

Tax & Legal Weekly Alert

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On June 28, 2014 the Law no. 85/2014 regarding the prevention of insolvency and insolvency procedures entered into effect introducing a few substantive amendments regarding the rights of privileged creditors.

Among the most important amendments we mention:

- the amounts available in the debtor's accounts at the date of opening the procedure and over which was established a movable mortgage would be distributed to the mortgaged creditor at its simple request;
- the facilities granted to the debtor during the observance period with the view of undertaking its current activities are repaid with priority during the debtor's bankruptcy procedure and they will be secured with assets or rights which are not object of other securities or priority rights; if such assets or rights are not available, the rights of the privileged creditors will be diminished;
- the amounts granted to the debtor by a credit institution after the opening date of the insolvency procedures may be set-off with the amounts deriving from its current activity cashed by the debtor in the bank accounts opened at the respective credit institution – [page 4](#)



Changes to the Tax Procedure Code

The Government Emergency Ordinance for amending and supplementing certain normative acts as well as for regulating certain tax-related measures was published in the Official Gazette on 23 June 2014. Under this Ordinance, the following changes have occurred:

A. Changes to the Tax Procedure Code:

1. Non-resident taxpayers that have tax obligations in Romania are no longer required to register with the Romanian tax authorities through a tax agent, as long as they are residents in a EU Member State, a State of the European Economic Area or a state with which Romania has in place a legal instrument for cooperation in administrative and tax matters. However, this amendment does not eliminate the compliance or payment obligations for non-resident taxpayers, only the requirement that such obligations need to be fulfilled through a tax agent.
2. A new chapter, chapter V, has been introduced, which establishes the transmission of applications and the electronic means for identifying taxpayers. However, the procedure for sending applications and identifying tax payers electronically will be published by the Ministry of Regional Development and Public Administration and/or the Ministry of Public Finances.

B. Changes to the Emergency Ordinance no. 29/2011 regarding rescheduled payments

1. Debts towards any public authority which sends the claim to ANAF for recovery can be rescheduled. Until now there have only been a few institutions from which the claims could be recovered.
2. New categories of goods that can be used as a guarantee have been introduced.
3. The conditions of maintaining the validity of payment rescheduling and the provisions regarding the rescheduling decision during the validity period of the rescheduling have been changed.
4. These changes also apply to pending applications for rescheduling.

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Changes to the Tax Code

Emergency Ordinance for amending and supplementing Law 571/2003 (Tax Code)

Published in the Official Gazette no. 475/27 June 2014

The employees and the retired individuals who request a bank credit restructuring until 1st of January 2016, may benefit of an income tax decrease by means of applying additional deductions.

- Eligible individuals
 - employees and retired individuals with a monthly gross income of less than 2.200 Lei and who have loans contracted before 31 May 2014;
 - successors who inherited restructured loans;
 - guarantors who took over such loans by novation.
- Cumulative conditions regarding the loans:
 - the loans have to be with a Romanian credit institution, Romanian branch of foreign credit institutions, Romanian non-banking financial institution;
 - a decrease in monthly payment obligations of maximum 35%, but limited to 900 Lei.
- Application method:
 - the applicable period for this deduction cannot be longer than the restructured period with lower monthly rates;
 - it will be applied monthly, for the period January 2016-December 2017.

The employers have the obligation to apply this special deduction for loans, based on a set of documents submitted by the employee, the latest until 1st January 2016. Thus, it is important that the employers update their payroll systems, so as to be able to reflect correctly these deductions.

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Impact of the Insolvency Code on the role of credit institutions in the insolvency procedure

On 25 June 2014, Law no. 85/2014 regarding the prevention of insolvency and insolvency procedures (the "**Insolvency Code**") was enacted, with the view of regulating insolvency procedures under a singular approach.

As regards credit institutions, the Insolvency Code repeals Government Ordinance no. 10/2004 regarding bankruptcy of credit institutions and introduces a few substantive amendments, as detailed below.

I. New regulations regarding credit institutions, as privileged creditors

The Insolvency Code introduces a series of amendments regarding the rights of privileged creditors (having receivables that are secured by a privilege, a mortgage or another right assimilated to it or by a pledge on the debtor's assets) of which the most frequent are credit institutions.

These amendments mainly regard the following:

- a) *Credit institutions may sweep the amounts available in the debtor's bank accounts over which a mortgage has been constituted in their favor*

The Insolvency Code clarifies the legal status of the amounts available in the debtor's accounts at the date insolvency procedures have been opened and over which a movable mortgage has been constituted (or which are cash collaterals), providing that the judicial administrator/liquidator **will distribute them at the simple request of the secured creditor** within 5 days as of its request.

In the case of amounts deposited in escrow accounts, if an opposition is filed, the amounts will be transferred to the unique account of the debtor in the insolvency procedure only after the syndic-judge verifies that all essential conditions of the escrow agreement have been fulfilled.

- b) *Limitations of privileged creditors' rights*

The Insolvency Code brings more specific provisions regarding the facilities granted to the debtor during the observance period with the view of undertaking its current activities. These working facilities:

- are repaid with priority during the debtor's bankruptcy procedure;
- will be secured with assets or rights which are not object of other securities or priority rights; if such assets are not available, with the consent of privileged creditors, they will be secured with assets already pledged.

If the latter's consent is not obtained, **the receivables of the privileged creditors will not be reimbursed in full from the asset object of the security**, but rather payments will be made in proportion taking into consideration the whole value of the assets or rights subject to the security privilege.

- c) *Setting-off debt generated after the opening of the insolvency procedure*

Under the new regulation, any creditor is entitled to set-off debts borne after the opening of the procedure. This represents a major advantage for credit institutions that finance the debtor's activity during the insolvency procedures. Hence, the amounts granted to the debtor by a credit institution after the opening date of the insolvency procedures may be set-off with the amounts deriving from its current activity cashed by the debtor in the bank accounts opened at the respective credit institution.

II. New regulations regarding the insolvency/bankruptcy of credit institutions

The insolvency/bankruptcy of credit institutions is currently regulated under the Insolvency Code, which has undergone a few legislative amendments, as follows:

- a) Prior approval of the National Bank of Romania is required for the insolvency practitioners to be appointed in the file;
- b) The Fund for Securing Bank Deposits should be a mandatory member of the creditors' committee;
- c) The liquidator may propose the liquidation method consisting in purchase of assets and undertaking debts, only after prior consultation with the National Bank of Romania;
- d) The liquidator must inform the Competition Council regarding the potential transaction, if the liquidation method will consist of purchasing assets and undertaking debts.

The Insolvency Code was published in the Official Gazette no. 466 dated 25 June 2014 and is in effect starting with 28 June 2014. The Insolvency Code will apply only to litigations started after this date; ongoing litigations will continue to be governed under the provisions of the former regulations.

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