

SMEs - mitigating the effects of the crisis generated by spread of COVID-19 | Facilities and support measures granted



In the context of the economic and financial difficulties caused by the spread of the COVID-19 virus, the Romanian Government has adopted a series of facilities and support measures for SMEs whose activity is directly affected by the measures ordered by the public authorities, for the prevention and control of the pandemic determined by the infection with COVID-19 coronavirus.

The main beneficiaries of the support measures adopted are **SMEs** and professions that carry out services of public interest (public notaries, lawyers and bailiffs). Analyzing the current legal provisions of the Military Ordinances no. 1/18 March 2020, 2/21 March 2020, 3/24 March 2020, 4/29 March 2020, 5/31 March 2020, 6/31 March 2020 and 7/4 April 2020 we notice that through the decisions issued by the public authorities, SMEs and similar businesses are particularly affected:

- **Restaurants, hotels, cafes or other public places** serving food and alcohol and non-alcoholic beverages;
- **Enterprises** that are involved in the provision of **cultural, scientific, artistic, religious, sports, entertainment or gambling, spa treatment and personal care activities**, in closed spaces;
- **Dentists**;
- **Retail activities of products and services in shopping centers where several economic operators operate**, except for the sale of food, veterinary or pharmaceutical products and cleaning services.

Ø **The following facilities have been granted to SMEs in relation to ongoing contracts:**

(i) Deferred payment for utilities services (electricity, natural gas, water, telephone and Internet services), as well as deferred payment of the rent for the SME's registered office and secondary offices.

This facility is granted to SMEs that:

- a) **have discontinued their activity in whole or in part on the basis of the decisions issued by the competent public authorities** during the state of emergency and which

b) **hold an emergency situations certificate ("ES")** issued by the Ministry of Economy, Energy and Business Environment ("MEEBE")

This facility is also granted to offices of professional practices such as lawyers, public notaries and bailiffs, as well as family doctors and dentists in which work, in any form, at most 20 persons, which have been affected by the measures taken by the public authorities for the prevention and control of the pandemic.

(ii) **The possibility to invoke force majeure against SMEs** only after a proven attempt, evidenced with documents communicated between parties by any means, including by electronic means, at **contract renegotiation**, in order to adapt their clauses to take into account the exceptional conditions generated by the state of emergency. This facility is applied for other types of contracts than those mentioned above.

(iii) Penalties have been waived for the duration of the state of emergency for delays in the execution of obligations arising from contracts concluded with the public authorities by SMEs.

Ø **Additional measures that can safeguard SMEs:**

- **the payment of installments and interest on loans granted by the Ministry of Public Finance** from the revenues resulting from the privatization of local administrative units/subdivisions can be postponed for 3 months. (The facility is not granted for loans that have outstanding payments);
- the mechanism for approving the operations granted by Eximbank SA is established on behalf and on the account of the state, leading to a cumulative exposure on the same debtor or group of debtors of over 50 million euros;
- the deadline of **31 March** (inclusive) for payment of the taxes on buildings, land and transport has been extended until **30 June** inclusive. These taxes are set out in the Fiscal Code, (Law 227/2015) in Art. 462 paragraph 1 (building tax), Art. 467 para. 1 (land tax) and Art. 472 para. 1 (tax on means of transport). Liberal professions also benefit from this measure;
- Ordinance no. 6/2019 on the establishment of fiscal facilities has been amended;
- for **tax liabilities due starting from the date of entry into force of GEO no. 29/2020 and not paid up to 30 days after the cessation of the state of emergency, no interest and late payment penalties** (as set out in the Fiscal Procedure Code) **will be due**. These tax liabilities will not be considered overdue obligations, and liberal professions also benefit from his measure;
- new bonuses have been introduced for the advance payment of corporate income tax;

- **measures for enforcement by garnishment of budgetary debts have been suspended** or will not be started, with the exception of the foreclosure procedures that are applied for the recovery of debts established by judicial decisions in criminal matters. Liberal professions also benefit from this measure.

- taxpayers which apply the system of declaring and paying their annual income tax, with quarterly advance payments, **can make quarterly advance payments for 2020**, at the level resulting from the calculation of the current quarterly income tax;

- **the deadline for submitting the declaration regarding the real beneficiary** provided by art. 56 paragraph 4 and art. 62 paragraph 1 of Law no. 129/2019 for the prevention and combating of money laundering and financing of terrorism, as well as for the amending and supplementing of some normative acts, is extended to 3 months after the date of cessation of the state of emergency. During the state of emergency, the submission of declaration is suspended;

- for the period of temporary suspension of the individual employment contracts as a result of the effects produced by the SARS-CoV-2 coronavirus, employers which have reduced or interrupted their activity totally or partially will receive payments from the state to cover the technical unemployment of their employees; to benefit from this facility, the employer must provide an affidavit;

- Emergency Ordinance no. 110/2017 on the Program for the Support of Small and Medium-sized Enterprises - IMM Invest Romania - has been amended and completed (“GEO no.110/2017”);

- the state aid scheme for the support of SMEs in the context of the economic crisis generated by the COVID-19 pandemic has been approved, and it will be granted after being authorized by the European Commission;

Regarding the two last facilities, through Government Ordinance no. 42/2020 for amending and completing GEO no. 110/2017 and also for approving the State aid scheme for supporting the activity of the SME in the context of the economic crisis generated by the COVID-19 pandemic (“GEO no. 42/2020”), the Romanian Government has granted supplementary budgetary measures, such as:

- SMEs can access from banks financing of 5 million Ron for working capital and maximum 10 million Ron for investments, but they cannot exceed 10 million Ron. 80% of these credits will be supported by the state. These facilities can be granted by the state if they do not exceed the maximum value of: (a) 2 x the annual salary fund, including employee and employer contributions, for the year 2019 of the company; (b) 25% of the turnover for 2019 realized by the beneficiary and (c) the liquidity requirement;

- the interests will be 100% subsidized by the state from the moment of granting the loans or credit lines contracted after the entry into force of OUG no. 42/2020 and until 31 December 2020;

- the risk commission will also be supported by the state by granting a grant;

- the maximum duration of financing is 72 months in the case of investment loans and 36 months in the case of credits / lines of credit for working capital. The credits / lines of credit for working capital can be extended by a

maximum of 36 months, and, in the last year of extension, they will be reimbursed under the conditions established by the methodological norms for applying the presence of emergency ordinances.

Ø Facilities for loans granted by banks and non-banking financial institutions to debtors

- have been established the conditions under which debtors (individuals, registered sole traders, individual enterprises, family businesses, legal entities and liberal professions) may benefit from the suspension of the payment of instalments, interest and commissions related to the loans for between one month and nine months. The suspension may not extend beyond 31 December 2020;
- the request for suspension must be sent to the creditors within a maximum of 45 days from the entry into force of GEO 37/2020 (30 March 2020);
- the interest on the outstanding amounts whose payment is suspended is capitalized on the existing credit balance at the end of the suspension period.

Ø Quick answers regarding the measures that can be applied, from a fiscal point of view, to meet the challenges of this period

The two major threats that any business is currently facing are the cessation or, as the case may be, the reduction of activity and the lack of cash. To help businesses and individuals mitigate as much as possible the abovementioned negative effects, we answer below to few specific questions regarding some practical measures that can be considered, in the context of the special regulations of this period regarding fiscal measures:

1. Filing of tax returns:

Has there been a postponement of deadlines for filing tax returns? – No.

What is the consequence of not submitting tax returns on time? – Civil offense: a fine can be applied between 1,000 lei to 5,000 lei for medium-sized and large taxpayers and from 500 lei to 1,000 lei for small taxpayers; Fiscal: establishing ex officio payable taxes and duties; Criminal: the tax authorities can notify the criminal investigation bodies to verify whether the legal requirements for tax evasion have been met.

2. Payment of tax obligations:

Has the payment deadline for tax obligations been postponed? - Only the payment deadline for the payment of tax on buildings, land and means of transport has been postponed.

Are interest rates and late payment penalties calculated in the event of missing the deadline? - No, for the fiscal obligations with the maturity after 21 March 2020 and not paid until 14 May 2020 (respectively, not paid within 30

days from the end of the state of emergency). Following the prolongation of the emergency situation, this term will be extended.

Are overdue tax obligations considered outstanding if the deadline is missed? - No (see previous answer).

3. Enforcement of fiscal obligations and fiscal audits

Will the tax authorities (NAFA) establish garnishments during this period? - No, not between 21 March 2020 and 14 May 2020, and as a result of the prolongation of the emergency situation, this deadline will be extended.

Have already established garnishments been lifted? Yes, between 21 March 2020 and 14 May 2020, and as a result of the extension of the emergency situation, this deadline will be extended.