

Amendments Brought to the Romanian Fiscal Procedure Code

Government Emergency Ordinance No. 39/2010 (“GEO no. 39/2010”) for the amendment and supplementation of Government Emergency Ordinance No. 92/2003 on the Fiscal Procedural Code was published in the Official Gazette of Romania, Part I, No. 278/28 April 2010, and will come into force on July 1, 2010 with certain exceptions which came into force on the publication date or within 10 days of the publication date.

One important amendment is that “**Default Interests and Penalties**” principle has been reintroduced in the Fiscal Procedure Code, while “**Default Increases**” will refer only to the fiscal obligations owed to local budgets.

Other principles which have been reintroduced include: “**Fiscal Receivable**” which refers to “the right to charge default interests, penalties or increases, as the case may be”, and the “**Accessory Payment Obligations**”, which includes “the obligation to pay default interests, penalties or increases, as the case may be, related to taxes, fees, contributions and other amounts owed to the general consolidated budget”.

Should the fiscal inspection bodies find that the taxpayer’s accounting records, fiscal records or statements are incorrect, false, or if such do not exist or are not made available, the inspection bodies will determine the fiscal obligation by using indirect methods for the reconstruction of income or expenses.

Tax liabilities towards local budgets

According to Article 119, as amended by GEO no. 39/2010, if the debtor fails to fulfill his payment obligations by the due date, default interest and penalties shall accrue. Exceptions from this rule are the payment obligations towards local budgets, since if the taxpayer fails to pay in due time he will be liable for default increases. The default increases are in amount of 2% applicable on the main obligation, calculated for each month or fraction of a month, starting from the day immediately following the due date and until the due amount is paid, payment day included.

Tax liabilities towards state budgets

The most important provisions on interest are as follows:

- Calculated for each day of delay, starting with the day immediately following the due date and until the due amount is paid, payment day included;

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- The exception from the rule provided herein above are the interests related to taxes, fees and contributions fulfilled by enforcement, as well as those owed by a debtor declared as insolvent and one who does not have traceable income and property;
- A separate calculation method is also set for the interest calculated for the fiscal obligations not paid on their due date, representing income tax;
- The default interest amounts to 0,05% per each day of delay and cannot be altered by annual budget laws.

As regards the default penalties, according to the newly introduced Article 120:

- They are due for failure to timely pay the main fiscal obligations and stand as a penalty for the untimely payment of such fiscal obligations;
- The level of default penalties is established as follows:
 - if the main fiscal obligation is paid within the first 30 days from the due date, no default penalties shall be owed or calculated for the main fiscal obligations settled;
 - if settled within the next 60 days, the level of default penalties is 5% of the main fiscal obligations settled;
 - if settled after 90 days from the due date, the level of default penalties is 15% of the outstanding main fiscal obligations;
- They do not relieve the obligation to pay interests.

In case insolvency proceedings are initiated, no default penalties or interests shall be owed or calculated after the opening of insolvency proceedings for fiscal receivables. In regards to fiscal receivables due before the entry into force of GEO no. 39/2010, default penalties and interest shall be due as of the coming into force of the normative act.

New Measures to Combat Tax Evasion

On 23 June 2010, the Official Gazette No. 421 published the Emergency Ordinance No. 54 ("GEO no. 54") regarding measures for combating tax evasion, which brought amendments to the Romanian Fiscal Code in order to combat tax evasion in VAT domain for Intra-Community acquisition of cereals, technical plants, vegetables, fruits, meat, sugar, flour, bread and bakery products, and settles minimum standards for registration and evidencing the taxpayers who perform Intra-Community activities. The provisions of GEO no. 54 entered into force on that same day.

The main provisions of the normative act regarding VAT are the following:

The Register of Intra-Community operators will be established from 1st August 2010 within the National Agency for Fiscal Administration (NAFA) and will contain all taxable individuals and legal entities that perform Intra-Community operations.

The Intra-Community operations, for which registration at the Register of Intra-Community operators is mandatory, include:

- Intra-Community delivery of goods in Romania, which are free of tax according to the provisions of Article 143 para. (2), letter a) and d) of the Fiscal Code;
- Subsequent delivery of goods made within a triangular operation which are declared as Intra-Community deliveries with T code, in Romania;
- Intra-Community supply of services made by taxpayers established in Romania for the benefit of taxpayers established in the Community, other than those exempted of VAT in the member state in which they are taxed;
- Intra-Community acquisitions of taxable goods that are located in Romania;
- Intra-Community acquisitions of services, made by taxpayers established in the Community for the benefit of taxpayers established in Romania.

The obligation of registration in the Register of Intra-Community operators should be fulfilled:

- On the date of requirement of registration for VAT purposes, of the taxpayers and non-taxable legal entities, if they intend to carry out one or more Intra-Community operations from the ones mentioned above;
- Before the performance of the aforementioned Intra-Community operations, by persons already registered for VAT purposes.

The application for registration in the Register of Intra-Community operators is to be submitted at the competent legal authority, along with the supporting documentation which will be settled by an order of the NAFA president. For taxpayers, the submission of the criminal record of the shareholders (individuals and legal entities as well) is mandatory, with the exception of Stock Companies and administrators.

The economic operators who intend to carry out Intra-Community acquisitions after August 1, which come under Article 158 index 2 of the Fiscal Code, must require from the fiscal tax authorities the registration in the Register of Intra-Community operators.

The entities that are not registered in the Register of Intra-Community operators will not have a valid VAT code for Intra-Community operations, even if they are registered for VAT purposes according to Article 153 and 153 index 1 of the Fiscal Code.

The performance of Intra-Community operations by entities that are not registered in the Register of Intra-Community operators shall be sanctioned with fine between 1.000 RON and 5.000 RON according to the provisions of the Fiscal Procedure Code.

Other measures that were taken by the GEO no. 54 regard the minimum excise duty for cigarettes which will be increased effective from July 1, 2010.

In addition, the reverse charge mechanism for domestic supply of goods has been introduced, which was restricted to certain products from the initial list (i.e. cereals, vegetables, fruit, meat, sugar and bread). The reverse charge mechanism for domestic supply of goods will enter into force on July 1st.

Regarding fiscal procedures, GEO no. 54 extends the measures of forced execution to third parties having joint liability with a debtor who is declared insolvent.

New Amendments Brought to the Romanian Fiscal Code by GEO no. 58/2010

The Government has managed to introduced a record number of changes to the Fiscal Code with the publication of the Emergency Ordinance no. 58/2010 ("GEO no. 58"), which radically changes the Romanian taxation system in the Official Gazette Part I, No. 431 of June 28, 2010,. GEO no. 58 will come into force on July 1, 2010.

Dependent vs. independent work activities

Any activity may be reconsidered as dependent activity if it meets at least one of the following criteria:

- a) The income beneficiary is in a relationship of subordination to the income payer, namely the governing bodies of the income payer, and follows the imposed working conditions, such as the duties, their way of fulfillment, the work program etc;
- b) In the provision of activity, the income beneficiary uses the material basis of the income payer, respectively spaces with adequate endowment, special work equipment or protection, work tools and similar;
- c) The income beneficiary contributes only with physical or intellectual ability, and not with equity;
- d) The income payer will support, in the interest of carrying out activities, the travel expenses of the income beneficiary, such as allowance for delegation-detached in the country and abroad, and also other expenses of this nature;
- e) The income payer will support the vacation allowance and the allowance for temporary work incapacity of the income beneficiary;
- f) Any other items that reflect the nature of a dependent activity.

If an activity is reclassified as a dependent activity, the **income tax and compulsory social contributions**, as established by law, **shall be recalculated and paid, being due jointly by the payer and the beneficiary of income**. In this case the rules for determining the income tax from wages made outside the basic work position are applied.

According to new regulations, individuals **who have income from independent activities will pay individual social insurance contributions, similar to those paid by any employee, but only for the amounts equivalent to five average salaries per year**.

The measure targets employers from all industries that use, for example, contracts with authorized individuals. In this situation, the individuals who derive income from independent activities will pay social contributions similar to those paid for salaries, should the work that is carried out be considered a dependent activity.

The annual net income from an independent activity based on income norms cannot be less than the 12 minimum national gross salaries.

There will be taxes imposed on the meal, gift, nursery and holiday vouchers, interest on bank deposits and compensation payments.

Moreover, compensatory payments given according to the law will be included in wages and will be taxable.

In addition, **the income obtained by resident individuals in the form of interest on deposits on sight / current accounts and customer deposits formed under the legislation of saving and credit in the collective system for housing domain, will be taxed with 16%, regardless of the date of incorporation of legal relationship.**

The income received by resident individuals as interest on deposits and / or savings instruments will be taxed at 16% rate.

Furthermore, the tax rate on income derived from transfer of securities other than social shares and securities in case of closed companies will be unified at 16%, regardless of holding period of securities and reporting of annual net loss in the next seven consecutive fiscal years.

GEO no. 58/2010 also provides for the establishment and fulfilling by taxpayers, during the fiscal year, of anticipated payments by the end of each quarter, in the account of due annual income tax.

In calculating the net gain and the tax for the transfer of securities other than social shares and securities in case of closed companies, for 2010, the following rules shall apply:

- For the period January 1st, 2010 to June 30, 2010 the net gain / net loss for this period will be determined depending on the retention period and it will be assimilated to the net annual gain / loss. The tax is determined by applying the tax rates of 1% and 16% to the net income for the respective period, assimilated to annual net gain.

The net loss related to the period January 1st, 2010 to June 30, 2010 assimilated to annual net loss will be compensated by net income assimilated to annual net gain for the period July 1st, 2010 to December 31st, 2010. If, after the compensation, loss arises, the loss will be reported only on the net gain for the taxable year 2011.

- For the period July 1st, 2010 to December 31st, 2010 the rules regarding the gain from transfer of securities others than social shares and securities for closed companies apply by assimilation of that period with the fiscal year.

GEO no. 58/2010 also includes the modification of **the anticipated tax rate for gains from sale-purchase operations of currency on a contract basis**, and also for any other such operations, from 1% to 16% for resident individuals.

A provision for **the unification of tax rate for gains from gambling to 25% is also included.**

GEO no. 58/2010 additionally includes **the modification of VAT from 19% to 24%, which will apply on the tax base for taxable operations which are not exempt from tax and which are not subject to a reduced rate.**

