

PAYMENT INSTALLMENT - SOLUTION FOR THE TEMPORARY LIABILITY OF MONEY

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Abstract: *The payment installment is an agreement between the debtor taxpayer and the tax authorities establishing that the amounts owed are to be paid within a period between 6 and 60 months, with monthly installments. The purpose of the staggering is to help the entities that are in financial difficulty to overcome this moment and to continue their activity. Also, the fiscal body collects debts from the taxpayer, monthly, without any other expenses. The debtor benefits from the payment exemption of the delay penalties if the scheduling schedule is respected. The delay increases are paid, monthly being included in the installment rates. In order to benefit from staggering the debtor constitutes guarantees in the form of money means, insurance seizure on the goods or gas contract or mortgage in favor of the fiscal body. The main condition for maintaining the validity of the payment installment is the declaration and payment of the tax obligations with payment terms starting with the date of the communication of the staggering decision, except in the case in which the payment scheduling is requested. During the period for which they were granted payment installments, interest is currently due of 0.02% for each day of delay.*

Keywords: *staggering, graph, installments, increases, penalties, guarantee*

1. INTRODUCTION

The taxpayers, natural and legal persons of public or private law, regardless of the way they are organized, can benefit from the payment scheduling of the fiscal obligations administered by the National Agency for Fiscal Administration.

The object of the staggering is represented by the fiscal obligations registered in the certificate of attestation that are administered by the National Agency for Fiscal Administration. There are also minimum value limits, for beneficiaries, respectively 500 lei for natural persons and 5,000 lei for legal persons.

2. THE PROCEDURE CONCERNING THE PAYMENT OF INSTALLMENT SCHEDULE

In order to grant the payment requesting entity the requesting entity, it must meet the following conditions:

- all declarative obligations are fulfilled;
- have the financial capacity to pay during the staggering period;
- to constitute the guarantee in the case of bonds over 20,000 lei;
- not to be in insolvency or dissolution proceedings;
- the liability according to the insolvency laws and / or the joint liability according to the Fiscal Procedure Code is not established.

In order to grant a payment installment, the taxpayer submits an application for payment of the staggered tax obligations.

The application will include the following elements:

- the identification data of the applicant;
- the period for which the payment deadline is requested, expressed in months, and its motivation;
- the total amount for which payment scheduling / deferral is requested;
- justification of the state of difficulty generated by the temporary lack of money availability and its causes;

- mentions regarding the payment facilities granted until the date of the application submission, based on the normative acts regarding payment facilities;
- references to the property.

Also, a declaration is made on the debtor's own responsibility, stating that it is not subject to insolvency law, that it is not dissolved and that he has not been held liable under insolvency law or joint and several liability under the Code of Procedure tax.

Debtors, legal entities, also submit the following documents:

- copy of the last financial statement if the annual financial statements have not been submitted to the competent fiscal body;
- the situation of the receipts and payments for the last 6 months prior to the submission of the application for granting payment installments of the fiscal obligations;
- copy of the last verification balance;
- the program of restructuring or financial recovery signed by the legal representative, which will also contain the argumentation of the possibility of payments during the requested period during the staggering;
- situation regarding indicative indicators and other information.

Individuals also submit:

- the inventory-register of receipts and payments or documents resulting from the revenues for the last 6 months prior to the date of submission of the application;
- the financial recovery program which will also contain the argumentation of the mobility of the payments during the requested period during the phasing.

The request is analyzed and solved within 60 days or 15 days, in case the debtor does not own property. Also, for borrowers with low tax risk, this term is 15 working days.

Payment facilities that can be granted by the competent fiscal body:

- payment scheduling of tax obligations;
- the postponement of payment of all the delay penalties, included in the certificate of fiscal attestation, in order to cancel them at the end of the staggering, even if the main fiscal obligation has been extinguished;
- the postponement of payment of the non-declaration penalties related to the main tax obligations not declared or incorrectly declared and established by the tax inspection body through taxation decisions, staggered to payment, in order to reduce by 75% until the payment scheduling is completed.

In order to solve the request for granting the payment deadlines for the tax obligations and for establishing the amounts that will be subject to them, the competent fiscal body issues the fiscal attestation certificate ex officio.

According to the Fiscal Procedure Code, depending on the patrimonial status of the debtor and the level of payment obligations, we distinguish the following situations:

- legal entities with fiscal obligations of up to 20,000 lei:
 - are exempted from the establishment of guarantees;
 - the staggering period - at most 5 years;
 - benefit from the delay in payment of the delay penalties, in order to cancel.
- legal entities with fiscal obligations in an amount greater than or equal to 20,000 lei:
 - they constitute guarantees;
 - the staggering period - at most 5 years;
 - benefit from the delay in payment of the delay penalties, in order to cancel.
- debtors who do not own property:
 - do not constitute guarantees;
 - staggering period - at most 6 months (regardless of the amount of tax obligations);
 - delay penalties - they are not deferred to payment but are included in the staggering, so they cannot be canceled.

- debtors who own property, but are insufficient to constitute the guarantees provided by law:
 - constitute guarantees for the value of the assets held;
 - staggering period - no more than 5 years (regardless of the amount of tax obligations);
 - delay penalties - do not defer payment and are included in the installment, so they cannot be canceled.
- debtors who, although they have assets in their assets, cannot make guarantees as they are pledged and / or mortgaged in full in favor of other creditors and do not bring any guarantees made in their favor by a third party:
 - staggering period - at most 6 months (regardless of the amount of tax obligations);
 - late fees - do not defer payment and are included in the installment, so they cannot be canceled.
- taxpayers with low tax risk:
 - they constitute guarantees in a percentage of 20% of the value of the guarantees established as a general rule;
 - the staggering period is no more than 12 months;
 - benefit from the deferred payment of late payment penalties, as well as a 50% interest rate, in order to cancel until the payment deadline is completed.

The request for granting the installment shall be settled within 60 days.

After issuing the fiscal attestation certificate, if the conditions for granting the payment installment are fulfilled, the fiscal body issues the principle agreement that is communicated to the debtor. It contains the staggering period, the date until which the guarantee is valid as well as its amount, the staggered payments, the deferred payments, as well as the interest due during the staggering period.

The debtor must provide a guarantee no later than 30 days from the communication of the agreement of principle. The natural persons with fiscal obligations less than 5,000 lei and the legal persons for amounts less than 20,000 lei are not guaranteed.

The following may be used for the establishment of guarantees:

- money means recorded at the disposal of the fiscal body, at the State Treasury;
- letter of bank guarantee;
- insurance seizure on the property owned by the taxpayer;
- contract of pledge or mortgage in favor of the fiscal body for goods owned by a third person.

They do not have the obligation to establish guarantees: public institutions, public authorities or services, public law units and institutions regarding technological research and development, state higher education institutions.

The amount of the guarantees must cover the staggered amounts for payment, the interest calculated during the staggering period and a percentage between 4% -16% of the staggered amount depending on the period granted.

The goods offered as collateral must not have the normal expiration time or otherwise be re-evaluated. The valuation of the goods is done by an independent evaluator.

3. MAINTAINING THE PAYMENT SCHEDULE

In order to maintain the staggering, certain conditions must be met:

- to declare and pay the fiscal obligations with payment terms starting with the date of the communication of the payment decision for payment, except in the case in which the payment schedule is requested.

The payment deadline is valid and if these obligations are declared and paid until the 25th of the month following the deadline provided by law.

➤ to fulfill the fiscal obligations established by the competent fiscal body by decision, with payment terms starting with the date of the communication of the decision of staggering. The payment schedule maintains its validity and if these obligations are paid within 30 days from the payment deadline provided by law.

- to pay the differences of fiscal obligations established by amending declarations within no more than 30 days from the date of filing the declaration, except the situation in which the payment deadline is requested.
- to comply with the amount and payment terms in the installment schedule. The payment scheduling maintains its validity even if the installment rate is paid until the next payment term in the scheduling schedule;
- to fulfill the fiscal obligations administered by ANAF unstated at the date of communication of the decision to defer payment, and which are not subject to deferral for payment, within a maximum of 180 days from the date of communication of this decision;
- to pay the tax obligations left unpaid after the settlement of the payments with the negative amount of VAT with the option of repayment, within no more than 30 days from the date of the notification of the payment notification, if the payment schedule is not requested;
- to pay, within no more than 30 days from the date of the notification of the payment notification, the fiscal obligations established in fiscal administrative documents that were suspended under the conditions of articles 14 or 15 of Law no.554 / 2004, with the modifications and the subsequent completions, and for which the suspension of the execution of the fiscal administrative act ceased after the date of the communication of the decision to defer payment, unless the taxpayer requested to defer the payment of these amounts;
- to pay, within no more than 30 days from the date of the notification of the payment notification, the fiscal obligations established by other authorities whose administration was transferred ANAF after issuing a decision to defer payment, unless the taxpayer has requested the payment schedule for these amounts;
- to pay the amounts for which the liability was established according to the provisions of the insolvency law, and / or the joint and several liability according to articles 25 and 26 of the fiscal procedure code, within no more than 30 days from the date of establishing the liability.

At the request of the debtor may be included in the payment installment, in progress: fiscal obligations with payment terms after the initial decision was issued; differences of fiscal obligations according to the corrective declarations filed; debts established by other bodies and transmitted to the National Agency for Fiscal Administration for recovery or unspent obligations after the settlement of the VAT refunds with the repayment option.

For the delayed payment of the delay penalties, a decision to postpone them related to the staggered debts is issued, at the same time as the decision of staggering. These penalties are canceled when the decision to control the payment scheduling is issued, by issuing a cancellation decision.

Penalties for non-declaration are deferred to payment, in a percentage of 75%, by a decision. The reduction is granted at the taxpayer's request.

For the payment installment rate paid late (up to the next payment term in the scheduling schedule), a 5% penalty is communicated to the taxpayer by a decision regarding the accessory payment obligations and is paid according to the provisions of the Fiscal Procedure Code.

If the taxpayer has lost the payment deadline, the execution for the unpaid amounts begins, the guarantee is executed and a penalty of 5% of the unpaid amounts is due.

In the event that the payment deadlines have been completely extinguished and the conditions for maintaining the validity of the payment deadline have been respected, the fiscal body issues the finalization decision, as well as the decision to cancel the delayed payment penalties.

Taxpayers who, at the date of entry into force of the order on tax facilities, benefit from the payment scheduling according to the fiscal procedure code, can also benefit from the cancellation of all accessions, if the payment scheduling is completed by December 15, 2019. In this case, the accessions included in the installment rates with payment term after the date of entry into force of the ordinance paid with the payment of the installment rate are refunded according to the Fiscal Procedure Code.

In the accounting records will be made:

- recording of expenses with accessories (non-deductible expenses from a fiscal point of view):

6581	=	4481
„Compensation, fines and penalties”		„Other debts to the state budget”

- their payment:

4481	=	5121
„Other debts to the state budget”		„Bank accounts in lei”

- accessories return (non-taxable income):

4481	=	7581
„Other debts to the state budget”		„Income from damages, fines and penalties”

5121	=	4481
„Bank accounts in lei”		„Other debts to the state budget”

4. CONCLUSIONS

If the debtor has lost the installment he can request the maintenance of its validity, by submitting a request, before the execution of the guarantee.

At most two applications can be submitted to modify the payment decision in a calendar year.

The fiscal body issues a decision to maintain the validity of the payment installment.

During the period for which they were granted to the payment installment, for the tax liabilities staggered to the payment, interest is calculated and a percentage of 0.02% is calculated for each day of delay.

The interest rate is 0.015% for each day of delay in case the taxpayer constitutes the entire guarantee in the form of the bank guarantee letter and / or the recording of money means at a unit of the State Treasury.

Interest is due and calculated for each installment in the payment scheduling schedule from the date of issuance of the payment scheduling decision until the payment term beginning with the date of issuing the payment scheduling decision and up to the payment term in the chart or until date of payment of the installment.

Advantages of granting payment scheduling are: suspension of forced execution for the amounts that are staggered for payment, for the entire validity period of the staggering; cancellation of penalties for late payment, at the end of the installment, if the payment terms are respected; participation in public tenders as the entire taxation phase is not considered overdue.

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