



NEW TAX ALLEVIATION MEASURES UNDER THE PANDEMIC

The pandemic context and its economic implications prompted in 2020 and 2021 several legislative measures to alleviate fiscal burden both through tax facilities, such as amnesties or regulation of new cases and conditions for debt rescheduling, and through amendments concerning deductibility for tax purposes. This type of measures fall under the scope of the newly enacted Government ordinances nos. 8 and 11, published on August 31, 2021 in the Romanian Official Gazette.

1. Tax facilities included in the Romanian Fiscal Code

Part of the alleviation measures were adopted through Government Ordinance no. 8/2021 amending Law no. 227/2015 on the Romanian Fiscal Code (the “**Fiscal Code**”) and amend the possibility of tax rescheduling in specific cases, as well as certain deduction threshold, as detailed below.

1.1 Tax rescheduling in case of transfers of assets, tax residency and / or economic activity

Taxpayers transferring abroad their assets or tax residency from Romania or the business conducted through a Romanian permanent establishment have been previously entitled to a 5-year rescheduling of the corporate tax triggered by such transfer, under specific circumstances. Nonetheless, such rescheduling was subject to the general conditions set forth by Law no. 207/2015 on the Romanian Fiscal Procedure Code (the “**Fiscal Procedure Code**”).

The new ordinance removes this case of rescheduling from the general regime and regulates specific conditions in relation thereto, such as the taxpayer's obligation to set up a bond only in case an actual and provable risk concerning debt recovery is found upon the preliminary analysis (fiscal debts overdue for more than 90 days and / or exceeding RON 20,000).

1.2 Increase of certain tax deduction

The deductibility threshold for the adjustments of impaired accounts receivables is set to increase from 30% to 50%, such amendment to become applicable as of January 1, 2022.

2. Tax facilities included in the Romanian Fiscal Procedure Code

The set of amendments aimed at establishing / refining fiscal facilities is complemented through Government Ordinance no. 11/2021, which sets forth *inter alia* a simplified regime of tax rescheduling and makes permanent the VAT reimbursement with subsequent tax inspection.

2.1 The simplified regime of tax rescheduling

The new regime is applicable for tax debts that are overdue for up to 12 months and the amount whereof is higher than the following thresholds:

- RON 500, in case of individuals;
- RON 2,000, in case of consortia;
- RON 5,000, in case of legal entities.

The simplified tax rescheduling is granted for maximum 12 months, provided that certain conditions are met, *inter alia*:

- the taxpayer does not undergo bankruptcy or dissolution procedure;
- there is no final decision on the taxpayer's joint responsibility under the insolvency or tax rules or, in case of such a final decision, the amounts for which the responsibility was established were paid;
- all tax returns were duly submitted.

The main features of this tax rescheduling regime consist of the lack of the obligation to set up a bond (which is mandatory under the general regime for rescheduling exceeding 6 months) and the lower amount of tax interest applicable throughout the rescheduling period (*i.e.*, 0.01% instead of 0.02% or 0.015% applicable under the general regime, depending on the type of bond set up by the taxpayer).

2.2 The VAT reimbursement with subsequent tax inspection

Via the amendments to the Fiscal Procedure Code, Government Ordinance no. 11/2021 makes permanent a rule stated temporarily since April 2020 and which should have ended on January 31, 2022, namely the reimbursement of VAT with subsequent tax inspection.

Until April 2020, as a rule, VAT could be reimbursed without prior inspection solely in case the amount of VAT to be refunded was lower than RON 45,000 or in case the VAT refund was claimed by a taxpayer benefitting from a tax rescheduling. Other cases where VAT could be reimbursed without prior inspection were decided by the fiscal authorities based on a risk analysis.

Starting April 2020, to curb the duration of the settlement of VAT refund claims and given the constraints related to the performance of VAT inspections, it was decided for VAT to be reimbursed without prior inspection and a subsequent tax inspection to be performed based on a case-by-case analysis, save for specific cases where prior inspection remained mandatory. This was meant as a temporary measure.

As it stands, this decision became permanent by replacement of the prior VAT reimbursement regime in the Fiscal Procedure Code and shall apply after January 31, 2022, as well. The sole cases where VAT reimbursement is still conditional upon prior tax inspection are the following:

- the taxpayer's fiscal record discloses deeds sanctioned as crimes;
- there is a risk of undue reimbursement, to be assessed based on the criteria expressly stated in the enactment;
- the taxpayer undergoes voluntary dissolution or insolvency procedure, except where a reorganization plan was confirmed;
- the VAT refund is claimed through the first return submitted following registration for VAT purposes;
- in case of taxpayers other than large or medium size taxpayers, the balance of VAT claimed for reimbursement pertains to a number of periods higher than the number of reporting periods used during a 12-month interval.

3. Other tax facilities

Apart from amending the Fiscal Procedure Code, Government Ordinance no. 11/2021 sets forth supplementary facilities, consisting of tax amnesty and alleviation measures for taxpayers whose activity is limited / suspended during the state of emergency / state of alert.

3.1 Amnesty for certain ancillary tax liabilities

The provisions of Government Ordinance no. 11/2021 regulating new tax amnesties are meant at covering certain cases that did not fall under the scope of the previous tax amnesties.

The tax liabilities concerned by the amnesty at hand are accessories to the following principal tax liabilities:

- tax debts mature by March 31, 2020 inclusively, which have been established through tax decisions issued following tax inspection or following the audit of the personal fiscal status, where such inspection / audit commenced after May 14, 2020 and ended before March 29, 2021;
- tax debts mature by March 31, 2020 inclusively, which have been established through tax decision issued following documentary audit, in case such decision is notified between May 14, 2020 and January 31, 2022.

The tax amnesty involves payment by October 4, 2021 of all principal tax liabilities established through the relevant tax decision and filing the request for tax amnesty by January 31, 2022. In case of tax decisions notified to the taxpayer after November 1, 2021, the request for tax amnesty must be submitted no later than 90 days after the notification.

Subject to the amnesty conditions being cumulatively met, the ancillary tax liabilities falling under the scope thereof are cancelled or subject to reimbursement, if previously paid.

3.2 Tax alleviation measures

The conditions for the maintaining of the ongoing tax rescheduling granted to taxpayers having their activity limited / suspended through decisions issued by the authorities during the state of emergency / state of alert may be stayed upon the relevant taxpayers' request until the date their activity is resumed.

Moreover, no ancillary tax liabilities are applicable for the deferred payment of instalments under the rescheduling program that are outstanding upon the activity resumption.

Taxpayers applying for such alleviation measures are exempt from the 5% tax penalty applicable for loss of tax rescheduling benefit.

This article contains general information and should not be considered as legal advice.



Felix Tapai

Tax Partner

felix.tapai@mprpartners.com



Alina Badea

Senior Associate

alina.badea@mprpartners.com

WE TRANSLATE LEGAL
TO BUSINESS