



## SEQUEL OF SUPPORTING MEASURES ADOPTED FOR THE BUSINESS ENVIRONMENT

### 1. General context

Since the beginning of the COVID-19 pandemic, the Romanian authorities enacted several tax measures in order to prevent the business environment from collapsing. By way of example, some of the already implemented measures are the following: (i) recalculation of the specific annual tax in order to reduce the impact on cash flow; (ii) granted tax benefits to certain categories of employees; (iii) extension of the deadlines for submitting the annual financial statements, etc.

Nowadays, in order to protect the business environment and the economic system, with a focus on small medium businesses that may be threatened by the occurrence of insolvency proceedings, Romania enacted Government Emergency Ordinance no. 90/2020 for the amendment of Government Emergency Ordinance no. 6/2019 regarding the establishment of certain fiscal facilities, as well as for the modification of other enactments (“GEO 90/2020”).

GEO 90/2020 focuses on addressing the potential economic blockage caused by Romania’s decision to suspend certain activities so that the spread of COVID-19 could be slowed down. In this regard, the provisions of GEO 90/2020 that are of significant matter are as follows:

- (i) the possibility for certain debtors to restructure their budgetary obligations in order to avoid unwanted insolvency proceedings;
- (ii) the extension of certain measures in order to protect debtors from the payment of any interest and late payment related penalties, as well as from burdensome enforcement measures.

As such, we will further provide a detailed presentation of the noteworthy provisions established by GEO 90/2020.

## 2. Factual background

In 2019, the Romanian Government issued the Ordinance no. 6/2019 regarding the establishment of certain tax facilities (“GO 6/2019”), which particularly aimed at avoiding to open the insolvency procedure with regard to debtors who are in financial difficulty and for which there is a risk of insolvency.

GO 6/2019 allowed debtors with outstanding budgetary obligations of at least approximately EUR 207.000, which were due until December 31, 2018, to file a restructuring request that would enable them to take some measures consisting of extension of payment terms, staggering payment, debt to equity swap, etc.

The budgetary obligations referred to above comprise the obligations to pay any amount that corresponds to the general consolidated budget (i.e. profit, turnover or income taxes, social security and social health insurance contributions etc.) and for which tax imposition decisions were issued.

In order to benefit from the restructuring measures, the procedure required taxpayers to submit a notification to the relevant tax authorities by March 31, 2020, informing them about their intention to ask for restructuring.

Based on this notification, the debtors are to receive a fiscal certificate which will allow them to contract an independent expert for (i) drawing up the restructuring plan (containing information on the financial status of the debtor and the restructuring measures proposed) and (ii) conducting the test of the prudent private creditor (proving that the Romanian State would obtain a higher degree of debt recovery in the restructuring alternative compared with both the forced execution scenario and the opening of the bankruptcy procedure scenario).

Consequently, taxpayers were also required to submit a formal restructuring request, encompassing the restructuring plan and the test of the prudent private creditor, by July 31, 2020.

Following the situation caused by the COVID-19 outbreak, the Romanian Government issued the Government Emergency Ordinance no. 29/2020 regarding certain economic, fiscal and budgetary measures (“GEO 29/2020”).

The provisions of GEO 29/2020 amended, inter alia, GO 6/2019, with view to ensuring that taxpayers challenged by the envisaged economical context would benefit from these restructuring measures as well. As such, the submission of both the notification and the formal request was provided with extended deadlines, namely July 31, 2020 and October 30, 2020.

On the other hand, GEO 29/2020 also introduced other supporting measures that suspended, during the state of emergency, the accrual of interest and penalties for certain payment obligations, as well as certain enforcement procedures.

Subsequently, the Government enacted GEO 90/2020, which introduced a complementary set of measures, aimed at extending the facilities set out in GO 6/2019 and GEO 29/2020, as further detailed in the below sections 3 and 4, respectively.

### **3. Facilities related to debt restructuring**

Following the measures adopted through GEO 29/2020, the Romanian Government noticed that by May 18, 2020, 441 notifications were submitted, of which only 10% materialized in formal restructuring requests.

The budgetary obligations notified by these taxpayers amount approximately EUR 1.4 billion, of which approximately EUR 0.9 billion are main budgetary obligations and approximately EUR 0.5 billion are accessories.

Considering these large outstanding amounts, as well as the financial difficulties brought by the COVID-19 outbreak, the Romanian Government decided to extend the scope of the restructuring measures.

Consequently, courtesy of GEO 90/2020, the budgetary obligations declared by the debtor or established by the relevant fiscal body by decision after April 1, 2020, but related to the fiscal periods up to March 31, 2020, irrespective of whether they meet the RON 1 million threshold, are also considered.

Moreover, the new legal deadline for notifying the intention to benefit from the restructuring measures is September 30, 2020. Taxpayers who have already submitted the notification by May 29, 2020, should have been provided ex officio with a new fiscal certificate within 10 days from this date.

Subsequently, both the restructuring plan and the test of the prudent private creditor must be submitted along with a formal restructuration request, which is to be filed by December 15, 2020.

It is important to note that taxpayers whose restructuration request was pending settlement by the time GEO 90/2020 has entered into force, had the option to submit a new one and restore the restructuring plan with the budgetary obligations outstanding as of March 31, 2020. This option should have been addressed to the competent fiscal body by way of a formal request until June 9, 2020.

### **4. Maintenance of suspension measures**

The Romanian Fiscal Procedure Code provides, as a matter of principle, that interest and late payment penalties accrue on fiscal obligations that are not paid by their due date.

Moreover, certain enforcement measures are also applicable for outstanding budgetary obligations.

Nevertheless, as a support measure, GEO 90/2020 maintained the suspension of these general provisions, that was firstly introduced by GEO 29/2020, uttering that any fiscal obligations (i.e., taxes, contributions and other amounts that constitute revenues of the general consolidated budget) due from the date of entry into force of GEO 29/2020 and not paid until June 25, 2020, are not considered outstanding and no late payment interest and penalties shall accrue thereon.

However, all such obligations become due on the first working day after the expiration of this term.

Furthermore, enforcement measures taken by way of garnishment of budgetary debts are also suspended until June 25, 2020, or shall not be commenced before this date, provided that they do not concern criminal matters.

The suspension of garnishment over amounts representing income and liquid assets is to be applied by the credit institutions or the garnishee by law, no other documents or formalities from the fiscal authorities being required.

## **5. Closing remarks**

As the supporting tax measures prolonged by way of GEO 90/2020 were very welcome at the time of their issuance, this extension was certainly expected by the business environment, which is still facing economic difficulties caused by the COVID-19 pandemic.

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