

Law-Now: Romania amends Fiscal Procedure Code and its high court rules on statute of limitation

On 18 December 2020, the Romanian President promulgated an amendment on the law on fiscal procedures and in the Official Gazette it was published a High Court of Cassation and Justice ruling on the five-year statute of limitations for corporate income tax.

Amendments to the Fiscal Procedure Code

Romania enacted Law no. 295/2020 for the amendment and completion of Law no. 207/2015 regarding the Fiscal Procedure Code ("Law 295/2020"). Published in the Official Gazette (no. 1266/21.12.2020) and scheduled to enter into force on 24 December 2020, the law contains, amongst others, the following provisions:

→ ***Transfer of the administrative challenges departments***: Specialised departments dealing with administrative challenges have been transferred and will function as a specialised structure at the level of the Ministry of Finance. Until now, the National Agency for Fiscal Administration contained the relevant departments handling administrative challenges.

→ ***Re-examination of administrative challenges***: A new option has been introduced for taxpayers to have their administrative-challenge resolutions revisited before going to court. Taxpayers can request a re-examination of the tax decision for solving an administrative challenge, under certain conditions. For example, when the said tax decision does not make reference to legal provisions that would fundamentally change the solution, the issuance of a decision by the Central Tax Commission, the issuance of interpretations by the high court, or an ECJ decision contrary to the decision to settle their challenge.

→ ***New annulment causes for fiscal administrative acts***: The following additional annulment causes for administrative acts issued by the tax authorities have been introduced:

- ◆ When presenting arguments, the tax authority must consider the prior written opinions or solutions issued by tax authorities or courts, if these were presented to the tax authority prior to the issuance of the administrative act.

- ◆ The tax authority need not comply with the arguments of the tax decision solving the administrative challenge if a new administrative act was issued.

- ◆ Issuance of the tax audit report and the tax decision after the finalisation of the tax audit.

- ◆ The tax authority issues administrative acts or findings in connection with the crime related to the evidence on the taxable base or customs value subject to tax or a customs audit.

→ ***Requests of taxpayers for interest due by the tax authorities***: The statute of limitation is five years for the taxpayer's request for interest related to amounts to be reimbursed or refunded from the state budget. The previous provisions made no reference to a term.

→ ***Non-declaration penalty***: The amount of the non-declaration penalty is reduced by 75% if the taxpayer settles his debts within the legal deadline. Previously, taxpayers submitted a written request for such a reduction.

→ ***Non-obligation to appoint a tax agent***: Non-resident taxpayers that opt to communicate with the tax authorities through electronic means are not obliged to appoint a Romanian tax agent.

→ ***The tax registration code***: This could also be used to fulfil tax obligations prior to the tax registration date.

→ *If the legal person ceases after the start of the tax inspection, the tax inspection will continue and apply to the successors of that person:* The tax claim will be established in the name of the successors. If there are no successors, the tax inspection will cease.

→ *New conditions for suspension of a tax inspection:* Suspension of a tax inspection may be ordered:

- ◆ to perform checks on the other members of the tax group or single tax group;
- ◆ in the event that the tax inspection body is notified or is informed that a legal proceeding is pending against the taxpayer based on evidence on how his taxable base was determined (i.e. the taxable base subject of the tax inspection) or if financial-accounting records of the taxpayer were collected by the criminal investigation body.

→ *The taxpayer may file an administrative challenge against the decision to suspend the tax inspection.*

Statute of limitations for corporate income tax

On 18 December 2020, Decision no. 21/14.09.2020 of the Romanian High Court was published in the Official Gazette. The decision states that the five-year statute of limitation period for corporate income tax begins on 1 January of the following year in which the taxable profit was realised.

This judgment solves the past problems arising from the practice of tax authorities (and supported by opinions issued by the Ministry of Finance), which reported the start of the statute-of-limitation period from 1 January of the following year in which taxpayers had the obligation to file their annual tax return. Since the deadline is 25 March of the following year, the tax authorities expanded the statute of limitation period by one year for a total of six years.

Although this decision refers to the statute of limitation for corporate income tax under the old Fiscal Procedure Code, it is relevant for ongoing or future tax inspections up to 2016 and ongoing or pending administrative or court dealings during the same period.

This decision of the high court is binding for both Romanian courts and the tax authorities from the moment of its publication in the Official Gazette, which took place on 18 December 2020.

For more information on the above changes, contact CMS experts **Roxana Popel, Andrei Tercu and Ramona Tudor.**