



Tax & Legal Newsletter February 2023

The Romanian authorities recently introduced some new legislative provisions, as follows:

1. Annulment of the tax obligations relating to the reclassification of gift vouchers

All principle and accessory tax obligations, unpaid by 27.02.2023, established by the tax authority through a tax assessment decision issued and communicated to the taxpayer as a consequence of a change of classification – from the category of income derived from other sources to that of income derived from salaries and assimilated salaries – of gift vouchers received by individuals from persons other than employers are to be annulled (including those distributed by employers on behalf of income payers).

The annulment of tax obligations applies to:

- the period 26.05.2006 to 31.12.2020 – for gift vouchers regulated for under Law 193/2006;
- the period 01.01.2019 to 31.12.2020 – for gift vouchers regulated for under Law 165/2018.

If the abovementioned fiscal obligations were already settled by means of payment, compensation, enforced execution or dation in payment, they will then be refunded to taxpayers upon submission of a request within the general statute of limitations period of 5 years.

The annulment of these fiscal obligations will be carried out ex officio by the fiscal body or, as the case may be, upon the taxpayer's request, within 30 days as of 27.02.2023.

Any tax assessment decisions issued by the fiscal body but not communicated to taxpayers by 27.02.2023 will be revoked.

The application procedure for these provisions is to be issued by order of the President of the National Agency for Fiscal Administration within 30 days as of 27.02.2023.

Source: Law 43/2023 on the annulment of tax obligations, published in the Official Gazette, Part I, no. 163 of 24 February 2023.

2. Transfers of extra-urban agricultural land – Order establishing the tax procedure

On 2 February 2023, the Ministry of Agriculture and Rural Development and the Ministry of Finance jointly issued Order no. 396/2022/883/2023 (hereinafter the "Order") establishing the procedure for the calculation, collection and payment of tax on transactions involving extra-urban agricultural land. The Order also set out the declarative obligations established under the provisions of art. 4² of Law 17/2014. For a period of about 2 years now, the law has in effect been inapplicable in the absence of this Order.

The Order applies to transactions involving agricultural land located in extra-urban areas carried out prior to the eight anniversary of the acquisition thereof, as provided for in Art. 4² of Law 17/2014, i.e. through: 1) the sale of the controlling interest of the legal entity owning agricultural land located in extra-urban areas where this represents more than 25% of its assets and provided the alienation takes place prior to the eight anniversary of the acquisition of said land (this condition also extends to the period of ownership by the



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shareholder/associate who purchased the land as a contribution in kind to the share capital of the owner, where this is the case); and 2) the completion of these transactions by a court decision that takes the place of a sales agreement.

The seller must pay a tax equal to 80% of the positive difference between (i) the value of the agricultural land on the date of alienation of the controlling interest and (ii) the value of the land on the date of acquisition thereof. In the case of sales of the controlling interest of a company, the 80% tax is due in all cases where, fewer than 8 years previously, the legal person whose shares are being sold owned extra-urban agricultural land acquired by any means other than by purchase. In this case, the seller is obliged to declare the amount of income obtained to the competent central tax office within a maximum of 10 days from the date of transfer. The amount of tax due must be paid within 60 days of the date of communication of the tax decision issued by the tax authority.

The 80% tax is calculated and collected by the notary before the notarial deed of sale of the agricultural land located in extra-urban areas is authenticated. It is not a deductible expense.

If the seller is not resident in Romania for tax purposes, then the double taxation convention concluded by Romania with the state where the seller has their tax residence does not apply with respect to the 80% tax rate.

Although the issuing of this Order has succeeded in unblocking the market for transactions in extra-urban agricultural land, there are still unregulated aspects which may in practice continue to act as obstacles to the completion of these transactions. For example, the Order does not stipulate who is to pay the 80% tax in the event that the controlling interest in a company owning extra-urban agricultural land is held by more than one person. It therefore remains to be seen what impact this Order will have on the procedure for the transfer of extra-urban agricultural land.

Source: Order no. 396/2022 of the Ministry of Agriculture and Rural Development and Order no. 883/2023 of the Ministry of Finance on the approval of the Procedure regarding the calculation, collection and payment of the tax, as well as the declarative obligations established by the provisions of art. 4² of Law no. 17/2014 regarding various measures to regulate the sale of agricultural land located in extra-urban areas and to amend Law no. 268/2001 regarding the privatisation of companies administering the state's publicly and privately owned agricultural land and the establishment of the State Domains Agency.

This newsletter is a service of TPA.

Kind regards,
Your TPA Team



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