

Fiscal Procedure Code Amendments provided by GEO 84/2016

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In brief

Government Emergency Ordinance no 84/2016 for modifying and supplementing financial and fiscal legislation was published in the Official Gazette on 6 December 2016.

The Ordinance provides a series of modifications regarding the Fiscal Procedure Code and transposes the provisions of Directive 2015/2376/EU for the amendment of Directive 2011/16/EU regarding the mandatory automatic exchange of information regarding fiscal matters.

In detail

The main amendments provided by GEO 84/2016 to the Fiscal Procedure Code are as follows:

1. Modifying the conditions for reactivation of inactive taxpayers

- Reactivation of inactive taxpayers will no longer require an attestation by the tax authority that the taxpayer performs the current activity at the registered headquarters. This condition still has to be met, however, if the taxpayer was declared inactive specifically for the reason that no activity was performed at the registered headquarters or they had avoided tax inspections by providing information regarding the headquarters which would not allow it to be located.

- It is specified that, for the reactivation of inactive taxpayers, said taxpayers should not fall under any other scenario which leads to them being declared inactive.
- Taxpayers subject to insolvency proceedings (simplified procedure), bankruptcy or dissolution procedures are exempted from the requirements applicable for reactivation of inactive taxpayers and may be reactivated if they submit all their tax statements.
- 2. Specification of date of payment for tax receivables, budgetary receivables and other amounts owed to public authorities, for particular cases.**
- In regards to **cash payments**, the date of payment is that mentioned on the payment document issued by the tax authority,

the State Treasury, public authorities entitled to receive such amounts or credit institutions, which have concluded protocols with public authorities or the State Treasury.

- In the case of **payments performed by using terminals or equipment provided by credit institutions** which have concluded protocols with the Ministry of Public Finance, the date of payment is that mentioned on the document issued by such terminals or equipment.
- In the case of **payments performed by postal mandate**, the date of payment is the date mentioned by the post office on the postal mandate. For mandates sent using electronic systems, the date of payment is that mentioned by the post office, as

- transmitted to the State Treasury.
- In the case of ***payments performed via banking services, including internet banking, home banking, mobile banking or other long distance payment methods provided by credit institutions***, including the usage of the provisional account open on the basis of protocols concluded with the Ministry of Public Finance, the date of payment is the date that the bank debited the debtor's account, as this date is provided by the electronic message from the bank.
 - For ***payments performed by credit cards***, the date of payment is the date of performance of the transaction, as this date is confirmed by the payment authorisation process.
 - The types of fiscal receivables administered by ANAF which can be subject to payment by using credit cards and the applicable procedure is to be regulated by an order issued by the minister of public finance.
- 3. Rules concerning proof of payment**
- Proof of payment may be provided by presenting paper documents, either originals or copies attested by signature of the issuing entity, such as payment orders, receipts, postal mandates or bank statements.
 - Proof of payment may also be provided by presenting the document issued by
- terminals or equipment of credit institutions which perform services regarding payments to the state budget, bank statements in the case of payments performed by internet banking, home banking, mobile banking or other long distance methods of payment, documents edited on paper for payments by credit card or the postal mandate edited on paper. In these situations, debtors are obliged to mention their contact details on said documents and the public authorities must verify receipt of payments. In the event of doubt, the authorities must request additional information using such contact details.
- If payments could not be confirmed, a decision for recovery of the amounts owed will be issued and this decision will be a writ of execution against the debtor.
- 4. The priority of differences of main and ancillary fiscal obligations, applicable for the settlement of fiscal obligations.**
- In the case of main and ancillary fiscal obligations assessed by tax decisions, the priority of such obligations in regards to other fiscal obligations, for the application of art. 168 of the Fiscal procedure code, concerning the settlement of fiscal obligations, is established by taking into consideration the date of receipt of the tax decision by the taxpayer and not the due date of such fiscal main and ancillary fiscal obligations.
- 5. Limits regarding a tax inspection performed for solving a tax statement submitted with an option for reimbursement of deductible VAT**
- It is specified that a tax inspection performed for the purpose of solving a request for reimbursement of VAT will only be performed for the periods that have generated the VAT amount which forms the subject of the reimbursement request.
 - If, however, the tax inspection team identifies clues regarding a breach of fiscal legislation for other periods, it may extend the tax inspection to those periods as well.
- 6. The deadline for submission of a challenge against a Decision imposing precautionary measures.**
- It is specified that Decisions imposing precautionary measures may be challenged directly before the courts of law and are not subject to a mandatory administrative challenge, prior to the judicial stage of the dispute.
 - A term of 30 days, from the date of receipt, is provided in regards to the submission with the courts of law, of challenges against Decisions imposing precautionary measures.
- 7. Exclusion of the obligation to mention the type of fiscal obligation and its amount, as well as the writ of execution, in the case of enforcement by**

seizure of bank accounts.

- Enforcement deeds concerning the seizure of bank accounts of the debtor are not required to indicate the type of fiscal obligation, the amount owed or the writ of execution, upon which the enforcement is being performed.

8. During the suspension of enforcement obtained by submission of a letter of bank guarantee, no decisions imposing ancillary fiscal obligations will be issued.

- In the case of a suspension of enforcement granted as a result of the submission of a bank letter of guarantee, no decisions imposing ancillary fiscal obligations will be issued or communicated.

9. Seizure of amounts owed to the debtor, initially taken as a precautionary measure, will become an enforcement measure by communication of a new seizure notice and not by communication of a writ of execution.

- In the case of a seizure of amounts owed to the debtor, instituted as a precautionary measure, prior to the issuance of a writ of execution, it becomes an enforcement measure after the communication of a new seizure notice to the debtor, instead of a writ of execution, as currently provided by the Fiscal procedure code.

10. Amendments regarding the jurisdiction for solving tax challenges.

- Tax challenges against decisions regarding ancillary tax obligations will be solved by the same tax authority as has jurisdiction over the challenge regarding the main fiscal obligation which generated the ancillary debt.
- The General Department for Solving Tax Challenges will have jurisdiction over tax challenges regarding fiscal obligations which amount to more than RON 1,000,000. That department currently has jurisdiction only for amount which exceed RON 5,000,000.

[Source: Government Emergency Ordinance no 84/2016 published in the Official Gazette no 977/06.12.2016, First Section]

The takeaway

The amendments provided by GEO no 84/2016 are numerous and substantial, introducing new and important rules, such as:

- Establishing the priority of differences of fiscal main and ancillary obligations, assessed by a tax decision, on the basis of its date of receipt by the taxpayer, instead of the due date of said fiscal obligations.
- Exemption of the enforcement deeds pertaining to seizure of bank accounts, from the requirements of specifying the type of fiscal obligation, its amount and the writ of execution.
- Introduction of a 30-day deadline from the receipt of the Decision imposing precautionary measures, in regards to a challenge against this deed.

Let's talk

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



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