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# *New amendments to the Tax Procedure Code*

7 March 2014

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## *In brief*

Government Emergency Ordinance No. 8, regulating tax matters and amending certain legal acts (“the Ordinance”), was published on 28 February 2014.

The Ordinance amends, among other laws, the legal provisions in Government Ordinance nr. 92/2003, regarding the Tax Procedure Code, republished (“the Tax Procedure Code”).

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## *In detail*

### ***Filing tax statements concerning residents of other EU member states***

A new obligation has been introduced for income payers (i.e. work income, payments made to managers, life insurance products under some certain circumstances, pensions) regarding the filing of tax statements concerning income paid to beneficiaries resident in other EU member states and the obligation of residents of other member states to declare all their income from immovable assets registered in Romania.

### ***The obligation to mention the identification data of tax consultants, financial auditors and experts in the content of the documents signed by them***

The amendments have also introduced the obligation for

tax payers to mention expressly in the content of documents filed with the tax authorities the identification data of individuals or legal entities mentioned above, where the documents have been signed by those parties.

### ***Certification of tax returns filed with tax authorities***

Prior to filing tax statements with the tax authorities, tax payers can now choose to have them certified by a tax consultant registered as an active tax consultant in the Tax Consultants Registry. The certification of tax statements can be done with or without reservations, under the certification regulations.

### ***Anti-fraud control***

Anti-fraud control mechanisms have been introduced under the provisions of Government Emergency Ordinance No. 74/2013 regarding some

measures for improvement and reorganisation of the National Agency of Tax Administration and for amending other legal acts.

### ***Certain rules regarding the settlement of tax receivables***

The new provisions establish the rule that payments made by debtors are not transferable and do not settle by payment / compensation the tax liabilities arising from enforcement deeds for which the execution suspension: a/ is ordered by a Court or creditor, in accordance with the law; or b/ the suspension for a period of at least 6 months is ordered by a Government decision. These debits are settled only at the express request of the taxpayer.

### ***Mention of the due amounts to be reimbursed from the state budget***

The Ordinance brings some amendments regarding the date at which tax receivables become due for amounts to be reimbursed from the state budget, but likely to be offset against the tax payer's other debts to the state budget.

### ***Special rules regarding VAT reimbursements***

According to the new provisions, VAT reimbursements are made with a later tax inspection only where the VAT amount is less than RON 45,000.

By exception, the above does not apply in situations where the tax payer has registered in its tax records actions that are sanctioned as criminal offences or if, considering the available information, the tax authority considers that there is a risk of an undue reimbursement.

Other cases of reimbursement will be resolved using tax inspections prior to or post reimbursement approval, based on a risk analysis conducted by tax authorities.

### ***Special rules on the restitution of withholding tax claims***

Under the new regulations, in cases where a payer withholds more tax than is actually due, as a rule, the amounts are restituted by the payer, at the taxpayer's request submitted within the prescription term. The amounts restituted by the payer are reconciled with other tax obligations of the same type.

For reconciled income tax, payers do not file corrective statements.

If the payer no longer exists, the amounts withheld in excess to the tax due according to the law are reimbursed by the competent tax authority, at the request of the tax payer.

### ***The level of interest rate***

The level of interest rate is reduced by 0.03% for every day of delay.

### ***Interest rates due based on annulled tax administrative deeds or cancelled before their annulment***

The obligation is established for the tax authorities to calculate and pay to taxpayers interest rates for the payment obligations imposed by tax administrative acts which have been subsequently cancelled by payment / compensation prior to an annulment. Interest is calculated from the moment the tax receivables become due until the moment of restitution / payment of other debts owed by the taxpayer.

### ***New rules regarding the enforcement of garnishment in forced executions***

To settle a tax liability in a forced execution, debtors who have bank accounts can have their accounts seized after 30 days have passed since the summons was communicated.

### ***Increased cap value of material competence for settlement of tax challenges***

According to the new amendments, the specialised structure for settling tax challenges within public finance regional general offices with competence for the administration of non-residents or for where the appellant has its domicile settles challenges against tax deeds imposing tax receivables up to RON 5 million.

In the case of tax deeds regarding tax receivables which amount to more than RON 5 million or which were established by the central inspection /control authorities, the NAFA (National Agency for Fiscal Administration) General Office for Settling Challenges is competent to settle disputes concerning them.

### ***Transitory dispositions***

Most of the provisions of The Ordinance came into force on **28 February 2014**.

The special provisions regarding VAT (i.e. art. III, pct. 13) which apply only to statements with negative amounts of VAT, with an option to reimburse, came into force on 1 March 2014.

The provisions regarding interest rates came into force on **1 March 2014**.

[Source: *The Romanian Official Gazette, Part I, nr. 151/28.II.2014*]

### ***The takeaway***

According to the new amendments, in order to settle a tax liability in a forced execution procedure, debtors who have bank accounts can have their accounts seized only after the expiry of the legal term of 30 days following the communication date of the summons.

As a rule, the reimbursement of VAT amounting to less than RON 45,000 is made only with a subsequent tax inspection.

The certification of tax statements is not binding anymore and tax payers may choose to certificate the tax statements.

The level of interest rate is reduced at 0.03% for every day of delay.

Taxpayers are entitled to be granted interest for the amounts paid as tax liabilities imposed by subsequently-annulled tax assessment decisions, for the period between the date on which the tax liabilities were paid and until the actual restitution of the paid amounts.

## Let's talk

For a deeper discussion of how this issue might affect your business, please contact:



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