

## THE PROCEDURE FOR RESTRUCTURING BUDGETARY CLAIMS FROM NECESSITY TO REALITY

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**Abstract:** The present work approaches the legal institution of the restructuring of budgetary claims from the perspective of the procedure to be followed by the tax debtors interested in agreeing on the need to extinguish their budgetary claims with the desire to avoid the insolvency of the company. We bring up that the restructuring of budgetary claims was thought so as to offer a helping hand, especially to large companies in a situation of major financial difficulty. This present study aims to provide a synthetic picture of the steps to be followed in order to successfully complete this procedure. For this, the procedure is divided into three stages, namely the pre-stage, the procedure itself and the completion of the procedure. The acts to be performed at the pre-stage refer to the notification of the restructuring intention, the restructuring plan and the prudent private creditor test. The stage itself of the restructuring starts with the submission of the application to the tax authority, which will be settled by it either with a decision approving the restructuring or with a decision rejecting it, or with a decision approving a payment facility. Once the restructuring is approved, it will be carried out in accordance with the restructuring plan, under the supervision of the persons designated for this purpose. During its development, the restructuring process may undergo changes that will materialize either in the modification of the restructuring plan or in the modification of the payment facilitation decision, if such a facility has been approved. Whether there is a change in the restructuring process, or not, once it has started, it will have to be completed. If the restructuring plan is successfully implemented, the fiscal debtor's budgetary claims will be extinguished and he will be able to go on with the economic activity for which he was established. If, however, the restructuring plan fails, the tax debtor risks being subject to forced execution by the tax authority, or even to request its insolvency, which could lead to the cessation of its existence.

**Keywords:** restructuring of budgetary claims; procedural acts; restructuring plan; prudent private creditor test; supervision of the budgetary debtor.

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## 1. Introduction

The Romanian legislature found it necessary to regulate in 2019 an institution that was new at the time. It is about the "restructuring of budgetary claims", on which we have made critical analyzes on other occasions.

We are in the presence of a legal institution of a procedural nature on which we make a series of observations that characterize it essentially and fundamentally. They provide a starting point in the process of critical analysis and understanding of the procedure after which the restructuring of budgetary obligations operates, namely:

- a. the restructuring of the budgetary claims was adopted by a legislative act, distinct from the Fiscal Procedure Code, which does not directly and explicitly changes or supplement, but indirectly by the fact that it may interfere in the conduct of the tax procedure, as well as by appealing to tax law institutions, such as payment facilities, regulated by the tax Procedure Code and thus undergoing substantial changes;
- b. the restructuring of budgetary claims differs from the other forms of financial support established by the Code of Tax Procedure, and in particular from the payment facilities which were thought to give the budgetary debtor a grace period in order to obtain the funds necessary to discharge his obligations to the budgets by payment publicly. It is also different from the cancellation of tax claims established by the Code of Tax Procedure because it becomes applicable when the collection of tax claims becomes unnecessary, ineffective or impossible.
- c. although it differs from the rescheduling and postponement of payment, or from the cancellation of tax receivables, however, in regulating the restructuring of budgetary claims, the legislator appeals to them themselves, in the form in which they were established by the provisions of the Code of Tax Procedure.
- d. the local tax authorities have the right to decide (not required by law to do so) whether they use this legal instrument in the process of collecting claims due to the budgets they manage;
- e. in terms of content, the restructuring refers to any kind of budgetary claim (due to the consolidated general budget) in respect of which enforceable titles have also been issued (it means that the claim has become certain and due).

Therefore, we define the restructuring of budgetary claims as a special procedure of a fiscal nature through which the legislator allows the tax debtor who wishes, in good faith, to extinguish his budgetary obligations, to do so on the basis of a complex restructuring plan elaborated by an independent specialist, plan that is accepted and assumed in all aspects by both sides of the fiscal legal relationship that arises on this occasion (the fiscal debtor and the fiscal body).

## 2. Procedural acts specific to restructuring and their effects

As it appears from the interpretation of all the relevant legal provisions in this area, the procedure of restructuring budgetary claims can be structured in several stages.

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From this point of view, we consider that there is a preparatory stage, prior to the present one (which consists of submitting the application and solving it). A separate stage is also highlighted in case of a change in the restructuring plan and the end of the procedure may be different, as the restructuring plan has been applied exactly and has also achieved its expected result, or the plan has failed, this implies certain legal and financial consequences for the tax debtor who has benefited from a procedure for restructuring its budgetary claims.

## **2.1. Preparatory procedural acts (prior to) the restructuring procedure**

### **2.1.1. Notification**

According to Article 3 of the Government Ordinance no. 6/2019, regarding the establishment of fiscal facilities, as amended, the debtor who wishes to restructure its budgetary obligations must notify the fiscal body of its intention.

An extremely important condition refers to the period during which these notifications can be submitted because failure to do so within the legal deadlines is punishable by forfeiture of the right to benefit from this facility.

For debtors who have submitted the notification of the intention to restructure the budgetary obligations, but who have not submitted the request for restructuring the budgetary obligations within the deadlines set by law, the enforcement shall start or go on, as appropriate. The submission of a new notification after the expiry of these deadlines shall no longer take effect. If the restructuring request is submitted after the start of the foreclosure, it shall be suspended from the date of submission of the restructuring request. Also, the submission of the request for restructuring after the start of the forced execution entails its suspension of the budgetary claims. After the notification has been received, the tax authority must verify that the debtor has fulfilled its declarative obligations according to the tax vector by that date and makes the payments, compensations and any other operations necessary to establish with certainty the budgetary obligations that may form the object of the restructuring. If it is found that the debtor has not fulfilled its declarative obligations, the tax authority directs him to fulfill this legal obligation within 10 working days.

No later than 5 working days from the date of submission of the notification, the tax authority shall issue ex officio the certificate of tax attestation and communicate it to the debtor. This period shall be duly extended if the tax authority finds out that the debtor has not fulfilled its declaratory obligations.

The budgetary obligations subject to restructuring shall be marked in the register on the payer's evidence and shall be extinguished only after those mandatory budgetary obligations imposed to be extinguished by payment have been extinguished, as a condition prior to the start of the procedure of fiscal restructuring. The fiscal authority is therefore obliged, to clarify with the debtor any inconsistencies with

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respect to the budgetary obligations that may be subject to restructuring, as well as with respect to those which are subject to pre-payment conditionalities.

Once the notification is submitted, the tax debtor must apply to an independent expert for the preparation of a restructuring plan and the prudent private creditor test. Please note that the submission of the notification of the intention to benefit from a restructuring of budgetary claims is not the equivalent of a restructuring request. This is a preparatory step and is intended to determine, from the beginning of the procedure, whether any budgetary claims may be subject to restructuring.

We make these remarks to highlight the fact that, besides the restructuring of budgetary claims, tax debtors also have other tools to help them extinguish their claims, such as clearing or payment facilities, either in the form of deferral or in the form of payment installments.

Moreover, neither the preparation of the restructuring plan nor the prudent private creditor test is part of the actual restructuring procedure, since these procedural acts are also of a prior nature, highlighting the same point, namely whether restructuring is possible and what form it might receive.

Interest rates, penalties and all accessories related to the main budgetary obligations administered by the fiscal body of the state with maturities before the 31st March 2020 included and individualized in tax decisions issued following a tax inspection or verification of the personal tax situation in progress on the 29 March 2021 or started after that date, but not later than the 31 January 2022, regardless of the moment the tax inspection is completed, shall be canceled if all of the following conditions are met:

- a) all the differences of the main budgetary obligations individualized in the tax decision are extinguished through any means provided by the Fiscal Procedure Code (payment, compensation, enforcement, exemption, cancellation, limitation, payment) until the legal deadlines;
- b) the request for cancellation of the accessories shall be submitted, under penalty of revocation, until the 31st January 2022 included, respectively within 90 days from the notification of the tax decision if the 90-day period is reached after the 31 January 2022 included.

Interests, penalties and all accessories that may be canceled under the law and which have been extinguished by payment after the 29th March 2021 shall be refunded according to the rules established in the Code of Tax Procedure.

### 2.1.2. The restructuring plan

The restructuring plan is a document drawn up by an independent specialist who carries out an evaluation of the economic and financial situation of the tax debtor and proposes restructuring measures in accordance with the provisions of Government Ordinance no. 6/2019.

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Thus, according to Article 4 of that normative act, the restructuring plan must include, on a mandatory basis, the following elements:

- a) the presentation of the causes and the extent of the financial difficulty of the debtor, as well as the measures taken by the debtor to overcome them;
- b) the patrimonial situation of the debtor;
- c) information concerning the causes for which the debtor cannot benefit from the payment rescheduling according to the Code of Tax Procedure;
- d) the restructuring measures of the debtor and the ways in which he understands to overcome the financial difficulty, with clear implementation deadlines, measures of budgetary obligations restructuring, as well as the presentation of the relevant economic and financial indicators demonstrating the restoration of the debtor's viability.

The restructuring of budgetary obligations may consist of one or more measures, one of which must be represented by facilities to pay budgetary obligations.

The legislator regulates two categories of measures that can be included in a restructuring plan. So, the first group of restructuring measures is the one related to budgetary obligations, namely:

- a) the facilities for the payment of budgetary obligations;
- b) the conversion into shares of the main budgetary obligations;
- c) the extinguishment of the main budgetary obligations by giving in payment of immovable property of the debtor;
- d) the cancellation of key budgetary obligations [1].

As for this set of measures, a few mentions need to be made. Thus, by facilitating the payment of budgetary obligations, one means the staggered payment of the main budgetary obligations, as well as the postponement of the payment of the accessories or a share of the main budgetary obligations, in order to cancel them. We also mention that the payment request is analyzed by a Commission set up at the level of the competent tax body. Last but not least, the measure to cancel some main budgetary obligations can take place for a maximum of 50% of the total main budgetary obligations and cannot concern main budgetary obligations and accessories of the nature of state aid (from European or national funds). The nature of the tax receivables administered by the Romanian Customs Authority, as well as the nature of the budgetary obligations resulting from a failed restructuring procedure.

The second category of measures that may be included in a restructuring plan refers to the debtor as follows:

- (a) operational and/or financial restructuring;
- b) corporate restructuring by changing the social capital structure;
- c) restriction of activity by partial capitalization of the assets from the debtor's property.

The restructuring plan must be approved by the general meeting of shareholders, associates, or the sole shareholder, as appropriate.

### 2.1.3. The prudent private creditor test

The prudent private creditor test is a stand-alone analysis, based on the premises emphasized in the debtor's restructuring plan, showing that the State behaves similarly to a private creditor, sufficiently prudent and diligent, that would obtain a higher degree of debt recovery in the restructuring variant compared to both the option of forced execution and the option of opening bankruptcy proceedings.

Therefore, the regulation of the institution of restructuring of budgetary claims is based on arguments to maximize the efficiency of the activity of collecting tax receivables. It is true that sometimes it may coincide with the interest of the tax debtor to maintain its activity in the most profitable conditions, but sometimes the interests of the two parties to the tax legal relationship born in such circumstances may be different or even divergent.

## 2.2. Start of the restructuring procedure. Request of restructuring and solutioning. Effects.

### 2.2.1. Request for restructuring

According to Article 5 of the Government Ordinance no. 6/2019, regarding the establishment of fiscal facilities, the request for restructuring of budgetary obligations must be submitted by the debtor to the fiscal body together with the restructuring plan and the prudent private creditor test referred to above, According to Article 22 of Government Ordinance no. 6/2019, the restructuring request may be submitted until the 31 July 2023, under the sanction of the revocation.

As I have already pointed out, following the notification of the intention to request the restructuring of the budgetary obligations, the fiscal body issues a certificate of fiscal attestation. However, some of the restructured claims may be extinguished by the time the restructuring application is submitted. For this reason, the tax authority will issue ex officio a new certificate of tax attestation, which will be communicated to the budgetary debtor in order to adjust the restructuring plan, if it has not already been adjusted. In this case, the budgetary obligations contained in the certificate of tax attestation, which may form the object of the restructuring, shall not be extinguished until the submission of the adjusted restructuring plan.

In order to be able to resolve the restructuring request, the competent tax authority must verify the following aspects:

a) if the debtor is in difficulty due to the lack of money availability and has the financial capacity to pay in order to benefit from the payment rescheduling according to the Code of Tax Procedure;

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b) if the restructuring plan contains the elements provided by the law and if it is approved by the general meeting of shareholders, associates or by the sole shareholder, as the case may be;

c) whether the measures for restructuring the budgetary obligations proposed by the restructuring plan comply with the legal requirements;

d) whether there are restructuring measures that can ensure the restoration of the viability and liquidity of the debtor by carrying out the prudent private creditor test on the basis of the analysis provided by the independent expert.

The request for restructuring the budgetary obligations shall be solved by the competent fiscal body within a maximum of 30 days from the date of its registration.

For debtors who have submitted requests for the restructuring of budgetary obligations and are in the process of settling, they may opt, by application addressed to the tax body, for the restoration of the restructuring plan with the remaining budgetary obligations on the 31st December 2020 and the submission of a new application by the 31 July 2023, subject to the penalty of revocation.

For the debtors who have submitted the notification of the intention to restructure the budgetary obligations but who have not submitted the request for restructuring the budgetary obligations by the 30th of June 2021, the enforcement shall start or continue, as appropriate. The submission of a new notification by or after the 30th of June 2021 shall no longer take effect. If the restructuring request is submitted after the start of the foreclosure, it shall be suspended from the date of submission of the restructuring request.

For the debtors who submit the notification of the intention to restructure the budgetary obligations but do not submit the request for restructuring the budgetary obligations within 6 months from the date of submission of the notification, the enforcement shall start or continue, as appropriate. If the 6-month deadline is reached after the 31st of January 2022, the request for restructuring must be submitted by that date. The submission of a new notification within the 6-month period or after the expiry of that period shall no longer take effect. If the restructuring request is submitted after the start of the foreclosure, it shall be suspended from the date of submission of the restructuring request.

It is important to mention that the budgetary obligations subject to restructuring are not considered as outstanding obligations. The interest rates, penalties and all accessories related to the main budgetary obligations administered by the central fiscal body with maturities before the 31st of March 2020 including and individualized in tax decisions issued following a tax inspection or verification of the personal tax situation in progress on the 29 March 2021 or beginning after this date, but not later than the 31 January 2022, no matter the time at which the tax inspection is completed, are canceled if the following conditions are met cumulatively:

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a) all differences of main budgetary obligations individualized in the tax decision are extinguished by any means provided by Article 22 of the Code of Tax Procedure, until the payment deadline provided for in Article 156 paragraph (1) of C. Code of Tax Procedure;

b) the request for cancellation of the accessories shall be submitted, under penalty of revocation, until the 31st of January 2022 included, respectively within 90 days from the notification of the tax decision if the 90-day period is reached after the 31st of January 2022 included.

Interests, penalties and all accessories that can be canceled and which were extinguished after the 29th of March 2021 shall be refunded under the conditions provided by the Code of Tax Procedure.

For the debtors who have submitted requests for the restructuring of the budgetary obligations and are in the process of settling on the 29th of March 2021, they shall be settled according to the legislation in force at the date of submission of the request or debtors may opt, by submitting, until the 31st of July 2023, under the sanction of revocation, a new request to the competent tax authority for the restoration of the restructuring plan with the remaining budgetary obligations on the 31st of December 2021. If so, on the basis of the request, the tax authority issues a new certificate of tax attestation, which includes the budgetary obligations outstanding on the 31st of December 2021 and not paid on the date of its issuance.

For the debtors who have submitted the notification of the intention to restructure the budgetary obligations and who have not submitted the request to restructure the budgetary obligations by the 29th of March 2021, the tax authorities shall issue, on their own motion, in 10 working days time, a new tax attestation certificate containing the budgetary obligations outstanding on the 31st of December 2021 and not paid on the date of its issue, which it communicates to the debtor. The submission of a new notification, after the 29th of March 2021, shall no longer take effect. In the event that enforcement has started, it shall be suspended from the date of submission of the restructuring request.

For the debtors who submit the notification of the intention to restructure the budgetary obligations after the 29th of March 2021 but do not submit the request for restructuring the budgetary obligations within 6 months from the date of submission of the notification, the enforcement shall start or continue, as appropriate. The submission of a new notification within the 6-month period or after the expiry of that period shall no longer take effect. If the restructuring request is submitted after the start of the foreclosure, it shall be suspended from the date of submission of the restructuring request.

For the debtors who on the 5th of August 2019 are in an investigation or investigation procedure of the European Commission in terms of compatibility with state aid law,

the 6-month period starts from the date of approval of the way the tax facility is granted by the European Commission.

### 2.2.2. Solving the demand. Working hypotheses

By Article 6 of Government Ordinance no. 6/2019, the legislator establishes the solutions that can be adopted by the fiscal body in solving the request for budgetary claims restructuring, as follows:

- a. issues a decision rejecting the request for restructuring the budgetary obligations restructuring and settles the request according to the provisions of Article 184-209 of the Code of Tax Procedure, respectively analyzes and approves, if necessary, a payment facility. In this case, the tax authority checks the conditions for granting it, including those regarding the deposit of guarantees.
- b. issues a decision approving the restructuring of budgetary obligations, if the competent tax authority finds that the legal conditions are fulfilled.
- c. issues a decision facilitating the payment of the main budgetary obligations, and the payment schedule set out in the restructuring plan forms an integral part of the payment facilitation decision;
- d. issues a decision deferring interest, penalties and all accessories due by the debtor relating to the main budgetary obligations which are the object of the restructuring at payment, except for ancillary obligations relating to the main budgetary obligations which constitute state aid or which result from a previous failed restructuring.
- e. requires the debtor to make the necessary corrections, if the competent tax authority finds that the debtor does not meet the legal conditions for restructuring or the restructuring plan does not ensure the restoration of the debtor's viability and the fulfillment of the prudent private creditor test. If no corrections are made within 30 days from the date of the request, the competent fiscal body shall issue a decision rejecting the request for restructuring the budgetary obligations, without prejudice to the debtor's right to submit a new application by the 31st of July 2023.
- f. issues a decision rejecting the request for the budgetary obligations restructuring, if the competent fiscal body finds that the budgetary debtor is in insolvency proceedings, has been dissolved, does not have all the tax declarations submitted, according to the fiscal vector, or does not meet the prudent private creditor test.

It should be mentioned that a restructuring procedure could be easier to bear for tax debtors in financial difficulties, as this does not require the lodging of guarantees. Payment facilities, as regulated by the provisions of the Code of Tax Procedure, include these guarantees that some debtors do not have. In essence, the reason why the procedure for restructuring budgetary claims was regulated was to avoid the insolvency of some companies that want to recover financially, or this would have been done with the application of the provisions of the Code of Tax Procedure

regarding payment facilities, if the debtors had the opportunity to meet the legal requirements.

### **2.3. The process of restructuring budgetary claims. Monitoring and supervision of the debtor**

After the restructuring request has been approved, according to Article 7 of Government Ordinance no. 6/2019, the tax authority establishes a regime of strict supervision of the activity of the tax debtor, the beneficiary of the restructuring procedure. From this point of view, the monitoring carried out by the person appointed for this purpose by the head of the tax body is doubled by the independent expert who also carries out permanent monitoring of the debtor, periodically drawing up a report on the state of implementation of the restructuring plan, which he sends to the debtor and the tax authority.

Persons carrying out supervision have the following rights:

- a) to participate in the meetings of the general assembly of shareholders, associates, board of directors and other such meetings regarding the debtor's management, as an observer;
- b) to have access to all the locations where the debtor operates, under the conditions of the Code of Tax Procedure ;
- c) to have access to all documents received by the debtor or emanating from the debtor, including contracts, offers, or other documents, under the conditions of the Code of Tax Procedure.

At the same time, the supervising members have the following obligations:

- a) to analyze the report concerning the state of implementation of the measures included in the restructuring plan drawn up by the independent expert;
- b) to sign for knowledge all requests, declarations and any other documents submitted by the debtor to the competent fiscal body;
- c) to discuss with the independent expert and propose measures and solutions, if deviations in the implementation of the restructuring plan are found. Depending on the risk elements identified, proposes the establishment of precautionary measures, according to the Fiscal Procedure Code.

In turn, the budgetary debtor has the following obligations:

- a) to inform and communicate, in due time, to the person/persons carrying out the supervision the date, time and place at which the meetings of the general meeting of shareholders, associates, the board of directors and other such meetings regarding the management of the debtor will take place, as well as the documents to be debated;
- b) to allow access to the person/persons carrying out the supervision in all the locations where they carry out their activity, at their express request, under the conditions of the Code of Tax Procedure

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c) to allow access to the person/persons carrying out supervision to all documents received by the debtor or emanating from the debtor, including contracts, offers, or other documents, as well as to make copies of the requested documents, under the conditions of the Code of Tax Procedure

d) to inform the independent expert and the person/persons carrying out the supervision about the delays in the implementation of the measures set out in the restructuring plan, their causes, as well as the solutions to be taken.

If the competent tax authority considers that clarifications are necessary on the report submitted by the independent expert or on the measures or solutions proposed by the persons carrying out the supervision, they may be requested either from the debtor or from the independent expert, or the persons carrying out the surveillance.

Whenever an adjustment to the restructuring plan is required, it shall be carried out by an independent expert.

## **2.4. Changes to the restructuring process. Effects**

### **2.4.1. Modification of the restructuring plan**

According to Article 10 of Government Ordinance no. 6/2019, during the period of the restructuring plan, this one may be modified on the initiative of the debtor, if the latter finds before the expiry of the deadlines that the measures included in the plan, the measures to restructure the budgetary obligations included, with the exception of payment facilities, cannot be achieved, for objective reasons, within the set deadlines. If an adjusted restructuring plan is presented, the debtor must update the prudent private creditor test. If the tax authority accepts the adjusted restructuring plan, depending on the result of the new test, the tax authority shall adjust the budgetary obligations from the decisions issued when granting the payment facility.

### **2.4.2. Modification of the decision to facilitate the payment during the period while the facility is valid**

As we have already indicated, the restructuring plan may also contain the measure of granting the payment facility. The payment facilitation decision can be modified during the period of validity of the facility, at the request of the debtor, As stated in the provisions of Article 11 of Government Ordinance no. 6/2019. The debtor may submit no more than two requests for amendment of the payment facilitation decision in a calendar year or, where applicable, in a fraction of a calendar year.

The request must be submitted within the period of validity of the facility and it can no longer be accepted after the facility loses its validity for any reason. The request shall be solved by the competent fiscal body by decision amending the decision to facilitate payment or the decision to reject it, as the case may be.

We also mention that the debtor must submit, together with the request for the amendment of the payment facilitation decision, a restructuring plan adjusted and

approved by the statutory bodies of the tax debtor. This new restructuring plan must naturally also include a new payment schedule, which can be extended, with the prior consent of the persons carrying out the supervision, for a maximum period of 3 years, no matter the number of requests submitted for amendments.

A particularly important effect of the request for modification of the payment facility to be approved relates to the accessories of the amounts included in the facility, which shall be deferred to pay for exemption, as they are no longer calculated during the period of validity of the payment facility. This is because new amounts and payment deadlines are set for the facilitation rates and the new payment schedule forms an integral part of the decision amending the payment facilitation decision.

It should also be noted that, in the event that during the period of validity of the payment facility, the administrative act in which the budgetary obligations subject to the payment facility are individualized is abolished or annulled, in whole or in part, the decision to facilitate payment is amended accordingly, but only at the request of the debtor. If during the period of validity of the facilitation the debtor obtains a suspension of the execution of the administrative act in which are individualized budgetary obligations subject to the payment facility, the decision to facilitate payment shall also be amended, but only at the request of the debtor.

All these regulations to support tax debtors are also applicable to the budgetary obligations of a debtor who does not benefit from the payment facility but merges with another debtor who benefits from the payment facility.

## **2.5. Completion of the restructuring procedure**

The restructuring procedure, like any other administrative procedure, is triggered by drawing up administrative acts, can undergo changes during its development and then will be completed in one of the following situations, each of them generating certain legal and financial effects. The restructuring plan may therefore be completed or fail.

### **2.5.1. Completion of the restructuring plan**

The purpose for which this entire procedure for restructuring budgetary claims was created is that the tax debtor will be able to pay the budgetary obligations that have been accumulated to a sufficient extent to endanger both the payment of these claims and the existence of the debtor's own legal person. This can only be achieved when the debtor's restructuring measures and the measures to restructure the budgetary obligations have been implemented. Therefore, according to Article 18 of Government Ordinance no. 6/2019, the restructuring plan is considered completed, and the interest, penalties and all accessories due by the debtor, deferred to payment, as well as the main budgetary obligations deferred to payment are annulled by

decision, which is communicated to the debtor once the decision to complete the restructuring plan.

### 2.5.2. The failure of the restructuring plan

From a legal point of view (according to Article 13 of Government Ordinance no. 6/2019), the restructuring plan is considered to be unsuccessful if the restructuring measures of the debtor including the restructuring measures of the budgetary obligations, with the exception of the payment facilities, they are not implemented within the deadlines set out in the plan and after notification, the debtor does not submit an adjusted restructuring plan or does not carry out the measures within the time limit set by the persons supervising his activity.

The restructuring plan also fails when the payment facility loses its validity. In this case, the competent tax authority issues a decision to find the loss of the validity of the payment facility, which is communicated to the debtor.

The main legal effects of losing the validity of the payment facility relate to:

- a) the beginning or continuation, as the case may be, of the forced execution for the entire amount not reserved, with the possibility of opening the insolvency procedure for the fiscal debtor who can no longer pay the budgetary obligations toward the budgets belonging to the state or the administrative-territorial units;
- b) the loss of the validity of the deferral of interest, penalties and all accessories, as well as of the main budgetary obligations deferred to payment. In this case, at the same time with the decision to determine the loss of the validity of the payment facility, shall also be communicated to the debtor the decision to lose the validity of the deferral of interest, penalties and all accessories due by the debtor, as well as the main budgetary obligations deferred to payment;
- c) the obligation of the tax debtor to pay the interest according to Article 174 of the Code of Tax Procedure, for the remaining budgetary obligations to pay from the restructuring. They are due from the date of issue of the facilitation decision

Even if the validity of a payment facility has been lost, Article 14 of Government Ordinance no. 6/2019 establishes that the debtor may request the competent tax authority to maintain a payment facility the validity of which has been lost, unless the facility has been lost as a result of the declaration of insolvency or dissolution of the company. Such a request for the maintenance of the validity of the payment facility may be made twice in a calendar year or a fraction of a calendar year if the debtor submits an application for this purpose before the termination of all the budgetary obligations which have been the subject of the payment facility. The application is settled by issuing a decision to maintain the validity of the facility while preserving the already approved facilitation period. In this case, the restructuring plan is maintained.

However, in order to maintain the validity of the payment facility, the debtor is obliged to pay the budgetary obligations due on the date of communication of the decision to maintain the validity of the facility, except for those which have been the subject of the facility whose validity has been lost, within 90 days from the date of communication of the decision.

### 3. Conclusions

According to the restructuring mechanism, taxpayers' legal persons under public or private law, except for public institutions and administrative-territorial units, in a state of significant financial difficulty, can benefit from restructuring the outstanding main budgetary obligations and their accessories.

If the restructuring request is approved, the taxpayer enjoys the following advantages:

- the enforcement procedure against the debtor in order to fulfill the obligations that are subject to restructuring cannot begin or, if it has started, remains suspended, the competent tax authorities notifying the measure of lifting the attachment of the banking institutions where the debtor has accounts opened and/or the deducted third parties;
- the taxpayer has the right to continue to take part in public and sector procurement procedures;
- during the course of the restructuring plan, authorizations, agreements, or similar administrative acts may not be revoked or suspended by the competent authority on grounds of non-payment;
- the budgetary obligations covered by the restructuring plan are not considered to be past due and therefore no accessories to these obligations are calculated from the date of approval of the restructuring plan;
- the possibility of the debtor to capitalize on the assets over which the tax authorities have imposed seizure, in order to carry out the restructuring plan, conditioned by the decision of the fiscal body, issued at the debtor's request, and by the opinion of the persons carrying out the supervision.

If the debtor doesn't submit the restructuring request or if it is rejected, the following consequences become possible:

- there is a risk of opening the insolvency procedure for the taxpayer;
- the forced execution of the obligations subject to restructuring and the obligations subject to payment facilities can be started or continued;
- the taxpayer no longer has the right to participate in public and sector procurement procedures, from the expiry of the deadline for submitting the restructuring request, if the request is not submitted within or from the date of communication of the decision to reject if the request is submitted within the time limit but is rejected.

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2. Onet, C., (2022). The Reorganization of Budgetary Obligations. General Considerations About This Juridical Institution. *Journal of Legal Studies*, 30 (44).
3. \*\*\*Fiscal Procedure Code (Law no. 207/2015 with subsequent amendments).
4. \*\*\*Government Ordinance no. 6/2019 regarding the establishment of fiscal facilities with subsequent amendments.

### Notes:

[1] GO no.6/2019 refers to all these legal institutions that are already legally enshrined in the provisions of the Code of Tax Procedure. Where the legislator wished to make further clarifications on any of these, he did so according to the usual rules, because the provisions of Government Ordinance no. 6/2019 have the value of a 'special law' in relation to the provisions of the Code of Tax Procedure which are the 'general law' in the field of restructuring of budgetary claims.