

8 September 2021

Fiscal Bulletin



Summary:

1. **Government Ordinance for amending and supplementing Law No. 227/2015 regarding the Fiscal Code**
2. **Government Ordinance for amending and supplementing Law No. 207/2015 regarding the Tax Procedural Code and regulation of tax measures**

New series of tax amendments

Government Ordinance No. 8/2021 for amending and supplementing Law No. 227/2015 regarding the Fiscal Code (“GO No. 8/2021”) and Government Ordinance No. 11/2021 for amending and supplementing Law No. 207/2015 regarding the Tax Procedural Code and regulation of tax measures (“GO No. 11/2021”) were published In the Official Gazette No. 832/31.08.2021. We further present the main legislative changes brought by the mentioned normative acts.

GO No. 8/2021

Profit tax

- Additions are made to the conditions for granting the tax exemption of dividends received from EU Member States (alignment of domestic legislation with the provisions of Directive 2011/96 / EU).
- The provision regarding the full deduction of adjustments for impairment of receivables is repealed starting 1 January 2022 and the threshold for deduction of adjustments for impairment of receivables is increased from 30% to 50%, subject to the cumulative fulfillment of the conditions provided by the Fiscal Code.
- Amendments are made to the provisions on the tax regime applicable to dividends distributed to shareholders / associates to cover all dividend distribution situations, according to the law, which were not paid until the end of the year when the distribution of dividends was approved.

Salary income tax and social contributions

- The Ordinance introduces the possibility for the resident employer to opt for the calculation, withholding and payment of compulsory social insurance contributions (CAS, CASS, CAM) for individuals who obtain salary revenues representing benefits in cash and / or in kind from third parties who are not Romanian tax residents.
- The ordinance also provides for a simplification when filing form 230, which redirects part of the income tax; measure valid starting the next deadline for submitting form 230, i.e. the one of 25 May 2022.

Withholding taxes

- Additions are made on the conditions for granting the tax exemption of dividends paid to EU Member States (alignment of domestic legislation with the provisions of Directive 2011/96 / EU).
- The possibility to submit to the competent tax authorities the certificate of fiscal residency in copy, accompanied by an authorized translation into Romanian language using the Virtual Private Space.
- It is clarified that withholding taxes borne by income taxpayers should be also declared in the informative withholding tax statement.

VAT

- Clarifications and additions are made regarding the supply of goods in the context of an intra-Community distance sale of goods, as well as distance sale of goods imported from third countries.
- New tax exemptions are introduced for the import of goods in Romania performed by the European Commission or an agency/body established under European Union law in order to fulfill the tasks conferred by European Union law to combat the COVID-19 pandemic. The same VAT exemptions apply to the supply of goods or services to the European Commission or to an agency/body established under European Union law in order to fulfill the tasks of combating the COVID-19 pandemic. The exemptions shall apply to imports, supplies of goods and services performed starting with 1 January 2021.
- The new Government Ordinance also corrects the erroneous transposition in the national legislation, through GEO No. 59/2021, of the Directive on the new European rules on electronic commerce, following the European Commission's letter of delay, in Case 2020/4142. More specifically, as provided by GEO No. 59/2021, in order to be able to register in the EU one-stop shop (i.e. called "*EU Regime*"), taxable persons having their economic headquarters in Romania who applied the special VAT exemption regime for small enterprises (i.e. threshold of RON 300,000) were obliged to renounce the special regime and to register for VAT purposes according to Art. 316 of the Fiscal Code. This aspect was solved by granting

the possibility to register for VAT purposes according to Art. 317 of the Fiscal Code, if the taxable person opts for the application of the EU Regime.

- At the same time, for taxable persons with the economic headquarters outside Romania, established in Romania through a fixed establishment, who are not registered nor are they obliged to register for VAT purposes according to Art. 316 of the Fiscal Code, the application of the EU Regime was not possible. This aspect was addressed by introducing the obligation of the taxable person to request the registration for VAT purposes according to Art. 316 of the Fiscal Code. The above mentioned changes will enter into force starting with **3 September 2021**.

Local taxes and fees

- The calculation of the tax due for mixed-use buildings is simplified.
- The procedure applicable to the sale of means of transport is simplified by establishing that the act of alienation-acquisition of means of transport can be concluded in electronic form and signed with an electronic signature and is communicated electronically to the competent local tax authorities (i.e. for registration / deregistration).
- A clarification is provided on computation mechanism of the performance tax, the tax base being constituted by the amount collected from the sale of entrance tickets and season tickets, excluding value added tax.

GO No. 11/2021

Standard tax control file (SAF-T)

- The Ordinance introduces the obligation to submit the standard fiscal control file, which represents, in essence, a statement with information from the taxpayer's accounting and fiscal records.
- The nature of the information that the taxpayer / payer must declare through the standard tax control file, the reporting model, as well as reporting starting date / dates is approved by order of the president of A.N.A.F.
- Also, the procedure for transmitting the standard fiscal control file, as well as the conditions under which the transmission is carried out shall be approved by order of the President of A.N.A.F.
- The SAF-T file may be subject to verification during the tax inspection, and A.N.A.F. will have the possibility to sanction the taxpayer who does not submit the standard tax control file.

Mandatory enrollment in the Virtual Private Space (VPS)

- The obligation to register in the VPS is introduced for taxpayers / payers legal entities, associations and other entities without legal personality, as well as natural persons who carry out a liberal profession or exercise an economic activity independently in order to transmit to the central fiscal body documents of the nature of applications, documents or any other documents by electronic means of remote transmission. The documents submitted to the central fiscal body in written format will no longer be processed and the taxpayers / payers will be notified regarding the obligation to communicate through the VPS.

VAT refund with subsequent control

- The VAT reimbursement procedure with subsequent control, temporary measure stipulated by GEO No. 48/2020 and having applicability until **31 January 2022**, will be permanent, thus becoming the general rule starting with **1 February 2022**. However, there are a number of exceptions to this rule such as cases where the taxpayer has recorded in the tax record facts that constitute offenses, if there are risks of undue reimbursement or if the taxpayer is in insolvency/voluntary liquidation. In all these exceptional cases, the VAT refund will be performed after the VAT inspection.

Simplified payment rescheduling procedure

- The Ordinance introduces the permanent simplified payment rescheduling procedure, for the budgetary obligations administered by the central fiscal body, considering that the payment rescheduling of the budgetary obligations, in simplified form, adopted by GEO No. 181/2020, was one of the most accessed facilities during the coronavirus pandemic; the measure applies from **1 October 2021**, immediately after the expiration of the temporary mechanism in GEO No. 181/2020.

Extension of the period of application of the fiscal amnesty

- The Ordinance provides for the possibility of canceling the main budgetary obligations administered by the central fiscal body due prior to **31 March 2020** inclusive and individualized in tax decisions issued as a result of a fiscal inspection or verification of the personal fiscal situation started after the date of entry into force of GEO No. 69/2020 (**14 May 2021**) and until the date of entry into force of GEO No. 19/2021 (**29 March 2021**) if certain conditions are cumulatively met regarding the submission of the request to cancel the accessories and the payment of the main debit.
- It is provided the possibility to cancel the ancillary fiscal obligations due prior to **31 March 2020** inclusive and individualized in taxation decisions issued as a result of a verification and for which the tax decision was communicated after the date

of entry into force of GEO No. 69/2020, but not later than 31 January 2022, subject to the fulfillment of certain conditions regarding the settlement of the main fiscal obligations in time and the submission of the request for cancellation of the ancillary obligations.

Other fiscal procedural changes

- The Ordinance introduces the possibility to file/correct the tax returns whenever a final court decision imposes measures which imply the payment of certain amounts or acceptance of expenses triggering the change of the taxable base and tax obligations related to periods for which the subsequent verification reserve was lifted.
- The Ordinance provides for the possibility of re-doing a tax inspection by the same inspection team that concluded the repealed act if, for objective reasons, there is no possibility of re-auditing by another inspection team.
- Fiscal obligations with future payment terms, established in the reorganization plan approved and confirmed in accordance with the law, should not be considered overdue.

Editors

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Our team comprises tax consultants previously working in management positions with Big Four companies and the Ministry of Finance. The group cooperates closely with the firm's lawyers specialising in administrative law, as well as contentious-administrative disputes.

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