

## Tax & Legal Newsletter April 2023

### 1. Amendments to the rules for payment in instalments schemes

In April, the authorities introduced the following changes and additions to the Fiscal Procedure Code regarding the application of payment in instalments schemes for tax liabilities:

**a. The classic form of payment in instalments** – according to which the taxpayers could access it are amended, as follows:

- Taxpayers who do not own assets with a view to providing securities to cover the payment of instalments, are unable to provide such securities or the amount of the securities provided is less than 50% of the outstanding tax liability subject to payment relief will only be eligible for payment in instalments schemes for a maximum period of 6 months.
- If the amount of security that can be provided by the taxpayer exceeds 50% of the amount of the outstanding tax liability subject to payment relief (but does not cover the amounts deferred, the interest due for the period of deferment plus up to 16% of the amounts deferred), then the debtor may benefit from a 5-year deferment period.
- In the above situations, the late payment penalties contained in the tax certificate are not deferred and are included in the instalments.
- In addition, the ceilings on outstanding tax liabilities eligible for payment in instalments below which no security is required are eliminated.
- Excise duties are removed from the list of tax liabilities for which this type of payment in instalments can be applied. As a result, within 30 days of communication of the deferral decision, taxpayers must pay any excise tax liabilities outstanding at that time (as these do not fall within the purview of the deferral).
- The number of requests for a modification/maintenance of a payment in instalments scheme (whose validity has expired) that can be submitted by taxpayers is reduced from two to one for each calendar year.
- By way of exception, where the debtor obtains a stay of execution of the fiscal administrative act for claims covered by the payment in instalments scheme during the period of validity of the scheme, or the fiscal administrative act is abolished or annulled during the period of validity of the payment in instalments scheme, the debtor may apply for an amendment of the payment in instalments decision whenever required.

**b. Simplified instalments**

- Tax obligations in the form of excise duties, taxes, compulsory social security contributions withheld at source and taxes relating to gambling activities are removed from the purview of the simplified instalments scheme.
- The new provisions add to the conditions for the application of the simplified instalments scheme. As a result of the reduction in tax obligations that fall within the purview of the instalment payment scheme,

## Tax & Legal Newsletter April 2023

the debtor must pay: (i) within 30 days of communication of the payment in instalments decision, all excise duties and taxes relating to gambling activities not paid up to that date; and (ii) within a maximum of 60 days of communication of the payment in instalments decision, all taxes and compulsory tax contributions outstanding at that time.

- The debtor may request to maintain the payment in instalments scheme whose validity has expired no more than once. This amendment applies to applications submitted after 6 April 2023.
- The interest charged for each day of delay on tax liabilities paid in instalments doubles to 0.2% (including for instalments currently in progress).

*Source: Government Emergency Ordinance no. 20/2023 amending and supplementing Law no. 207/2015 on the Tax Procedure Code and amending Government Ordinance no. 6/2019 on the introduction of various tax incentives.*

### 2. New VAT exemptions for medical domain

From 11 June 2023, the following types of transaction are exempt from VAT with deduction right:

- construction, rehabilitation and modernisation services for hospital units in the public state network or those owned and operated by non-profit entities registered with the public register run by the ANAF;
- supplies of medical equipment, appliances, devices, articles, accessories and protective equipment, sanitary materials and consumables normally intended for use in the field of healthcare or for use by persons with disabilities, and goods essential for coping with and overcoming disabilities other than those mentioned below, as well as the adaptation, repair, rental and leasing of such goods, made to hospital units in the public state network or those owned and operated by non-profit entities registered with the public register run by the ANAF;
- supplies of dentures and related accessories, with the exception of tax-exempt dentures (servicing and supplies of dentures carried out as part of their profession by dentists and dental technicians);
- delivery of orthopaedic products.

VAT exemption will be possible in the following forms:

- directly, by invoicing without VAT, by the suppliers of goods/service providers, if the beneficiary is a hospital unit in the state public network or, where appropriate, the central or local public institution/authority which finances it;
- by refunding VAT on purchases of goods or services made by non-profit entities according to a procedure to be published within 60 days. The refunded amounts are to be used by the non-profit entities exclusively to finance purchases of the goods and/or services mentioned above.

*Source: Law no. 88/2023 amending and supplementing Law no. 227/2015 on the Fiscal Code.*

## Tax & Legal Newsletter April 2023

### 3. The procedure for issuing the individual advance tax ruling

The Romanian tax authorities have recently published the procedure for the individual advance tax ruling. Among the main changes introduced by the new procedure, we mention the following:

- The taxpayer can request, exclusively by electronic means (i.e. VPS), a preliminary discussion before submitting the request for issuing the tax ruling; in the event that this request is submitted concurrently or after the request for issuing the tax ruling, it will no longer be taken into account by the tax authorities.
- The preliminary discussion has a role of understanding the aspects related to the tax ruling and is not equivalent to the initiation of the procedure for issuing the ruling. In addition, the comments / statements made by the tax authorities during these discussions do not constitute a commitment regarding the approval / rejection of the request for issuing the tax ruling.
- As part of the preliminary analysis, the request for issuing the advance tax ruling is not taken into account by the fiscal body in situations such as:
  - the request or documentation is not submitted by electronic means;
  - the request or documentation does not include the information required by the procedure, is not legible, includes conflicting information or does not relate to the requesting taxpayer; the request covers several tax obligations etc.
- The criteria for granting the request for tax ruling are much more restrictive. Among other things, the request for issuing the tax ruling may be rejected if: (i) the future tax situation under analysis has been the subject of a binding tax ruling request of the taxpayer or an affiliated entity, previously resolved by the authorities, (ii) the situation includes transactions that are not regulated in the Tax Code, (iii) alternative ways of carrying out the proposed transactions are presented, (iv) the information under analysis hides another factual situation (e.g. transactions without economic purpose), (v) the tax treatment applicable for the taxpayer is dependent on the tax treatment applicable to other entities / persons involved in the transaction, who have not requested the issuance of a tax ruling etc.
- The binding tax ruling is approved by order of the Minister of Finance. Subsequently, the order may be revoked if the issuing tax body becomes aware of situations such as: (i) the conditions considered when issuing the tax ruling are not respected, (ii) the persons and entities involved in the transactions described are controlled by designated persons etc.

*Source: Order no. 1178/2023 of the Minister of Finance for the approval of the Procedure regarding the issuance of individual advance tax ruling, in the form published on 30 March 2023.*

### 4. The effects of legislative amendments for construction and urban planning

New amendments introduced by Law no. 102/2023 on building permits for construction works are mainly aimed at extending the publicity formalities that must be carried out by the owner prior to commencement of construction works. Within a maximum of 30 days from the date of issue of a building permit, the holder is obliged to (i) install a sign identifying the investment in a visible place on the construction site, (ii) register, at his/her own expense, the building permit with the land register of real property and (iii) publish in a wide circulation newspaper information about the building permit, the permit number, the date of issue, the title and the description of the project.



## Tax & Legal Newsletter April 2023

Building permits can be appealed against by interested social organisations by lodging a prior complaint within 30 days of the most recently performed publicity operation, in cases where the lodging of a prior complaint is mandatory; or within 60 days, in cases where the lodging of a prior complaint is not mandatory.

It is also possible for the public and any interested social organisations to consult information about the main conditions pertaining to the execution of construction works on the premises of the authority responsible for issuing the relevant building permit. Any other documents deemed public are also made available to the interested parties.

By comparison with the previous provisions, overall, these new amendments to the law on building permits only make the procedure for carrying out construction works more difficult by placing new obligations on the holder of the building permit to make the building permit public.

### **5. The procedure for the recovery of unduly issued green certificates has been approved**

The Romanian Energy Regulatory Authority (ANRE) has approved the procedure for the recovery of green certificates issued unduly to economic operators accredited by the ANRE to apply the green certificate promotion scheme.

The ANRE is responsible for analysing supporting documents and identifying situations where a named electricity producer has unduly benefited from green certificates, either by itself monitoring the way green certificates are granted or further to complaints received from a third party.

Where applicable, the ANRE will request additional information from the transmission system operator or from the accredited producer of electricity generated from renewable energy sources, in order to establish the amount of electricity produced from renewable energy sources for which green certificates were unduly issued and the period during which this electricity was produced and delivered to the electricity grid and/or end consumers.

Upon completion of its analysis, the ANRE issues a decision establishing the number of green certificates issued unduly and the month(s), if any, for which they were issued. The decision will be issued within 30 days of the date on which the ANRE receives all the necessary documents showing that a given renewable electricity producer benefited from unduly issued green certificates, with the decision also being published on the ANRE website and communicated to both the economic operator concerned and the transmission system operator.

Under the procedure, the beneficiaries of unduly issued green certificates are also liable to pay interest on the period from the date of receipt of the unduly issued green certificates to the date of their full recovery. The ANRE has therefore succeeded in developing the necessary regulatory framework for the recovery of unduly issued green certificates, including the recovery of green certificates through their equivalent in interest payments, in order to correct its own errors.

## Tax & Legal Newsletter April 2023

*Source: Order no. 59 of 5 April 2023 approving the Procedure for the recovery of unduly issued green certificates and amending the Regulation on the issuing of green certificates, approved by Order of the President of the Romanian Energy Regulatory Authority no. 4/2015; and Law no. 102 of 13 April 2023 amending and supplementing Law no. 50/1991 on the authorisation of construction works and Law no. 554/2004 on administrative litigation, as well as supplementing Article 64 of Law no. 350/2001 on land use and urban planning.*

This newsletter is a service of TPA.

Kind regards,  
**Your TPA Team**

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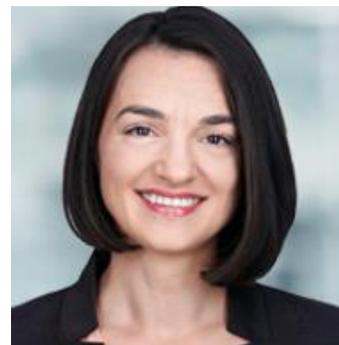
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