

# Tax and Legal Alert

PwC Romania

D&B David si Baias

13 February 2020

## Government Ordinance no. 5/2020 for amending and completing Law 207/2015 on the Tax Procedure Code

### In brief

The Romanian Government has issued Government Ordinance no. 5/2020 for amending and supplementing Law 207/2015 regarding the Tax Procedure Code ("Ordinance").

The Ordinance:

1. amends the Tax Procedure Code in relation to the procedures for forfeiture of bank accounts and enforced debt collection by means of garnishment as ruled by the central tax authority. It also introduces, among other aspects, a new case of joint and several liability with tax debtors. These provisions entered into force on 3 February 2020;
2. transposes the provisions of COUNCIL DIRECTIVE (EU) 2018/822 of 25 May 2018 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements ("DAC6") into the Tax Procedure Code. These provisions come into force on 1 July 2020, but take effect as of 25 June 2018.

### In detail

#### 1. Enforced debt collection and third-party garnishees

The Ordinance states that the provisions on the correction of errors in payment documents prepared by debtors will be applied to third-party garnishees.

The two-day deadline has been eliminated for communicating decisions to lift enforced collection measures as a result of the suspension of enforced debt collection by submitting a letter of bank guarantee or an insurance policy.

Two new cases have been introduced which entail the joint liability of third parties with the tax debtors in the case of bankruptcy by the central tax body: (i) the situation of credit institutions that proceed to the settlement of the payment documents received or accept other payments from their accounts, after the information on the amount available for payment has been transmitted to the central tax authority, and (ii) the situation of credit institutions that do not make the payment of the amounts unavailable in the special account opened at the Central Operational Treasury, indicating the payment record number.

Third parties now have three working days to make the payment, calculated from the date the enforcement is established or from the date on which the claim becomes payable.

#### 2. DAC 6

The reporting rules introduced by Council Directive (EU) 2018/822 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements subject to reporting obligations certain intermediaries or taxpayers, as appropriate,

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to report to the tax authorities cross-border arrangements that meet at least one of the hallmarks provided for in Annex 4 of DAC6.

## **Hallmarks**

DAC6 provides for two broad categories of hallmarks: those subject to the benefit test and those that are directly reportable. The test is passed if the main benefit or one of the main benefits of the arrangement is to obtain a tax advantage.

## **Reportable arrangements**

The Ordinance refers only to cross-border arrangements. Domestic arrangements (involving only Romania) are outside the scope of these regulations.

## **Reporting obligation**

The reporting obligation generally applies to any intermediary which designs, markets, organises, makes available for implementation or manages the implementation of a reportable cross-border arrangement or provides assistance or advice regarding such activities.

Intermediaries obliged to maintain professional secrecy may only report cross-border arrangements with the relevant taxpayer's prior written consent. In the absence of this consent, they have to notify any other intermediaries. In the absence of another intermediary, they notify the relevant taxpayer of the reporting obligations. If there is no intermediary, the reporting obligation rests with the taxpayer.

## **When and how to report**

As of 1 July 2020, intermediaries and, under certain conditions, taxpayers, have to report each cross-border arrangement within 30 days. The time limits begins to run from the day after the arrangement is made available for implementation, or is ready for implementation, or when the first step in its implementation has been made, whichever occurs first. If those occur between 25 June 2018 and 1 July 2020, however, qualifying arrangements will have to be reported by 31 August 2020.

Within 60 days as of the Ordinance's publication, the form to be used by the relevant intermediaries or taxpayers for reporting information on cross-border arrangements subject to reporting will be approved under an order to be issued by the president of the National Agency for Fiscal Administration. ANAF will also issue a guide on how to apply the new provisions.

## **Sanctions**

The penalties for not fulfilling the legal provisions within the stipulated deadlines are: fines of RON 20,000 to RON 100,000 on intermediaries or taxpayers for failing to report arrangements or for delayed reporting; fines of RON 5,000 to RON 30,000 on intermediaries obliged to maintain professional secrecy that fail to notify another intermediary or the relevant taxpayer.

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## The takeaway

### 1. Enforced debt collection and third-party garnishees

The provisions regarding the correction of errors in payment documents drawn up by debtors will also apply to third party garnishees.

The two-day deadline has been eliminated for communicating decisions to lift enforced collection measures following the suspension of enforced debt collection.

Two new cases have been introduced which entail the joint liability of third parties.

### 2. DAC 6

The Ordinance transposes into national law the provisions of DAC6, establishing that intermediaries have to report cross-border arrangements that fall within certain specific hallmarks. Where they are obliged to maintain professional secrecy, cross-border arrangements will be reported only with the taxpayer's written consent. If there are no intermediaries, the reporting obligation rests with the taxpayer.

Failure to comply with the reporting obligation is deemed an administrative offence and is sanctioned with a fine.

The Romanian tax authorities will issue a guide for how to apply the hallmarks.

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