

2021

Amendments to the Fiscal Code and the Fiscal Procedure Code



NOA Tax Advisors

NOA Group

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Amendments to the Fiscal Code and the Fiscal Procedure Code

Amendments presented in brief:

On August 30th, 2021 Order no. 8 of August 30th, 2021 for the amendment and completion of Law no. 227/2015 on the Fiscal Code was published, amending the profit tax, income tax, mandatory social contributions, income tax obtained in Romania by non-residents, the value added tax, local taxes and fees, etc.

Also, on August 30th, 2021 Order no. 11 of August 30th, 2021 for the amendment and completion of Law no. 207/2015 on the Fiscal Procedure Code and the regulation of some fiscal measures was published, bringing amendments/ completions regarding the reimbursement of the value added tax, the payment rescheduling procedure, the standard audit file for tax, etc.





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Amendments explained in more details:

Key words:	Amendments to the Fiscal Code
<ul style="list-style-type: none">• The taxable period for foreign legal entities having the place of effective management in Romania• Dividends received from EU Member States• Limit for deducting adjustments for impairment of receivables	Corporate income tax <ul style="list-style-type: none">❖ A provision is added according to which for foreign legal entities having the place of effective management in Romania, the taxable period starts from the date of registration with the central fiscal body.❖ Dividends received from EU Member States by the Romanian legal entity / the Romanian permanent establishment of the foreign legal entity, from a subsidiary located in a Member State are non-taxable for corporate income tax computation purposes even if the Romanian legal entity/ the permanent establishment, respectively the subsidiary pay another tax that replaces the corporate income tax. A similar amendment was introduced for the application of the exemption from income tax obtained by non-residents, in case of dividends paid by a Romanian resident to a legal entity resident in another EU Member State or to a permanent establishment of a foreign legal entity of an EU Member State, located in another EU Member State.❖ The limit within which the taxpayer has the right to deduct the adjustments for the impairment of receivables is increased from 30% to 50% of their value - the provision enters into force starting with January 1st, 2022.



- Payment rescheduling in case of transfers of assets, tax residence and/ or economic activity

- Anticipated payment in case of tax reductions to improve the level of capitalization

- Payment of dividend tax

- Net income under the real system

❖ With respect to the fiscal regime of transfers of assets, fiscal residence and / or economic activity carried out through a permanent establishment, for which Romania loses the right to tax, if, when granting the payment rescheduling, there is a real and provable risk of non-recovery of the budget receivable, the taxpayer has the obligation to set-up a guarantee within maximum 10 days from the date of communication by the fiscal body of the agreement in principle. The situations in which the payment rescheduling is not granted, as well as several new cases when the payment rescheduling loses its validity are also mentioned.

❖ Taxpayers who declare and pay the annual corporate income tax, with anticipated payments and which fall under the provisions of art. I of the Government Emergency Ordinance no. 153/2020 for the establishment of fiscal measures to stimulate the maintenance / increase of equity (Ordinance establishing certain reductions on the annual corporate income tax / micro-enterprises income tax/ the activity-specific tax if the company improves its level of capitalization), shall make the anticipated payment for the first quarter of each fiscal year at the level of the amount resulting from the application of the tax rate on the accounting profit of the period for which the anticipated payment is made. This rule is applicable starting with the fiscal year 2022, until the fiscal year 2026.

Dividend tax

❖ The deadline of January 25th of the following year / the first month of the modified fiscal year for the payment of dividend tax will apply if the distributed dividends have not been paid by the end of the year in which their distribution was approved (previously, it was applied if they were not paid by the end of the year in which the annual financial statements were approved).

❖ This provision applies to dividends paid to associates/ shareholders, both legal person and individuals.

Income tax

❖ Taxpayers who obtain income from the transfer of the use of personal assets, other than the income from the lease of agricultural goods and the income from the rental of rooms, in personal property, will be able to opt for the determination of the net income in real system, based on accounting data. The option to determine the net income in real system is mandatory for the taxpayer for a period of 2 consecutive fiscal years and is



<ul style="list-style-type: none">• Revenue from the rental for tourist purposes of over 5 rooms• Revenues from renting for tourist purposes of less than 5 rooms• Income from gambling• Redirecting up to 3.5% of income tax• Obligation to compute, withhold and pay social security contributions in case of individuals who obtain in-cash and / or in-kind benefits from third parties	<p>considered renewed for a new period if the taxpayer does not request a return to the previous system.</p> <ul style="list-style-type: none">❖ Taxpayers who in a given fiscal year have derived income from renting for tourist purposes a number of over 5 rooms, in personal property, in the next fiscal year (previously specified <u>starting</u> with the next fiscal year), will determine the annual net income in real system, based on accounting data, and will have the obligation to complete the Register of tax records.❖ Taxpayers who in 2021 derived income from renting, for tourist purposes, a number of less than 5 rooms, in personal property and determined the annual net income in real system, in 2022 will determine the annual net income based on income norms.❖ The computation method of the tax due on the income obtained as a result of participation in gambling activities, characteristic of casinos, poker clubs, slot machines and lotteries, with a value higher than the non-taxable threshold of RON 66,750 is being regulated.❖ It is specified that the amounts received by non-profit entities from redirecting of up to 3.5% of the income tax of individuals shall be used for the purpose of carrying out non-profit activities.❖ At the same time, taxpayers will be able to choose to submit the request directly to the non-profit entity/ the cult unit, beneficiary of the amount, which will have the obligation to send to the competent tax authority, by electronic means of remote transmission, a form by which it centralizes the requests received from the taxpayers, until May 25th, inclusive, of the year following the one of the income realization. <p>Social security contributions</p> <ul style="list-style-type: none">❖ Is being added the provision according to which in case of individuals who obtain in-cash and / or in-kind benefits from third parties who are not Romanian tax residents, the Romanian tax resident employer or the employer who is not a Romanian tax resident and who fall under the applicable European legislation in the field of social security, as well as the agreements regarding the social security systems to which Romania is a party, may opt for the obligation to compute, withhold and pay the social insurance contribution, the social health insurance contribution and the labour insurance contribution. <p>Tax on income obtained from Romania by non-residents</p> <ul style="list-style-type: none">❖ The exemption from the income tax obtained in Romania by non-residents applicable for dividends paid by a Romanian resident to
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- Dividends exempt from the income tax obtained in Romania by non-residents

- Certificate of tax residence

- VAT exempt operations

- One-Stop-Shop

a legal entity resident in an EU Member State will also apply to dividends paid to a legal entity resident in a Member State of the European Economic Area, other than EU member states, namely Iceland, the Principality of Liechtenstein, the Kingdom of Norway, if the foreign legal entity receiving the dividends fulfils the conditions laid down by the law.

- ❖ It is specified that the tax residence certificate, accompanied by an authorized translation into Romanian, submitted by electronic means of remote transmission, to the competent central fiscal body is accepted in copy, in accordance with the original and the statement that the original or legalized copy of the certificate may be found at the income payer, at the Romanian legal entity whose securities are alienated, at the permanent establishment in Romania, respectively at the Romanian legal entity where the non-resident individual was seconded, as the case may be.

Value added tax

- ❖ A VAT exemption is introduced for imports of goods made in Romania, respectively for the supply of goods or the provision of services, by / to the European Commission or an agency or body established under European Union law, if the European Commission or such agency or body imports / purchases such goods in the execution of their tasks, in order to respond to the COVID-19 pandemic, with certain exceptions - the provision applies to imports, supplies of goods and provision of services performed as of January 1st, 2021.
- ❖ The taxable person who has the place of its economic activity outside Romania, but who is established in Romania through a fixed establishment, who is not registered nor has the obligation to register for VAT purposes, should request the registration for VAT purposes if it opts for the application of the special regime for intra-Community distance sales of goods, for domestic supplies of goods made by electronic interfaces which facilitate such supplies and for services provided by taxable persons established in the European Union but not in the Member State of consumption. Similarly, the taxable person who has the place of its economic activity in Romania, if he is not registered and is not obliged to register according to art. 316 of the Fiscal Code, may request to register under art. 317 of the Fiscal Code, if it opts for the application of the special regime mentioned above.

Local taxes and fees

- ❖ In order to determine the tax on mixed-use buildings owned by individuals, for the surface used for non-residential purposes, the



<ul style="list-style-type: none">• Tax on mixed-use buildings• The act of alienation-acquisition of means of transport• Performance tax	<p>condition that the utility expenses should not be borne by the person carrying out the economic activity was eliminated.</p> <ul style="list-style-type: none">❖ It is specified that the act of alienation-acquisition of the means of transport, concluded between persons who have their fiscal domicile in Romania, may be concluded in electronic form, signed with electronic signature, and may be communicated electronically for deregistration/ registration of the means of transport, as the case may be.❖ A completion is made according to which the tax on performances shall be computed by applying the tax rate to the amount collected from the sale of entrance tickets and season tickets, excluding VAT.
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<p>Key words:</p> <ul style="list-style-type: none">• VAT refund with subsequent tax inspection• Risk of improper repayment	<h2>Amendments to the Tax Code</h2> <h3>Refund of value added tax</h3> <ul style="list-style-type: none">❖ The measure of reimbursement, with subsequent performance of the fiscal inspection of the VAT requested for reimbursement through the returns with the negative amount of VAT with reimbursement option, submitted within the legal term of submission is being perpetuated. The measure does not apply to returns with negative amounts of VAT with option to reimburse, submitted by large and medium taxpayers, which are settled after the anticipated tax inspection, in certain specific cases (<i>the taxpayer has facts recorded in the tax record, there is a risk of undue reimbursement, the voluntary liquidation procedure has been initiated / the insolvency procedure has been opened</i>).❖ Also, it does not apply to returns with negative amounts of VAT with reimbursement option, submitted by other taxpayers/payers, in the cases applicable to large and medium taxpayers, but also in other cases (<i>first return with negative amounts of VAT with reimbursement option submitted after registration for VAT purposes, the balance of the negative amount of VAT claimed for reimbursement comes from a number of periods greater than the number of reporting periods in a 12-month period</i>).❖ The situations in which the taxable persons are considered to present a risk of undue reimbursement of VAT are being regulated.❖ The threshold of RON 45,000 for the VAT refund with the subsequent performance of the fiscal inspection is eliminated.
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- Payment rescheduling

- Payment rescheduling in simplified form

- Submission of the standard audit file for tax

- Access to the electronic version of the standard fiscal control file

- ❖ The provisions are applicable starting with February 1st, 2022.

Rules on the payment rescheduling procedure

- ❖ It is specified that the payment rescheduling is not granted for tax obligations that represent state aid granted from state sources or resources or managed by the state, as well as European funds or national public funds related to European funds.
- ❖ Special rules are introduced regarding the payment rescheduling of the tax calculated according to art. 40^{^3} of the Fiscal Code, respectively according to the fiscal regime of the transfers of assets, fiscal residence and/ or economic activity carried out through a permanent establishment for which Romania loses the right to tax.
- ❖ The measure regarding the payment rescheduling in a simplified form is perpetuated, for the tax obligations administered by the central fiscal body, which can be applied for the main tax and accessory obligations which are outstanding for a maximum 12 months prior to the application date and are unpaid until issuance of the fiscal confirmation certificate. In the simplified procedure, the payment rescheduling may be granted for a maximum period of 12 months.
- ❖ The provisions are applicable starting with October 1st, 2021.

Provisions regarding the standard audit file for tax

- ❖ The obligation to submit the standard audit file for tax is introduced and regulated.
- ❖ The definition of “*informative statement*” is completed to also include the standard audit file for tax - applicable starting with January 1st, 2022.
- ❖ Upon request of the interested persons, within the administrative and judicial means of appeal, the fiscal body has the obligation to provide a copy or a link to ensure access to the electronic version of the standard audit file for tax.
- ❖ It is specified that, for the purpose of performing the fiscal inspection, the fiscal body can verify the concordance between the data from the fiscal declarations with those from the accounting and fiscal records of the taxpayer / payer, including from the standard audit file for tax.
- ❖ Contraventions are introduced for violating the provisions on the standard audit file for tax as follows:



- Contraventions in the case of the standard audit file for tax

- **the non-submission** within the legal terms will be sanctioned with a fine ranging from RON 1,000 to RON 5,000,
- **the incorrect or incomplete deposit** is sanctioned with a fine ranging from RON 500 to RON 1,500.

❖ The persons who are correcting the standard audit file for tax until the legal term for submitting the next file, as well as the persons who, after the legal term for submission, correct the declarations as a result of a fact not imputable to the taxable person, will not be sanctioned.

❖ The provisions are applicable starting with January 1st, 2022.

Other amendments

❖ It is mentioned that the payers / taxpayers legal persons, associations and other entities without legal personality, as well as individuals who carry out a liberal profession or exercise an economic activity independently are obliged to transmit to the central fiscal body documents such as applications, notes or any other documents, by electronic means of remote transmission, respectively by enrolment in the electronic communication system developed by the Ministry of Finance / NAFA. The requests, notes or any other documents that are submitted to the central fiscal body in paper format will not be taken into consideration, and the latter will notify taxpayers / payers on the obligation to communicate by electronic means of remote transmission. The provisions shall apply from March 1st, 2022.

❖ The tax return may be submitted or corrected after the subsequent verification reservation was cancelled also when, by final court decisions, obligations are assessed on behalf of the payer, representing the payment of amounts or acceptance of expenses that generate changes in the taxable basis and fiscal obligations related to periods for which the reservation of subsequent verification was cancelled.

❖ The remake of the fiscal inspection will be able to be carried out by the same inspection team that concluded the cancelled act if, for objective reasons, there is no possibility for the remake of the fiscal inspection to be carried out by another inspection team.

❖ Amendments are made regarding the situation in which precautionary measures have been instituted and the criminal investigation bodies have been notified, in which case the precautionary measures remain valid for 3 months from the date of the criminal notification.

- Enrolment in the electronic communication system

- Correction of the tax return after the cancellation of the subsequent verification reservation

- Remaking the tax inspection

- Precautionary measures



<ul style="list-style-type: none">• Execution of the guarantee	<ul style="list-style-type: none">❖ For the situation in which, based on a letter of guarantee/ guarantee insurance policies, it was ordered the suspension or non-commencement of the enforcement of the fiscal obligations established by fiscal administrative acts that are subject to an appeal, and the appeal or administrative contentious action is rejected, the term in which the fiscal body executes the guarantee is modified.
<ul style="list-style-type: none">• Correction of errors in payment documents	<ul style="list-style-type: none">❖ Additions are made regarding the correction of errors in the payment documents, in case the tax obligation is administered by a different tax body.
<ul style="list-style-type: none">• Cancellation of interest, penalties and accessories	<ul style="list-style-type: none">❖ The measure of cancellation of interest, penalties and all accessories has been introduced, for the main budgetary obligations administered by the central fiscal body with due date prior to March 31st. 2020 inclusive and individualized in tax assessment decisions issued as a result of:<ul style="list-style-type: none">▪ a fiscal inspection or verification of the personal fiscal situation started <u>after the date of entry into force of the Emergency Ordinance no. 69/2020</u> (i.e., May 14, 2020) and concluded <u>until the date of entry into force of the Emergency Ordinance no. 19/2021</u> (i.e. March 29, 2021), respectively▪ a documentary verification and for which the tax assessment decision was communicated <u>after the date of entry into force of the Emergency Ordinance no. 69/2020</u> (i.e., May 14, 2020), but no later than January 31, 2022.
<ul style="list-style-type: none">• Restricted / closed activity during the state of emergency / alert	<ul style="list-style-type: none">❖ For debtors whose activity is restricted / closed during the state of emergency / alert and who benefit from payment rescheduling, the conditions for maintaining their validity are suspended, upon request, until the date on which the activity is resumed. For late payment of instalments in the rescheduling charts, no interest and penalties are computed and due.
<ul style="list-style-type: none">• Payment facilities	<ul style="list-style-type: none">❖ In case of debtors requesting payment facilities subsequent to the loss of the validity of the payment rescheduling granted according to the Government Emergency Ordinance no. 181/2020 (i.e. simplified rescheduling for budgetary obligations due after the date of declaration of the state of emergency) for the main fiscal obligations and / or ancillary fiscal obligations remaining to be paid from the rescheduling, the penalty due according to Government Emergency Ordinance no. 181/2020 (i.e. the penalty of 5% applicable as a result of the loss of the validity of the payment rescheduling) is cancelled.



How we may help you:

The NOA Tax Advisors team supports companies by providing advice and guidance in various cases regarding the new legislative changes as mentioned above, as well as in all situations encountered from a tax point of view.

The NOA Tax Advisors team is at your disposal for more details regarding those presented in this legislative news summary.

Best regards,
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"It's not just about the nicely packed advices, we've added the practical, the tailored and the client experience."