

## Establishment of restructuring measures for budget liabilities outstanding as at 31 December 2018

### Context

The Government adopted the tax amnesty pursuant to **Ordinance no. 6/2019** for the implementation of certain tax relief. In this regard, the Ordinance provides for two mechanisms, namely:

- (i) restructuring of principal liabilities outstanding prior to 31 December 2018 for debtors having debts equal to or higher than RON 1 million<sup>1</sup>, by means of a restructuring plan, which involves measures such as payment rescheduling, but also the monitoring of the debtor during the implementation of such measures; and
- (ii) Write-off of ancillary liabilities for debtors – legal entities, natural persons or entities without legal personality having debts below RON 1 million, as well as for debtors<sup>2</sup> having debts equal to or higher than RON 1 million.

The restructuring also applies for principal and ancillary budget liabilities assessed by other authorities than the tax ones, including the fines of any kind transmitted for recovery after 1 January 2019.

The Ordinance still needs additional regulations to be concretely applicable, and such regulations should be adopted in the following period.

### Restructuring of budget liabilities

The restructuring of the tax liabilities which form the object of the restructuring plan involves the following measures:

- ◆ payment of budget liabilities in installments;
- ◆ swap of the principal budget liabilities into shares;
- ◆ giving in payment of the debtor's immovable assets;

- ◆ write-off of principal budget liabilities.<sup>3</sup>

### The eligibility requirements for restructuring

In order to be able to benefit from the restructuring of budget liabilities, the taxpayer that wishes to apply this measure should notify the tax authority with respect to such intention and to cumulatively meet the following requirements:

- ◆ to fail to meet the requirements for benefiting from the payment rescheduling regulated by the Tax Procedure Code;
- ◆ to submit a restructuring plan prepared by an independent expert;
- ◆ to not be subject to the insolvency procedure;
- ◆ to not be dissolved;
- ◆ to have all tax returns submitted, according to the tax vector;
- ◆ to pass the prudent private creditor test.<sup>4</sup>



<sup>1</sup>The principal liabilities outstanding as at 31 December 2018 subject to Ordinance no. 6/2019 are those declared by the debtor or assessed by the competent tax authorities in a tax decision after 1 January 2019, which refer however to tax periods prior to 31 December 2018.

<sup>2</sup>Natural persons or entities without legal personality, administrative-territorial units or administrative-territorial sub-divisions of Bucharest Municipality or public institutions.

<sup>3</sup>It may take place for maximum 50% of the total principal budget liabilities under certain conditions, but does not apply for principal and ancillary liabilities representing state aid.

<sup>4</sup>This test involves an analysis from which to result that the state acts as a private creditor that wants a higher recoverability of claims in the variant of restructuring as compared to enforcement or opening the bankruptcy procedure.

## Write-off of ancillary liabilities

The Ordinance provides for the write-off of ancillary liabilities for debtors<sup>5</sup> having debts below RON 1 million. However, the debtors<sup>6</sup> having outstanding principal liabilities exceeding RON 1 million may also benefit from this relief.

## Requirements for write-off of ancillary liabilities

This measure may apply if the following requirements are cumulatively met:

- ◆ the outstanding principal budget liabilities have been settled until and including 15 December 2019;
- ◆ the principal and ancillary budget liabilities administered by the central tax authority and having payment deadlines between 1 January 2019 and including 15 December 2019, have been settled before the submission date of the application for write-off of ancillary liabilities;
- ◆ the debtor has submitted all tax returns according to the tax vector until the submission date of the application for write-off of ancillary liabilities;
- ◆ the debtor submits the application for write-off of ancillary liabilities after fulfilling the above requirements, but no later than 15 December 2019.

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<sup>6</sup>Natural persons or entities without legal personality, administrative-territorial units or administrative-territorial sub-divisions of Bucharest Municipality or public institutions.