

FINANCIAL DISCIPLINE

Applicable legislation in this field

- Government Decision no. 701/1992 on consolidation of financial discipline, published in the Official Gazette no. 304/26th of November 1992
- Government Ordinance no. 15/1996 on consolidation of financial-currency discipline, published in the Official Gazette no. 24/31st of January 1996
- Government Emergency Ordinance no. 79/2001 on consolidation of the financial-economic discipline and other provisions with financial character, published in the Official Gazette no. 297/7th of June 2001 approved by the Law no. 59/2002
- Government Ordinance no. 34/2003 on measures in the field of financial-currency discipline of economic entities, published in the Official Gazette no. 62/1st of February 2003 approved by the Law no. 237/2003

I. Scope of legal provisions in the financial discipline matter

Consolidation of financial discipline has as effect the increasing of budgetary receipts including by recovery the debts of the state from bad debtors, as well as the diminution of tax evasion and fighting against corruption in the financial field.

Consolidation of financial discipline may be achieved both by stimulating of the payment in due time and in the legal quantum of the budgetary liabilities of the economic entities and by firm sanctioning of the bad debtors tax payers.

For this purpose, the fulfillment of tax liabilities of the unit is studied, the enforcement of measures of firm sanctioning of those that fail to pay their financial liabilities (bad debtors).

II. Authorities having duties in this field

The competent authority having duties and responsibilities in the field of financial discipline is the Ministry of Public Finances.

III. Liabilities incumbent to economic entities in relation to the fiscal registration

The followings are obliged to be fiscally registered:

- trade companies, including cooperative organizations;
- family partnerships;
- authorized natural persons performing activities independently.

1. Lodging of fiscal registration declaration

According to the point 8⁴.4. from the Order no.1213/2002, the registration certificate issued by the Unique Bureau from the territorial chamber of commerce and industry serves as a substitute for fiscal registration certificate. However, economic entities obliged to be fiscally registered must fill in and lodge a fiscal registration declaration with the competent fiscal body.

Trade companies, including those with a status of subsidiary, family partnerships are obliged to fill in and to lodge, within 15 days from the issuance of the registration certificate a “Fiscal registration declaration for legal persons, family partnerships and partnerships without juridical personality (010), code M.F.P. 14.13.01.11/1”. Fiscal registration declaration is lodged with the general departments of county public finances, respectively of the Bucharest municipality or with the public finances administrations of the districts of the Bucharest municipality, in the jurisdiction of which the trade company or the family partnership as the case may be, have the offices.

Trade companies having secondary offices type subsidiaries must lodge for their registration a fiscal registration declaration with the fiscal body in the jurisdiction of which the office of the subsidiary is, accompanied by a copy of the fiscal registration certificate of the trade company. The declaration must be filed within 15 days from the establishment of the subsidiary.

The other secondary offices, respectively agencies or other such centers of activity of the trade company must be fiscally registered as tax payers on incomes from salaries, if minimum 5 employees having individual labor contract unfold activities within them. Fiscal registration is made by

lodging with the fiscal body in the jurisdiction of which the respective secondary office is, of the Fiscal registration declaration for legal persons, family partnerships and partnerships without juridical personality”. The declaration must be lodged within 15 days from the establishment of the secondary office. If the secondary office is in the same jurisdiction with the company establishing it, it may not register it fiscally.

Authorized natural persons register fiscally on the date of the lodging of the declaration regarding incomes and estimated expenses to be made in the fiscal year, which has to be filed within maximum 15 days from the date of the beginning of the activity.

2. Lodging of the mentions declarations

If modifications appear in the data stated with the occasion of fiscal registration, trade companies or family partnerships must file, within 15 days from the date of the occurrence of the modifications a “Mentions declarations for legal persons, family partnerships and partnerships without juridical personality”.

Authorized natural persons, subject to VAT payment also file a mentions declaration in the situation of occurrence of certain modifications in the declared data.

Within 15 days from the filing of the mentions declaration, the fiscal body proceeds to the fiscal control of the economic entity.

3. Fiscal registration as VAT payer

Trade companies and family partnerships having as object of activity operations subject to VAT quotas and declare that gain annual incomes estimated over the exemption threshold established by law are registered as VAT payers through the filing of the fiscal registration declaration.

Trade companies and family partnerships making profits from operations exempted from VAT may choose, through fiscal registration declaration or after the fiscal registration, by mentions declaration, for the capacity of VAT payer.

In the moment in which the VAT payer capacity ceasing according to law, trade companies and family partnerships must file mentions declaration within 15 days from the date of the legal document recording the respective situation. The removing from record is made starting with the first day of the month following the filing of the mentions declaration, if the fulfillment of the legal conditions is established.

Subsidiaries or other subunits without legal personality of the tax and duties payers from Romania cannot be registered as VAT payers.

Authorized natural persons that become VAT payers according to law, at the beginning of activity or after the fiscal registration, shall fill in and file with the general departments of county public finances, respectively of the Bucharest municipality or with the public finances administrations of the districts of the Bucharest municipality in the jurisdiction in which they have the residence or head office of activity the “Fiscal registration declaration for natural persons having residence in Romania” or “Mentions declaration for natural persons having residence in Romania”.

4. Fiscal registration as excise payer

Economic entities becoming excise payers after the fiscal registration are obliged to file mentions declaration with at least 15 days before the beginning of the production or import of goods activity for which excises are owed.

Sanctions applicable in the case of violation of legal provisions in the field of fiscal registration

Violation of legal provisions in the field of fiscal registration is sanctioned according to the provisions of Government Ordinance no. 82/1998. We exemplify:

Failure to file in due time of the fiscal registration declaration or of the mentions declaration and the filing of false registration declaration, non-observing reality, is contravention and is sanctioned with a fine from lei 1,500,000 to lei 2,000,000.

IV. Obligations incumbent to economic entities in relation to the drawing up and filing of the taxes and duties declarations

Taxes and duties declarations are documents through which the followings are declared:

- owed taxes and duties, in the situation in which the obligation to calculate taxes and duties is in the payer’s burden;
- goods and taxable incomes, in the situation in which the establishment of the income and of the duty is made by a fiscal body;
- taxes levied by stopping at the source, in which case the payer has the obligation to calculate, retain and pay taxes and duties.

All economic entities – trade companies, family partnerships, authorized natural persons – having payment liabilities of incomes and duties to state budget and local budgets are obliged to file taxes and duties declarations.

Rules regarding the filling in and filing of the taxes and duties declarations

Taxes and duties declaration is drawn up by filling in a form put at the payers' disposal, free of charge, by the Ministry of Public Finances.

The payer is obliged to file the taxes and duties declaration even if he is exempted from the tax payment according to the legal regulations, as well as in other cases established by the Ministry of Public Finances.

Payers have the obligation to draw up correctly the taxes and duties declarations writing clearly, readable and completely the information stipulated in the forms. If the taxes and duties declarations comprise errors, they may be rectified by the payers, from their own initiative.

Also, the payer is obliged to go in the established term at the competent fiscal body for the performance of the rectifications, otherwise the fiscal body establishing the payment obligation ex officio.

Sanctions applicable in the situation of the violation of the legal provisions in the field of the taxes and duties declarations

Failure to file in due time by the trade companies of the taxes and duties declarations is sanctioned according to the provisions of Art. 13 from the Government Ordinance no. 68/1997 as follows:

- with 10% from the owed tax, if the delay is up to 30 days inclusive compared to the established legal term;
- with 30% from the owed tax, if the delay is up to 60 days inclusive compared to the established legal term;
- with 50% from the owed tax, if the delay exceeds 60 days compared to the established legal term;
- with lei 500,000 in the situation of failure to file the tax return if, for the period of reporting, no payment liabilities are registered.

Penalties cannot exceed the amount of lei 50,000,000.

V. Obligations incumbent to trade companies in connection with the receipts and payments operations

The operations of receipts and payments between trade companies are performed only by payment instruments, without cash.

Exceptions:

Trade companies may make payments in cash in the following cases:

- payment of salaries and other rights of personnel;
- other payment operations of trade companies with natural persons;
- payments to other trade companies, subject to limitation of a daily threshold of maximum lei 30,000,000.

Specification

Payments to trade companies exceeding the threshold of lei 30,000,000 may be made in the following situations:

- deposits in the bank accounts of the trade companies that can be made by other legal persons, without any ceiling;
- expenses for official trips, within the limit of the amounts due for payment of the transportation, of the daily allowance, indemnity and accommodation during the official trip, as well as unexpected expenses made for this purpose;
- protocol expenses occasioned by the organization of conferences, symposiums and other such actions, subject to conditions of the quotas established by the legal norms in force.

The amount in cash from the trade companies' pay offices cannot exceed, at the end of each day, the ceiling of lei 20,000,000. The exceeding of this ceiling is admitted only with the amounts afferent to the payment of salaries and other rights of personnel, as well as of other operations with natural persons, for a period of 3 working days from the date stipulated for their payment. The amounts in cash exceeding this level shall be deposited in the bank accounts of the respective trade companies.

Violation of legal provisions regarding the operations of receipts and payments between trade companies is sanctioned according to the provisions of the Government Ordinance no. 15/1996 on consolidation of currency-financial discipline. For example:

Making of payments in cash to trade companies over the ceiling of lei 30,000,000, as well as the existence in the trade companies' pay offices of

amounts in cash over the ceiling of lei 20,000,000 are contraventions and are sanctioned with a fine from lei 10,000,000 to lei 50,000,000.

VI. Obligations incumbent to trade companies in relation to the keeping of Unique Control Book

Trade companies have the obligation to keep the unique control book.

The unique control book has as purpose the evidencing of all controls performed to the trade company by all specialized control bodies, in the fields: financial-fiscal, sanitary, phyto-sanitary, urbanism, quality in constructions, consumer's protection, labor's protection, labor's inspection, protection against fires, as well as in other fields stipulated by law.

Trade companies are obliged that, within 30 days from the registration date, to buy the unique control book.

The unique control book is issued, against payment, by the general department of public finances from the jurisdictions where the trade company has the registered office, on the basis of its registration certificate.

The unique control book is numbered, sealed and kept by the legal representative of the verified trade company or by his representative.

The unique control book is kept at the registered office and at each secondary office for which functioning approvals/authorizations have been issued.

The verified trade company has the obligation to present the unique control book to the control bodies.

Sanctions applicable in the case of the failure to comply with the legal provisions regarding the unique control book

The failure to buy the unique control book within 30 days from the registration is contravention and sanctioned with a fine from lei 5 million to lei 10 million.

The failure to present the unique control book at the specialized control bodies' request is contravention and sanctioned with a fine from lei 10 million to lei 20 million.