

# Tax & Legal Alert

ROMANIA 10 June 2009

## Emergency Ordinance no. 46/2009 regarding the improvement of tax procedures and the reduction of tax evasion

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Emergency Ordinance no. 46/13.05.2009 regarding the improvement of tax procedures and the reduction of tax evasion has been published. It amends a series of legal provisions in this area.

Also, according to the Ordinance, taxpayers which have benefited from tax liabilities reschedule and relief from the related penalties but have defaulted on the terms as a result of the economic crisis may apply for reinstatement, under certain conditions.

### I) We note below the main **Tax Procedure Code** amendments:

The power of attorney based on which fiscal attorneys are registered with the tax authorities is to be construed as a simple deed, with no authentication required. The power of attorney has to be filed with the tax authorities in original or in an authenticated copy.

Taxpayers may be declared inactive in the following cases:

- failure to fulfil relevant reporting requirements within a semester;
- avoidance of tax inspections by providing misleading information regarding the registered office;
- not operating at the declared registered office or tax domicile, as found by tax authorities.

The tax authorities will not declare as inactive taxpayers in a state of insolvency and taxpayers subject of an issued or adopted dissolution ruling.

Tax certificates can be issued at the request of both the taxpayer and of the public authorities, in the cases and under the conditions provided by law and in observance of the provisions governing tax secrecy.

The regulation also amends the provisions regarding the sequence of settling tax receivables.

For debtors falling under the provisions of Law no. 85/2006 regarding the insolvency procedure the sequence of settling tax receivables is set forth.

The competent tax authorities will be bound to notify debtors of the means of settlement of the tax liabilities, five days prior to the subsequent payment term of the tax liabilities.

For tax receivables administered by the local authorities, payments made subsequent to the communication of the summons in the enforcement procedure will no longer be used to settle first the tax liabilities listed in the writ of execution.

The Ordinance also regulates the delay penalties owed by taxpayers on which a dissolution decision has been issued. Thus, starting with the registration date of the dissolution decision with the trade registry, delay penalties will neither be computed nor owed, irrespective of whether the tax receivables occur prior or subsequent to the dissolution registration date. If the dissolution act is annulled by an irrevocable court ruling, the delay penalties are computed for the period between the registration date of the dissolution decision with the trade registry and the date the annulment ruling becomes irrevocable.

In respect of enforcement of tax receivables, the minutes regarding price differences or/and enforcement expenses which are prepared by enforcement officers will be considered writs of execution. These minutes can be subject to a fiscal challenge, in accordance with the provisions of the Tax Procedure Code.

The Ordinance stipulates that the president of the National Agency for Tax Administration is entitled to issue regulations for the application of some of the provisions of the Tax Procedure Code.

**II) EO no. 46/2009 substantially amends **Emergency Government Ordinance no. 91/2003 regarding the organisation of the Financial Guard**, as follows:**

The Financial Guard may, on the prosecutor's request, ascertain the facts that represent breaches of the legal provisions and obligations the Guard is empowered to investigate, issuing minutes to assess damages, which represent means of proof, according to law.

The Financial Guard will perform inspections in view of establishing the fiscal facts, ascertaining and sanctioning minor offences. Also, the Financial Guard will ascertain the circumstances of criminal deeds perpetrated and will notify the competent bodies. The Ordinance also amends the duties and prerogatives of the Financial Guard commissioner, entitling him to conduct certain activities related to law application in different scenarios.

**III) Regarding the amendments to Government Ordinance no. 75/2001**, we highlight the following:

A taxpayer being jointly or severally liable with other taxpayers, who in turn are declared bankrupt or insolvent, will have the tax record updated to reflect this fact.

Moreover, the inactive taxpayer status must be registered within both the company's tax record and that of its legal representative.

Following the amendments made, if the fiscal inactivity of the taxpayer is registered in the relevant tax record, the delegated judge, the courts of law or the competent bodies will refuse to authorise the operations provided for art.8 paragraph 1 of Law no. 75/2001 regarding the tax record.

For legal persons fiscally inactive at the time the Ordinance is published, as well as for their

legal representatives, the registration of the fiscal inactivity in the relevant tax records is to be operated within 60 days as of the publication of the Ordinance.

**IV) EO no. 46/2009 amends the provisions of **Law 571/2003 regarding the Fiscal Code**, as follows:**

The list of inactive taxpayers will be published on the web page of the Ministry of Public Finance – the website of the National Agency for Fiscal Administration.

The tax authorities are entitled to cancel by default the VAT registration of persons in temporary inactivity declared as such under the law.

In order to register new means of transport purchased from a Member State, the persons not registered and not required to register for VAT purposes in Romania should seek from the relevant tax authority the issuance of a certificate attesting to the payment of the VAT towards the state budget for the new means of transport purchased.

The above-mentioned persons should request the relevant tax authority to issue a certificate attesting that no VAT is due upon the purchase from a Member State of transport means not deemed as new according to the legal provisions.

The model and content of the certificate will be established by order issued by the president of the National Agency for Fiscal Administration.

**V) Reinstatement of tax liabilities reschedule and relief from the related penalties which have been defaulted on terms of granting as a result of the economic crisis**

Debtors who were granted such benefits but did not meet payment deadlines due to the economic crisis may apply for a reinstatement of the benefits if they meet the conditions imposed by the Ordinance.

The application for reinstatement of the validity of benefits is to be settled by the authorities within 45 days of the date of registration.

For the period from 30 September 2008 to the date the reinstatement application is answered, debtors do not owe penalties related to tax liabilities which have been subject to reschedule and penalty relief. All

enforcement measures are suspended between the filing of applications and their resolution.

The tax liabilities assessed by the authorities after the issuance of the tax certificate are to be paid within 90 days of the due time but not later than 25 December of each fiscal year.

Debtors who pay in advance the scheduled rates will continue to benefit from the penalty relief granted and will not be required to set up a guarantee, although they defaulted on the other terms of the payment facility agreement.

The provisions of the Ordinance also apply to debtors who have benefited from payment relief representing claims of public institutions involved in the privatisation process and tax claims taken over and administered by the Authority for State Assets Recovery.

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