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Important amendment of the VAT regime in case of bankruptcy

By the Law 30/2019 approving the Government Emergency Ordinance no. 25/2018 regarding the amendment and the supplementing of certain normative acts, as well as approving certain fiscal and budgetary measures, **starting with January 1st, 2019**, article 287, letter d) of the Fiscal Code was amended, in the sense that, starting with January 1st, 2019, **VAT may be adjusted in case the value of the assets delivered or of the services performed cannot be cashed in following the entering into bankruptcy** of the beneficiary or **following the implementation of a reorganization plan admitted and confirmed by a court decision, whereby the receivable of the creditor is modified or eliminated.**

Consequently, as opposed to the former regulation, which allowed, in the case of bankruptcy, the adjustment of VAT only at the closing of the procedure, currently, the **adjustment of VAT is allowed starting with the moment of the entering into bankruptcy** of the company (i. e. starting with the date of the court decision, or, as the case may be, the court hearing report, whereby the entering into bankruptcy was decided).

In addition, the amendment pertains also to the insolvency/bankruptcy proceedings that started before January 1st, 2019 and that are still pending. Consequently, in case **the entering into bankruptcy occurred before January 1st, 2019** and the **final/final and irrevocable court decision** closing the procedure provided for by the insolvency legislation has not been issued by that date, **the adjustment shall be performed within a term of 5 years as of January 1st, 2019.**

The adjustment is allowed even if the reserve of subsequent verification has been lifted, according to the Fiscal procedural code. By the performing the adjustment, the reserve of subsequent verification, for the fiscal period in which the value added tax for the operation subject to the adjustment became due, is re-opened. In case, after the adjustment of the tax base, the amounts related to the respective receivables are cashed in, the performed adjustment shall be accordingly cancelled, as per the cashed in amounts, by the write-off for the fiscal period in which they are cashed in.

Consequently, starting with January 1st, 2019, VAT can be adjusted for all the debtors of the company that have entered into bankruptcy, under the above-mentioned terms.

We remain available for any clarifications that you may consider necessary.

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The article was prepared by Letitia Silaghi, Senior Associate within the Romanian team.