

Deferral of payment in Romanian tax law

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Companies (but also private individuals) that record tax arrears can, under certain conditions, benefit from measures that help them overcome difficult times.

These facilitations are all the more welcome as, as a result of the latest amendment to Act 241/2005 on combating tax evasion, the failure to withhold and pay withholding taxes and/or contributions within 60 days of the legal due date is considered a criminal offence.

Facilitations

Specifically, taxpayers are given the opportunity to meet tax liabilities in instalments when granted a deferred payment (*eșalonare la plată*). The following types exist:

- **Deferral of payment (*eșalonarea la plată*)** pursuant to articles 184 - 209 of the Code of Tax Procedure and Order No. 90/2016 of the President of ANAF;
- **Deferred payment in simplified form (*eșalonarea la plată în formă simplificată*)**, governed by Art. 209¹ - 209¹⁴ of the Tax Procedure Code and Order No. 1767/2021 of the President of ANAF.

➤ Deferral of payment

The usual deferral can be granted for a period of up to 5 years if a number of conditions are met. For taxpayers who do not provide collateral, it is granted for a maximum of 6 months.

Such deferral is possible for all tax obligations entered in the tax certificate (*certificatul de atestare fiscală*) whose amount exceeds RON 500 for natural persons, RON 2,000 for unincorporated associations and RON 5,000 for legal persons.

To be eligible for a deferral of payment, a debtor must fulfil a number of conditions:

- It is in a temporary liquidity shortage, but has the financial capacity to make payments during the deferral period. This must be demonstrated by means of a restructuring plan (*plan de restructurare*);
- For periods of instalment payments whose duration exceeds 6 months, he shall provide security;
- It is not in insolvency proceedings or in liquidation;
- It has filed all tax returns in accordance with the tax recording sheet (*vector fiscal*).

For deferred amounts, late payment surcharges of 0.5% per month are owed, which in turn may be partially deferred.

The debtor files an application with the competent tax office, on which a decision is taken within 60 days. In the case of debtors who have no assets, the application is exceptionally settled within 15 days.

Order of the President of ANAF No. 90/2016 describes the procedure in detail, distinguishing between taxpayers with low tax risk and those with high tax risk.

➤ **Deferral of payment in simplified form**

The simplified form of deferred payment may be granted for up to 12 months; it concerns outstanding tax debts that arose no earlier than 12 months before the date of submission of the application and have not been paid by the time the tax certificate is issued.

In order to benefit from a simplified form of deferred payment, debtors must fulfil a number of conditions:

- Filing an application, accompanied by an instalment payment plan, with the tax authority;
- No insolvency proceedings have been opened against it;
- They are not in dissolution;
- There is no decision establishing their personal liability on the basis of the legal provisions on insolvency and/or joint and several liability in the event of inability to pay;
- They have filed all tax returns according to the tax record sheet.

The simplified deferral offers a number of advantages over the traditional deferral. On the one hand, the procedure is less bureaucratic; applications are decided (according to the law) within only 5 working days. On the other hand, no securities have to be provided.

However, it should be noted that interest of 0.01% per day is due, calculated for each instalment from the date of the notice granting the deferment until the date of its payment. In the event of failure to comply with the instalment payment plan, the taxpayer will also be charged a late payment surcharge of 5% of the unpaid instalment amount.

Conclusion

The deferred payment scheme, especially the simplified form, is a significant benefit for taxpayers with tax arrears. At the same time, the tax authorities benefit from it: they collect the relevant amounts, even if this happens over a longer period of time, thereby reducing the risk of non-payment for taxpayers in difficulty.

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