

13 April 2023

Fiscal Bulletin



Content:

1. OPANAF no. 420/2023 for the approval of the model and content of the form "*Notification of compliance issued by the tax audit authority*", the notification procedure and the periodicity of issuance, as well as for the modification of annex no. 1.a at OPANAF no. 3.711/2015 regarding the model and content of the forms and documents used in the tax inspection activity ("*OPANAF 420/2023*")
2. Order of the Ministry of Finance no. 1178/2023 for the approval of the Procedure regarding the issuance of the anticipated individual fiscal solution ("*OFM 1178/2023*")
3. Government Emergency Ordinance no. 20/2023 for the amendment and completion of the Fiscal Procedural Code, as well as for the amendment of GO no. 6/2019 regarding the establishment of fiscal facilities ("*GEO 20/2023*")

Voluntary compliance procedure

By OPANAF 420/06.04.2023, the "*Notification of compliance issued by the tax audit authority*" form and the relevant procedure were approved, providing for the following main elements:

- The compliance notification is issued following an analysis by NAFA and only if risks of fiscal non-compliance are identified.
- The compliance notification is issued only if fiscal risks that were not previously notified to the taxpayer and were not subject to fiscal audits are identified.
- The compliance notification will include, among others, the identified fiscal risk related elements, the taxable periods, the taxes/fees/contributions related to the identified risks and the estimated fiscal impact, if quantifiable.
- The notification can be issued on paper or in electronic format.

- The taxpayer can notify NAFA within 30 days of receiving the notification regarding, for example, the method of compliance or the reason for not complying.
- At the end of the 30 days, NAFA analyzes the information received from the taxpayer and prepares a reasoned proposal for beginning or not a tax audit.

Although presented as a facility, this new procedural step can also cause risks for taxpayers. Thus, the correction of tax returns, following the notification, for the uncertain purpose of avoiding a potential tax audit will make it impossible to challenge your own return at a later time.

On the other hand, if the aspects notified by NAFA refer to obvious errors of the taxpayer, their correction becomes advisable.

The opportunity to correct errors in the compliance notification will need to be carefully considered for each specific situation.

The procedure regarding the issuance by the Ministry of Finance of the anticipated individual fiscal solution

By OFM 1178/30.03.2023, the Procedure regarding the issuance by the Ministry of Finance of the anticipated individual fiscal solution (i.e. hereinafter referred to as "SFIA") to regulate the fiscal treatment applicable to a future factual fiscal situation, in relation to taxes, fees and mandatory social contributions regulated by the Fiscal Code, has been approved.

Among the important changes regarding the SFIA introduced by OFM 1178/2023 are the following:

- The application for SFIA is submitted exclusively online, at least 90 days before the date on which the transactions are intended to take place.
- New information is introduced regarding the analysis that authorities carry out to determine whether applications for SFIA are compliant.
- The list of situations in which requests are rejected is significantly expanded.
- Additional details are provided regarding the enforceability of the SFIA.

Although the role of the SFIA is to guarantee that the tax treatment of a transaction is practically that indicated in the SFIA and cannot be challenged in future tax audits, the new procedural changes make it extremely difficult for taxpayers to obtain the SFIA.

Classic and simplified payment scheduling of tax debts

The rules for the application of the classic and simplified payment scheduling of outstanding tax debts have been modified through GEO 20/2023, the declared purpose being to improve the collection of taxes to the state budget.

Thus, regarding the **classic payment scheduling** we mention the following:

- Scheduling of tax debts for 6 months becomes more difficult to access in the absence of guarantees.
- The scheduling shall not be allowed anymore for excise duties but shall be allowed for obligations representing European funds or public national funds related to European funds.
- Keeping the scheduling is conditioned also by the payment of outstanding excise duties, in maximum 30 days starting from the date the decision for payment scheduling has been communicated.

In what concerns the **simplified payment scheduling** certain changes have been introduced, among which we mention:

- The scheduling shall not be allowed anymore for excise duties, withholding taxes and social security contributions or taxes and social security contributions withheld at source, and taxes related to gambling activities.
- Keeping the scheduling is conditioned also by the payment of outstanding tax obligations, in maximum 30 days starting from the date the decision for payment scheduling has been communicated (i.e. excise duties and taxes related to gambling activities), respectively 60 days starting from the date the decision for payment scheduling has been communicated (i.e. taxes and social security contributions).
- Changing the scheduling and keeping it are allowed only once per year.
- The interest is increased from 0.01% to 0.02%/day.

It is no longer possible to access both the classic and simplified payment scheduling at the same time.

In summary, these changes make it more difficult to access the classic and simplified payment scheduling.

Editors

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Our team comprises tax consultants previously working in management positions with Big Four companies and the Ministry of Finance. The group cooperates closely with the firm's lawyers specialising in administrative law, as well as contentious-administrative disputes.

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