mixtures of non-alcoholic beverages with or without added sugars, produced on site within public catering establishments, are excluded from the payment of excise duties.

The chargeability of the excise duty will intervene in the following cases:

1. On the date of receipt of products from intra-community acquisitions;
2. When carrying out formalities for release for free circulation of products from import operations;
3. At the time of sale on the domestic market of products from domestic production.

According to the proposed draft law, in comparison with the other non-harmonized excise duties, the payers of the new excise duty do not have the obligation to obtain authorization from the territorial customs authority.

However, economic operators must register as excise payers to the competent tax authority and submit monthly the D100 declaration and annually the D120 declaration.

Increase of the excise duty for cigarettes starting September 1, 2019

According to the same emergency ordinance draft, starting with September 1, 2019, the total excise duty for cigarettes will be increased from RON 483.74 lei to RON 503.97 per 1,000 cigarettes. At the same time, for the period September 1, 2019 - March 31, 2020, the specific excise duty for cigarettes will increase from RON 366,147 to RON 386,377 per 1,000 cigarettes.

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