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Government Ordinance no. 4/2022 for the amendment and completion of Law no. 227/2015 regarding the Tax Code, as well as for the extension of the deadline regulated by the Government Ordinance no. 6/2019.

On Friday, January 28, 2022, the Government Ordinance no. 4/2022 for the extension of the deadline regulated by the Government Ordinance no. 6/2019 regarding the establishment of certain fiscal facilities was published within the Official Gazette no. 092 from 28.01.2022.

Government Ordinance for the amendment and completion of certain normative acts, as well as for the amendment of certain deadlines.

On Monday, January 31, 2022, the Government Ordinance no. 11/2022 regarding the amendment and completion of Law no. 227/2015 on the fiscal Code, regarding the amendment and completion of Law no. 207/2015 on the fiscal procedure Code as well as regarding the taxpayers that have the obligation to pay specific tax, according to Law no. 170/2016 was published within the Official Gazette no. 097 from 31.01.2022.

New edition of OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2022

Thursday, January 20, 2022, the new edition of the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations was published

[Government Ordinance no. 4/2022 for the amendment and completion of Law no. 227/2015 regarding the Tax Code, as well as for the extension of a deadline.](#)

In this context, the deadline regulated by the article 22 para. (1) of the Government Ordinance no. 6/2019 on the establishment of certain fiscal facilities, published in the Official Gazette of Romania, Part I, no. 648/ 05.08.2019, is extended. Consequently, **the new deadline for submitting the restructuring request is July 31, 2022** (before the amendment the deadline was January 31, 2022).

[Government Ordinance for the amendment and completion of certain normative acts, as well as for the amendment of certain deadlines.](#)

Amendments to Law no. 227/2015 on the fiscal Code

On January 31, 2022, the Government Ordinance no. 11 for the amendment of Law no. 227/2015 on the fiscal Code was published within the Official Gazette no. 097/January 31, 2022. The main changes are as follows:

Corporate income tax

- Regarding the sponsorships or patronage acts performed and regarding the private scholarships granted, the provision according to which the amounts that are not deducted from the corporate income tax is carried forward for the next 7 consecutive years is **removed**;

Microenterprise tax

- Regarding the sponsorships performed and regarding the private scholarships granted, the provision according to which the amounts that are not deducted from the microenterprise tax is carried forward for the next 28 consecutive quarters is **removed**;

Specific tax

- Taxpayers that pay specific tax, according to Law no. 170/2016 regarding the specific tax for certain activities, **for year 2022, do not** owe specific tax for a period of **180 days** computed from the date of entry into force of the Government Ordinance (*i.e. from February 3, 2022*);
- Thus, for 2022, taxpayers recompute the specific tax by dividing the specific annual tax by 365 calendar days and multiplying the resulting value by the difference between the number of 365 calendar days and the number of 180 calendar days.

Amendments to Law no. 207/2015 on the fiscal procedure Code

The anticipated individual tax ruling and the advance price agreement

- Under **Article 52, paragraph (12)** the deadline for solving the application for issuing the anticipated individual tax ruling was extended from 3 months to **6 months**.

Periodic provision of information

- **Paragraph (2) is added to Article 59**, obliging the taxpayer/ payer who provides an electronic interface to facilitate online business transactions **to provide periodic information on the transactions to the central tax authority, by filling in a declaration in testimony hereof**. The nature of the information, the periodicity and the declaration models are approved by the Order of the National Agency for Fiscal Administration President.

The obligation to submit a tax return

- **Article 101, paragraph (4)** is amended so that **only in the case of obligations to declare incomes which are exempted from the payment of income tax** (the case of temporary inactivity was eliminated), **the central tax authority may approve other terms, or conditions for submitting tax returns upon the taxpayer / payer request**.
- In this Article, **four new paragraphs are inserted**, regulating the following:

"(4¹) Entities registered in the commercial register, for which there are mentions of temporary inactivity, are not required to submit tax returns for the period of temporary inactivity, starting from the 1st day of the month following the mention of temporary inactivity registered in the commercial register.

(4²) Entities, other than those referred to in para. (4¹), are not required to submit tax returns, for the period for which they requested the suspension of their activity from the bodies that authorized them, starting with the 1st day of the month following the mention of the activity suspension registered in the register of taxpayers.

(4³) Application of the para. (4¹) and (4²) provisions shall case on the date of the activity resumption or at the end of a three-year term starting from the date of the temporary inactivity mention registered in the commercial register, or of the activity suspension mention registered in the register of taxpayers.

(4⁴) The obligations to declare, related to the activity carried out before the registration of temporary inactivity / suspension, are maintained."

Competency to perform a tax inspection

- **Paragraph (2) is added to Article 119.** According to its provisions, **the competency to perform the tax inspection, in case of claims administered by the central tax authority, may be given** by the Order of the National Agency for Fiscal Administration President **to tax authorities that do not have competency according to Title III, Chapter I.**

Documentary verification – scope and object

- **Article 148** is amended so that provisions of **Article 119**, regulating the competency to perform a tax inspection, and **Article 120**, regulating special rules on the competency to perform a tax inspection by the central tax authority, **are also applicable in the case of the documentary verification performed by the tax inspection authority.**

Special provisions regarding the tax on dividends reimbursement

- **Article 170¹, para. (1)** is amended so that if there are resulting amounts to be reimbursed from the budget, after the annual adjustment of dividends partially distributed during the year, the dividend payer submits to the competent tax authority a declaration of adjustment/ application for reimbursement, after the reimbursement of the dividends by the co-venturers/ shareholders or after the approval of the annual financial statements in case of unpaid interim distribution of dividends, until the end of the limitation period for the right to request reimbursement.

Conditions for granting debt repayment schedule

- **Article 186, paragraph (1), letter (c)** is amended so that it is regulated **the possibility of submitting a debt repayment schedule application for the debtor undergoing insolvency procedure, on condition that he is out of the insolvency procedure by the issuing date of the debt repayment schedule decision.**
- The condition laid down in **Article 186, paragraph (1), letter (e)**, regulating that the debtor shall not have been established liable under the insolvency law and/or jointly liable, **is eliminated.**

Conditions for maintaining the validity of debt repayment schedule

- **It is introduced an exception** from the condition of maintaining the validity of the debt repayment schedule provided for in **Article 194, paragraph (1), letter (j)**. **The payment of the amount for which the liability was established** according to the provisions of the insolvency law and/or joint liability **is not a condition for the debtor who requested the debt repayment schedule according to Article 195.**
- **Article 195** is amended so that:
 - The **letter (j) of Article 194, paragraph (1)** – previously presented – **is listed in the provisions of Article 195, paragraph (1) letter a)**, regarding the maintenance of the debt repayment schedule validity that depends on the listed tax liabilities payment.

- The exception regulated by Article 195, paragraph (1) letter b) was eliminated.
- The letter (j) of Article 194, paragraph (1) is listed in the provisions of Article 195, paragraph (3), regarding the deadline for submitting the amendment application for debt repayment schedule.

Enforcement by garnishment

- Paragraphs (3), (13) to (15) of Article 236 are amended by replacing the term "*bank*" used throughout these provisions, with "*credit institution*".

New edition of OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations issued in 2022

The OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (i.e. the "OECD Guidelines") provide guidance regarding the application of the "arm's length principle". This represents the international consensus on the evaluation of cross-border transactions between related parties.

The Romanian tax legislation specifically stipulates the use of the OECD Transfer Pricing Guidelines in establishing the local transfer pricing rules. References in this respect can be found both in the Fiscal Code (art. 11, para. 4) and in the Order no. 442/2016. Therefore, the publication of the new OECD Guidelines has a significant impact, on both taxpayers and tax authorities in justifying the prices used in transactions carried out between affiliated entities.

The new edition, published on January 20th, 2022, includes revised guidance on the application of the profit split method, guidance on the application of the approach regarding hard-to-value intangibles, and guidance regarding transfer pricing rules for financial transactions.

Profit split method

- The new OECD Guidelines aim to clarify the cases in which the profit split method is considered the most appropriate method of testing the compliance of the price set in transactions between related parties with the arm's length principle. Simultaneously, additional clarifications are provided on its practical application, using specific examples.

Hard-to-value intangibles

- Guidelines on how to apply the approach regarding hard-to-value intangibles were issued in 2018, being intended to assist tax administrations in implementing this approach. Thus, the new OECD Guidelines provide several examples with the aim to clarify the process of determining hard-to-value intangibles.

Financial transactions

- The guidance regarding financial transactions was issued by the OECD in 2020, representing the first type of regulation from a transfer pricing perspective. These guidelines address issues referring to: accurate delimitation of financial transactions, economically relevant characteristics to be followed in the analysis of financial transactions, specific aspects related to the pricing of financial transactions, per type of transaction (e.g. loan, guarantees, cash-pooling). The guidance regarding financial transactions is presented in chapter X of the OECD Guidelines.

The new OECD Guidelines and the related press release can be found [here](#).

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