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Emergency Ordinance on tax amnesty and the Procedure for its application

This normative act introduces a series of fiscal-budgetary measures aimed at the efficient management of obligations owed to the state budget, which may present multiple benefits for taxpayers and for the business environment in general, while the procedure provides some clarifications regarding the conditions under which the provisions of the Emergency Ordinance will be applied.

Emergency Ordinance on tax amnesty and the Procedure for its application

In the Official Gazette no. 905 of September 6, 2024, the Emergency Ordinance no. 107/2024 was published, regulating certain fiscal-budgetary measures regarding the management of budgetary claims and the budget deficit for the consolidated general budget of Romania in 2024, as well as for the amendment and completion of certain normative acts (hereinafter referred to as the "**Emergency Ordinance**"). Additionally, in the Official Gazette no. 944 of September 19, 2024, the Procedure for the cancellation of certain budgetary obligations, dated 16.09.2024 (hereinafter referred to as the "**Procedure**"), was also published, and brings several clarifications regarding the conditions and procedures under which the provisions of the Emergency Ordinance will apply.

In general terms, these normative acts introduce a series of fiscal-budgetary measures aimed at efficiently managing the obligations owed to the state budget, which may provide numerous benefits for taxpayers and the business environment.

Among the most relevant measures for the private sector are:

1. Tax amnesty

The measures for the cancellation of ancillary budgetary liabilities apply to all categories of debtors, including those declared insolvent, those who are part of insolvency proceedings or in dissolution or persons who have been established jointly and severally liable.

A. Terms & Conditions

Interest, penalties and all accessories related to the main budgetary obligations **outstanding as of August 31, 2024**, are cancelled if the following conditions are met:

- **extinguishing the outstanding main liabilities by the date of submission of the cancellation request** – all main budgetary liabilities which are outstanding by August 31, 2024 are extinguished in any of the ways provided by the Tax Procedure Code (for example, by payment, compensation, cancellation, prescription) by the date of submission of the request for cancellation of accessories inclusive (no later than November 25, 2024);
- **extinguishing all liabilities with payment deadlines after September 1, 2024** – all main and ancillary budgetary liabilities administered by the central fiscal body and which have payment deadlines after September 1, 2024 are extinguished in any of the ways provided by the Fiscal Procedure Code (for example, by payment, compensation, cancellation, prescription) until the date of submission of the request for cancellation of accessories inclusive (no later than November 25, 2024);
- **submission of tax returns** – the debtor submits all tax returns, according to the tax vector, until the date of submission of the request for cancellation of accessories inclusive (no later than November 25, 2024);
- **Submission of the request for the cancellation of accessories** – subject to the fulfillment of the other requirements, the debtor submits the request for cancellation of accessory obligations until November 25, 2024 inclusive, under penalty of losing the right.

B. Categories of budgetary liabilities that can lead to the application of amnesty

As a rule, the ancillary budgetary liabilities that can be subject to cancellation are those related to:

- **obligations due or with payment deadlines up to and including 31 August 2024** – this category includes main budgetary obligations due or with payment deadlines until 31 August 2024, including those that have not been included in the list of claims or in debt payment schedules;
- **differences established by tax decisions communicated up to and including 31 August 2024** – this category refers to main budgetary obligations additionally established by tax decisions communicated until 31 August 2024, even if the payment deadline has not been met by that time;
- **differences in main budgetary liabilities for tax periods up to and including 31 August 2024** – this category includes (i) on one hand, the main budgetary obligations additionally established by the

central tax authority by a tax decision issued and communicated, as a result of a tax audit, until 6 September 2024, and **(ii)** on the other hand, the main budgetary obligations established by a tax decision issued ex officio by the tax authority or by a tax return submitted late by the taxpayer, in the period between September 1, 2024 and the date of submission of the request for cancellation of the accessories inclusive;

- **differences in main budgetary obligations additionally declared by debtors through an amending tax return submitted between 1 September and 25 November 2024** – this category refers to the situation of taxpayers who correct main budgetary obligations due prior to 31 August 2024 inclusive and also refers to differences in obligations arising from the regularisation and correction of errors in value added tax returns;
- **differences in budgetary obligations due prior to 31 August 2024 inclusive, established as a result of a tax audit in progress on 6 September 2024** – this category refers to the amounts additionally established as a result of a tax audit for which the tax decision was not communicated by 6 September 2024;

According to the Procedure, debtors who have submitted, within a maximum of 20 days from September 6, 2024, corrective returns for the tax periods prior to August 31, 2024 inclusive, even if the tax control began after the entry into force of the ordinance, can also benefit from the cancellation of accessories.

- **budgetary liabilities due prior to 31 August 2024 inclusive and extinguished by this date** – this category refers to the main obligations already extinguished by 31 August 2024 and also includes ancillary obligations extinguished after 6 September 2024 (which will be subject to refund);
- **liabilities not extinguished by offsetting with the amounts individualized in the refund request pending on November 25, 2024 inclusive** – this category refers to budgetary obligations in respect of which the tax authority has totally or partially rejected the refund and which have not been offset with the amounts individualized in the refund request;
- **customs liabilities and budgetary liabilities established by the economic and financial inspection bodies** – these types of obligations may entail the application of measures for the cancellation of accessories if the conditions provided for the other types of obligations are met;
- **other liabilities existing in the tax authority's records for recovery** – this category includes liabilities individualized in enforceable titles and existing in the tax authority's records on August 31, 2024 inclusive, respectively those related to tax periods up to August 31, 2024 inclusive and which were submitted to the tax authority for recovery in the period between September 1, 2024 and the date of submission of the request for cancellation of accessories.

In particular situations, the provisions of the ordinance may also apply in relation to:

- **budgetary liabilities for which there are payment facilities in progress on 31 August 2024 inclusive**, to the extent that after that date, but no later than 25 November 2024 inclusive, the payment facility loses its validity;
- **liabilities established by administrative acts whose execution is suspended on 31 August 2024 inclusive**, to the extent that after that date, but no later than 25 November 2024 inclusive, the suspension of the execution of the administrative act ceases, respectively if the debtors waive the effects of the suspension in order to benefit from the cancellation of the accessories;

Moreover, **debtors who benefit from the payment rescheduling on September 6, 2024**, respectively those who **obtain the rescheduling until November 25, 2024 inclusive**, can also benefit from cancellation of accessories under certain conditions. However, according to the Procedure, in the event that ancillary payment obligations included in instalments with deadlines before 6 September 2024 have been extinguished, they cannot be subject to cancellation and, respectively, refund.

C. Obligations excluded from the application of the amnesty

The amnesty does not apply to accessories related to main budgetary obligations representing state aid to be recovered or funds due to the European Union budget. Also, the interest and penalties related to budgetary obligations that are the subject of a criminal trial, which have been established by court decisions issued in a criminal trial or which represent damages that are the subject of the cause of non-punishment provided for in art. 10 of the Law on Preventing and Combating Tax Evasion cannot be canceled.

D. Procedure

Taxpayers who wish to benefit from the cancellation of accessories according to the Emergency Ordinance can notify the tax authority of this intention. In this regard, it should be noted that the notification procedure is not mandatory and does not exclude the obligation of the debtor to submit the request for cancellation of accessories in accordance with the provisions of the ordinance.

The benefits of such notification mainly refer to the fact that the tax authority is called upon **(i)** to verify the fulfillment of the declarative obligations and, if necessary, **(ii)** to guide the taxpayer in order to fulfill them, **(iii)** to carry out the necessary operations to establish with certainty the main budgetary obligations that could lead to the application of the ordinance, **(iv)** to issue and communicate the tax certificate within 5 working days. Also, the tax authority will issue the decision to postpone the payment of interest, penalties and all accessories that may be subject to cancellation, and any enforcement procedures do not start or are suspended for the deferred obligations.

After notification, the request for cancellation of accessories must be submitted:

- as a general rule, **no later than 25 November 2024 inclusive**;
- **within 90 days from the communication of the tax decision**, in the case of debtors subject to an ongoing audit on 6 September 2024;
- **within 90 days from the communication of the new tax decision**, in the case of debtors in respect of whom the tax decision issued and communicated by September 6, 2024 or as a result of a tax audit in progress on this date has been overturned (in the tax appeal resolution procedure).

The cancellation request can be withdrawn at any time and only by submitting a request for this purpose to the tax authority. Such a request does not affect the taxpayer's right to submit a new application for cancellation.

In this context, it should be noted that the facility remains valid even in the case of definitive annulment of the fiscal administrative act (in the procedure for resolving the tax appeal or in judicial proceedings), if the issuance of a new fiscal administrative act has been ordered, as well as in the situation where the tax authority identifies budgetary obligations that were not included in the tax attestation certificate.

The request for cancellation of ancillary obligations shall be resolved by a decision to cancel budgetary obligations or, as the case may be, by a decision rejecting the request for cancellation.

In any case, taxpayers dissatisfied with the acts issued on the basis of the notification regarding the intention to benefit from the cancellation of the accessories or for the resolution of the request for cancellation of the accessories may file a tax appeal, within 45 days from the communication of these documents.

2. **Benefits granted to individuals**

Individuals who have outstanding main budgetary obligations on August 31, 2024 inclusive, in an amount of less than RON 5,000 inclusive, can benefit from:

- **cancellation of 50% of the main budgetary obligations outstanding on August 31, 2024 inclusive**, if 50% of these obligations are extinguished by the date of submission of the cancellation request, but no later than November 25, 2024;

- **cancellation of interest, penalties and all accessories related to the main budgetary obligations, outstanding on August 31, 2024 inclusive**, if the aforementioned condition is met.

Individuals who have outstanding main budgetary obligations on August 31, 2024 inclusive, in an amount greater than RON 5,000, can benefit from:

- **cancellation of 25% of the main budgetary obligations outstanding on August 31, 2024 inclusive**, if 75% of these obligations are extinguished by the date of submission of the cancellation request, but no later than November 25, 2024;
- **cancellation of interest, penalties and all accessories related to the main budgetary obligations, outstanding on August 31, 2024 inclusive**, if the aforementioned condition is met.

Debtors who have paid off the amounts representing 50% and 25% of the outstanding budgetary obligations as of August 31, 2024, including interest, penalties and all accessories that could have been cancelled according to the Emergency Ordinance, can benefit from refund.

However, the amounts subject to rescheduling and which were included in instalments with payment terms before September 6, 2024 will not be subject to cancellation and, as the case may be, refund.

3. Bonuses applicable to corporate income tax or microenterprise income tax payers

Taxpayers which owe corporate income tax, as well as those which pay microenterprise income tax, benefit from a bonus of 3% of the annual tax due for the 2024 tax year. The tax authority will establish *ex officio* the compliance with the conditions for granting the bonus, namely:

- all tax returns were submitted according to the tax vector;
- the tax due for 2024 was paid in full within the deadline set by law;
- the debtor does not register any other outstanding fiscal/budgetary obligations by the deadline set for submitting the declarations by which **(i)** the annual corporate income tax for the year 2024/modified fiscal year starting in 2024 is declared, respectively by which **(ii)** the microenterprise income tax for the fourth quarter of the fiscal year 2024 is declared, according to the law.

In the case of microenterprises that become corporate income tax payers in 2024, the percentage related to the bonus applies to both the microenterprise income tax and the annual corporate income tax.

As a general rule, the amounts related to this bonus will be offset with other tax obligations (and will not be refunded).

[For further questions regarding the aspects mentioned in this alert, please contact us.](#)



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