



Stimati colaboratori,

Va informam ca in data de 21.01.2020 a fost publicata **Decizia nr. 581/2019 a Curtii Constitutionale a Romaniei publicata in M. Of. nr. 40/21.01.2020**, referitoare la admiterea exceptiei de neconstitutionalitate a dispozitiilor art. 213 alin. (8) din Legea nr. 207/2015 privind Codul de procedura fiscala, in redactarea anterioara modificarii prin Ordonanta Guvernului nr. 30/2017 pentru modificarea si completarea Legii nr. 207/2015 privind Codul de procedura fiscala, precum si ale art. 213 alin. (8) din Legea nr. 207/2015 privind Codul de procedura fiscala, astfel cum a fost modificata prin Ordonanta Guvernului nr. 30/2017, potrivit careia masurile asiguratorii dispuse de organul fiscal nu mai pot fi prelungite pe o perioada nedefinita si indelungata de timp, in cazul in care sunt sesizate si organele de urmarire penala.

Conform vechii reglementari, in cazul in care erau instituite masuri asiguratorii de catre organele fiscale si erau sesizate si organele de urmarire penala potrivit legii, masurile asiguratorii subzistau pana la data solutionarii cauzei de catre organele de urmarire penala sau de instanta de judecata. Daca organele de urmarire penala nu instituiam masuri asiguratorii, cele dispuse de organele fiscale se prelungeau in mod nedefinit, pana la solutionarea cauzei, fie de organele penale, fie de instantele de judecata. Procesele puteau sa se intinda pe perioade lungi de timp, chiar si ani.

Dear collaborators,

We would like to inform that on 21-st of January, 2020 was published, the **Decision no. 581/2019 of the Constitutional Court of Romania published in the Official Gazette no. 40/21.01.2020**, concerning the admission of the exception to non-constitutionality of the provisions of Article 213 paragraph (8) of Law no. 207/2015 on the Tax Procedure Code, in the wording prior to the amendment by Government Ordinance no. 30/2017 for the amendment and completion of Law no. 207/2015 on the Tax Procedure Code and Article 213 paragraph (8) of Law no. 207/2015 on the Tax Procedure Code , as amended by Government Ordinance no. 30/2017, according to which the insurance measures ordered by the tax authority can no longer be extended for an indefinite period of time, if the criminal prosecution authorities are also seised.

According to the old regulations, if insurance measures were imposed by the tax authorities and the prosecution was also seised in accordance with the law, the insurance measures shall remain until the case is resolved by the criminal prosecution authorities or by court. If the criminal prosecution authorities did not introduce insurance measures, those ordered by the tax authorities were extended indefinitely, until the resolution of the case, either by the criminal authorities or by the courts. Trials could extend for long periods of time, even years.

Neluarea masurilor asiguratorii in penal transformau organele fiscale in singurele organe competente sa aprecieze in mod discretionar momentul incetarii valabilitatii masurilor asiguratorii.

Reglementarea anterioara permitea organului fiscal sa nu mai dispuna ridicarea masurii asiguratorii daca era formulata si sesizare penala, inasa, fara a face vreo referire la mentinerea in continuare a obligativitatii organului fiscal de a emite titlul de creanta.

Or, in lipsa titlului de creanta - act administrativ impotriva caruia dispozitiile legale permit contribuabilului sa urmeze calea administrativa de contestare si, ulterior, de sesizare a instantei de judecata - contribuabilul nu avea deschisa calea legala de a accede la justitie.

Masurile asiguratorii luate de organele fiscale, care se puteau intinde pe termen nelimitat, nu puteau fi contestate, desi isi produceau efectele intr-o faza procesual penala, intrucat nu erau luate de organele judiciare.

Avand in vedere cele de mai sus, Curtea a statuat ca o solutie legislativa care nu permite contestarea luarii masurii asiguratorii incalca dreptul de proprietate privata.

Prin Decizia nr. 581/2019 Curtea Constitutionala a Romaniei a decis ca masurile asiguratorii dispuse de organul fiscal (popriri, sechestre fiscale) nu se mai prelungesc pana la finalizarea cercetarii penale sau a procesului in instanta.

Not taking the insurance measures by the criminal authorities made the tax authorities the only responsible authority to judge on a discretionary basis when the validity of the protective measures ceased.

The previous legislation allowed the tax authority to no longer order the removal of the insurance measure when it was filed a criminal complaint, but without any reference to further maintaining the obligation of the tax authority to issue the debt instrument.

However, without the debt instrument - administrative act against which the legal provisions allow the taxpayer to follow the administrative appeal and subsequently to refer the case to the court - the taxpayer had no legal way to access justice.

The insurance measures taken by the tax authorities, which could extend indefinitely, could not be challenged, although they produced their effects at a criminal trial stage, as they were not taken by the judicial bodies.

In the light of the above, the Court held that a legislative solution which does not allow contesting the insurance measures infringes private property rights.

By Decision no 581/2019 the Constitutional Court of Romania decided that the insurance measures ordered by the tax authorities (deductions, tax seizures) are no longer to be extended until the completion of the criminal investigation or court trial.

Eventualele masuri asiguratorii pot fi dispuse de procuror, separat.

Decizia nr. 581/2019 este obligatorie din 21 ianuarie 2020, data la care hotararea Curtii Constitutionale a aparut in Monitorul Oficial.

The possible preservation measures can be ordered by the prosecutor separately.

Decision no. 581/2019 is madatory starting from January 21-st, 2020, when the decision of the Constitutional Court of Romania was published in the Official Gazette.

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