

RESTRUCTURING OF THE BUDGETARY OBLIGATIONS FOR ECONOMIC ENTITIES

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***Abstract:** Fiscal facilities concern: measures to restructure the outstanding budgetary obligations as of December 31, 2018 for debtors with debts greater than or equal to one million lei, based on a restructuring plan, staggered payment and fiscal supervision during the easing period; the cancellation of the accessories (increases and penalties) in the case of debts under one million lei, if the main budgetary obligations are paid by December 15, 2019. The potential beneficiaries are required to submit a notification regarding the intention to restructure the budgetary obligations until October 31, 2019. The date of submission of the notification of the restructuring intention is suspended the forced execution by the fiscal body. Debtors who request the cancellation of accessory budgetary obligations submit a notification to the fiscal body's register, by post or through the service „Virtual private space”. The central fiscal body analyzes the fulfillment of the declarative obligations according to the fiscal vector, the extinguishing, compensations, in order to establish with certainty the budgetary obligations that constitute a condition for granting the fiscal facility. The debtor must submit the application for cancellation of the accessories in due time. Otherwise, the tax authorities issue and communicate to the debtor, the decision to lose the validity of the postponement of payment of the accessory payment obligations.*

***Keywords:** facilities; reorganization; accessory; obligations; enforcement; restructuring plan*

1. Introduction

In order to make the mechanisms of recovery of the budgetary obligations more efficient to the debtors who have accumulated, over time, budgetary obligations and have not been able to pay them and taking into account that these debtors could not access the payment scheduling of the budgetary obligations due to the fact that is in a financial difficulty that cannot be considered temporary, the Government has regulated by the Government Ordinance no. 6/2019 two alternative mechanisms to the procedure for granting the payment installment provided by the Fiscal Procedure Code, as follows:

- a. measures to restructure the outstanding budgetary obligations as at December 31, 2018 for debtors with debts equal to or greater than the amount of one million lei, based on a restructuring plan, staggered payment and fiscal supervision during the easing period.
- b. cancellation of obligations, accessories.

2. Restructuring measures of budgetary obligations

Only taxpayers who have debts greater than or equal to one million lei can benefit from the regulated restructuring measures, representing legal persons of public or private law, without any discrimination, respectively both legal entities of private law freely constituted in one of the forms provided by law as well as the legal persons of public law established by law or by acts of central and local public administration authorities or by other means provided by law. Public institutions do not fall under the provisions regarding the restructuring of budgetary obligations.

The restructuring measures cover all the main budgetary obligations registered in the fiscal certification certificate, outstanding as of December 31, 2018 and not paid until the date of issuing the fiscal certification certificate. The restructuring also covers the budgetary obligations established by bodies other than the fiscal bodies, sent for recovery to the fiscal bodies after January 1, 2019, as well as fines of any kind, regardless of whether those obligations have the payment term before or after January 1 2019.

The following are not subject to restructuring:

- a. budgetary obligations that, at the date of issuing the certificate of fiscal certification, fall under the scope of art. 167 of Law no. 207/2015 regarding the Fiscal Procedure Code, with subsequent amendments and completions, hereinafter referred to as the Fiscal Procedure Code, within the limit of the amount to be reimbursed / to be returned / paid from the budget;
- b. the budgetary obligations established by administrative acts that, at the date of issuing the certificate of fiscal certification, are suspended under the conditions of art. 14 or 15 of the Law of the administrative contentious no. 554/2004, as subsequently amended and supplemented. If the suspension of the execution of the administrative act ceases after the date of approval of the restructuring plan and the communication of the decision to facilitate payment, the debtor may request the inclusion in the payment facilitation of the budgetary obligations that were the object of the suspension or taking other measures to restructure the budgetary obligations. For this purpose, the competent fiscal body communicates to the debtor a payment notification regarding the individualized budgetary obligations in administrative acts for which the execution suspension has ceased, as well as the decisions regarding the related accessory obligations;
- c. the main budgetary obligations and accessories representing state aid to be recovered.

In order to benefit from the restructuring of the budgetary obligations, the debtor must cumulatively fulfill the following conditions:

- not to fulfill the conditions to benefit from the payment installment regulated by the Fiscal Procedure Code;
- to present a restructuring plan and a prudent private creditor test, drawn up by an independent expert;
- not to be in the insolvency procedure according to Law no. 85/2014 regarding insolvency prevention and insolvency procedures, as subsequently amended and supplemented, or according to Law no. 85/2006), as subsequently amended and supplemented;
- not been dissolved, according to the legal provisions in force;
- have all the tax declarations filed, according to the fiscal vector. This condition must be fulfilled on the date of issuing the tax certificate;
- to perform the prudent private creditor test.

The prudent private creditor test represents an analysis based on the assumptions envisaged in the debtor's restructuring plan, which shows that the state behaves similar to a sufficiently prudent and diligent private creditor, which would achieve a higher degree of recovery. of the claims in the restructuring version as compared to the forced execution version or the opening of the bankruptcy procedure.

The restructuring plan must include the following:

- presenting the causes and the extent of the financial difficulties of the debtor, as well as the measures taken by the debtor to overcome them;
- the patrimonial situation of the debtor;
- information regarding the causes for which the debtor cannot benefit from the payment staggering according to the Fiscal Procedure Code;
- the measures for restructuring the debtor and the ways by which the debtor understands to overcome the financial difficulty, with clear terms of implementation, the measures for restructuring the budgetary obligations, as well as the presentation of the relevant economic-financial indicators that demonstrate the restoration of the debtor's viability.

The measures for restructuring the budgetary obligations that can be proposed through the restructuring plan are the following:

- facilities to pay the budgetary obligations;
- the conversion into shares of the main budgetary obligations, under the conditions regulated in art. 264 of the Fiscal Procedure Code;

- extinguishing the main budgetary obligations by giving payment of some immovable property of the debtor, according to the provisions of art. 263 of the Fiscal Procedure Code;
- the cancellation of some main budgetary obligations in the proportion of maximum 30%, 40% or 50%, as the case may be, of their total and which cannot have as main budgetary obligations and accessories representing state aid to be recovered.

Debtors wishing to restructure their budgetary obligations have the obligation to notify the fiscal body of their intention until October 31, 2019, subject to the sanction of the decrease of the right to benefit from the restructuring of the budgetary obligations.

At the same time, conditions are set for the payment of the outstanding budgetary obligations, both up to the date of submission of the restructuring request and for the first year of facilities, its second and from the third year of the facility until completion.

In addition, the debtors who included in the restructuring plan the cancellation measure must also carry out:

- payment by the date of submission of the restructuring request of 5% of the amount of the budgetary obligations that are the object of payment easing if the debtors included in the restructuring plan and the cancellation measure of maximum 30% of the total of the main budgetary obligations.
- payment by the date of the submission of the restructuring request of 10% of the amount of the budgetary obligations that are the object of payment easing if the debtors have included in the restructuring plan and the cancellation measure of maximum 40% of the total of the main budgetary obligations.
- payment by the date of the submission of the restructuring request of 15% of the amount of the budgetary obligations that are the object of payment easing if the debtors included in the restructuring plan and the cancellation measure of maximum 50% of the total of the main budgetary obligations.

The request for restructuring, together with the restructuring plan and the test of the prudent private creditor, can be submitted to ANAF within 6 months from the entry into force of the ordinance. In case the fiscal body ascertains the fulfillment of all conditions, it issues the decision approving the restructuring of the budgetary obligations.

During the period of the restructuring plan, the independent expert will monitor the implementation of the measures included in the restructuring plan, and the fiscal body establishes a debtor's supervision regime regarding the compliance with the provisions of the restructuring plan, as well as the measures for restructuring the budget obligations. In this respect, the head of the competent fiscal body shall appoint one or more persons for the purpose of carrying out the supervision. The independent expert has the obligation to periodically prepare a report on the state of implementation of the measures that he transmits to the debtor and the fiscal body.

During the period of the restructuring plan, it may be modified at the initiative of the debtor, if it finds before the deadlines that the measures included in the plan, including the measures for restructuring the budgetary obligations, except for payment facilities, cannot be implemented, for reasons objectives, within the established deadlines.

In case of presenting an adjusted restructuring plan, the debtor must update the prudent private creditor test. If the fiscal body accepts the adjusted restructuring plan, according to the result of the new test, the fiscal body adjusts the budgetary obligations stipulated in the previously issued decisions. During the period of the restructuring plan, the forced execution procedure does not start or is suspended, from the date of the submission of the request for restructuring the budgetary obligations.

The accessories and payment obligations are not due and calculated from the date of approval of the restructuring plan.

In the event that the debtor's restructuring measures, as well as the measures for restructuring the budgetary obligations, have been completed, the restructuring plan is considered

finalized, and the interests, penalties and all accessories due by the debtor, postponed to payment, as well as the main budgetary obligations postponed upon payment, it is canceled by a decision communicated to the debtor at the same time as the decision to finalize the restructuring plan.

If the debtor does not comply with the measures set out in the restructuring plan it fails.

The fiscal body has the obligation to request the opening of the insolvency procedure, according to Law no.85 / 2014 on insolvency prevention and insolvency procedures, in the following situations:

- in case the debtor does not submit the request for restructuring the budgetary obligations within 6 months and fulfills the conditions provided by Law no. 85/2014 for the opening of the insolvency procedure;
- in case the competent fiscal body rejects the restructuring request and the principle agreement is not issued and the debtor does not pay the budgetary obligations within 90 days from the date of notification of the rejection decision and fulfills the conditions provided by Law no. 85/2014 for opening the insolvency procedure but not earlier than the deadline for submitting the restructuring request provided in the normative act;
- in case the restructuring plan fails and the debtor does not pay the budgetary obligations within 90 days from the date of communication of the decision establishing the loss of validity of the payment facility and fulfills the conditions provided by Law no. 85/2014 for the opening of the insolvency procedure but not earlier than the deadline for submitting the restructuring request provided in the normative act.

3. Cancellation of accessories obligations

The condition for the cancellation of the accessories in case of debts under one million lei is that the main budgetary obligations will be paid by December 15, 2019.

The debtors category also includes the following:

- debtors declared insolvent, according to the law;
- the persons to whom the joint and several liability was established according to Law no. 207/2015 regarding the Fiscal Procedure Code, with the subsequent amendments and completions, or the liability according to Law no. 85/2014 regarding insolvency prevention and insolvency procedures, as subsequently amended and supplemented, or according to Law no. 85/2006 regarding the insolvency procedure, with the subsequent amendments and completions, for the budgetary obligations related to the period prior to December 31, 2018 including, regardless of the date of issuing the decision to attract liability or to remain final of the decision to attract liability;
- the debtors in the insolvency procedure or in the dissolution, according to the legal provisions in force;
- the debtors who, as of December 31, 2018, include only payment obligations, unfinished accessories related to the main budgetary obligations extinguished up to this date, and the accessories were not extinguished until the date of entry into force of the Government Ordinance no. 6/2019 regarding the establishment of some fiscal facilities, hereinafter referred to as the ordinance, respectively until August 8, 2019;
- the debtors to whom the tax decisions were communicated related to some main budgetary obligations due until December 31, 2018 including, as a result of a tax inspection in progress on August 8, 2019, regardless of the amount of the main budgetary obligations and the date communication of the tax decision.

The fiscal facilities are granted by the central fiscal body. By way of exception, in the case of enforceable securities transmitted to the central tax body for the purpose of recovering for which the accessory calculation is performed by the authorities / institutions that transmitted the respective titles, the fiscal facilities are granted by these authorities / institutions.

Debtors express their intention to benefit from the cancellation of ancillary payment obligations by filing a notification, as follows:

- at the registry of the competent central fiscal body;
- by post, with recommended letter with acknowledgment of receipt;
- through the service "Virtual private space".

The cancellation of the accessory payment obligations is requested by the debtors, including those who notified the fiscal body, based on a request for the cancellation of the accessories, submitted to the registry of the competent central fiscal body, communicated by post, with a recommended letter with acknowledgment of receipt or transmitted through the service "Virtual private space".

The application may be submitted after the conditions for granting the cancellation have been met, but not later than December 16, 2019 inclusive.

In the case of enforceable securities issued by other public authorities / institutions and sent to the fiscal body for recovery, the central fiscal body notifies the public authorities / institutions that have the competence, according to the law, to calculate and establish ancillary budgetary obligations, regarding the application for cancellation filed by the debtor, in order to grant the cancellation of payment of the accessory budgetary obligations or to reject the request, as the case may be.

4. Conclusions

The borrowers can benefit from this facility:

- legal persons, natural persons or entities without legal personality that as of December 31, 2018 including have outstanding budgetary obligations administered by the central fiscal body under one million lei;
- natural persons or entities without legal personality, administrative-territorial units or administrative-territorial subdivisions of the municipality of Bucharest or public institutions that have outstanding budgetary obligations on December 31, 2018 of one million lei or greater. For the debtors who have debts under one million lei, the following facilities were regulated:
- cancellation of all accessories related to the main budgetary obligations due to the general consolidated budget, outstanding at December 31, 2018, administered by ANAF, with the following conditions:
 - the extinction until December 15, 2019 of the main budgetary obligations outstanding at December 31, 2018
 - extinguishing until the date of the application for cancellation of the accessories, the main budgetary obligations and the accessories administered by the central fiscal body with payment terms between January 1, 2019 and December 15, 2019;
 - filing by the date of registration of the request for cancellation of the accessories, of all the tax declarations, according to the fiscal vector;
 - submission, until December 15, 2019, of the request for cancellation of the accessories.
- cancellation of all the accessories related to the main budgetary obligations, declared additionally by the debtor by means of an amending declaration, with a maturity prior to December 31, 2018, administered by ANAF, with the following conditions:
 - the amending statement to be submitted by December 15, 2019;
 - the individual obligation in the amending declaration is extinguished on the same date;
 - extinguishing up to the date of submission of the request for cancellation of the accessories of the main budgetary obligations and accessories administered by the central fiscal body with payment terms between January 1, 2019 and December 15,

- 2019;
- the filing of all tax declarations, according to the fiscal vector, until the date of registration of the cancellation request;
 - submission of the application for cancellation of accessories by December 15, 2019.
- cancellation of all accessories, related to the main obligations with payment terms prior to December 31, 2018 and extinguished up to this date, with the following conditions:
- the main budgetary obligations were extinguished until December 31, 2019;
 - the accessories related to the aforementioned obligations are due and not due on December 31, 2018:
 - extinguishing until the submission of the request for cancellation of the accessories of the main budgetary obligations and accessories administered by the central fiscal body with payment terms between January 1, 2019 and December 15, 2019;
 - filing by the date of registration of the request for cancellation of the accessories, of all the tax declarations, according to the fiscal vector;
 - submission of the application for cancellation of the accessories. Until December 15, 2019.
- cancellation of all accessories, related to the main budgetary obligations with payment deadlines until December 31, 2018, established by the tax decision issued by the fiscal inspection within ANAF, which is in progress at the date of entry into force of the ordinance, with the following conditions:
- the differences of main obligations to be paid within the payment term established by the taxation decision;
 - the request for the cancellation of the accessories must be submitted within 90 days from the date of communication of the tax decision.

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