



Fiscal Council's Opinion on the legislative proposal - Law for amending the Law no. 227/2015 on the Fiscal Code – b399/2021

On September 22, 2021, the Fiscal Council (FC) received the address of the Romanian Senate no. XXXV/4478 dated 14.09.2021, by which it is requested, in accordance with the article 53 paragraph (2) letter e) of the Fiscal Responsibility Law no. 69/2010 republished (FRL), the opinion on a legislative proposal – Law for amending the Law no. 227/2015 on the Fiscal Code (the proposal no. b399/8.09.2021).

According to the article of law to which reference is made, the attributions of the Fiscal Council are:

e) analysis and elaboration of opinions and recommendations, both before the approval by the Government and before the transmission to the Parliament, on the annual budgetary laws, on the budgetary revisions, as well as on other legislative initiatives that may have an impact on the budgetary expenditures, as well as the assessment of their compliance with the fiscal principles and rules provided by this law.

Brief description of the legislative proposal

The legislative proposal submitted to the Fiscal Council refers to amending the current legislation on the methodology for applying the local tax on non-residential buildings owned by physical and legal persons, as follows:

- regarding the tax on non-residential buildings owned by individuals, it is proposed to amend the current legislation on the application of art. 458 of Law no. 227/2015 paragraph (4) which states: “If the value of the building cannot be calculated according to the provisions of para. (1), the tax is calculated by applying the tax rate of 2% on the taxable value determined according to art. 457” with the modification that this rate of 2%¹ should be applied "**only with the condition** of a prior notification to the owners by

¹ From a tax rate of 0.2 – 1.3% on the taxable value of the building determined according to art. 458 para. (1)

the local tax authority, respectively, by the General Directorate of Taxes for Physical Persons within the City Hall, that the taxable amount cannot be established according art. 458 para. (1)". One argument in the favor of the legislative proposal highlighted by its initiators is that "the current regulation assumes that the taxpayer is in bad faith";

- concerning the application of the tax on non-residential buildings owned by legal persons, the legislative initiative also proposes that if they have not updated the evaluation of the "taxable value of the building in the last 5² years", the 5%³ tax rate should be applied "**only with the condition** of prior notification of the owners by the local the local tax authority, respectively, by the General Directorate of Taxes for Legal persons within the City Hall, that the legal entity owns a property that has not been revalued in the last 5 years prior to the reference year". In supporting this proposal, the Explanatory Memorandum states that "the long-time frame to proceed with the revaluation of the building is likely for owners to create omissions even for prudent and diligent ones";
- if the owners of individuals and legal persons do not receive a prior notification from the local tax authority, the authors of the legislative initiative propose the introduction of the provision according to which "the owner will owe a tax at the amount reflected in the last evaluation report he submitted.";
- regarding the way of notifying the owners, the initiators propose to be done including electronic means - fax, e-mail, other electronic means - if the owner has indicated to the tax authority the appropriate information for this purpose. "

Budgetary impact of the legislative proposal

The legislative proposal is not accompanied by the financial statement in which its impact on the general consolidated budget is presented.

The Explanatory Memorandum attached to the present proposal only states that this will have a positive impact on the relationship between the tax authority and taxpayers, as well as with the business environment, while local tax authorities will thus play an active role in the sense given by the Constitutional Court.

² According to art. 460 of Law no. 227/2015 para (6) the period is 3 years. The 5 -year period is for physical persons.

³ From a tax rate of 0.2 – 1.3% on the taxable value of the building determined according to art. 460 paragraph (2).

Assessment of the Fiscal Council regarding the legislative proposal

The Fiscal Council appreciates the initiatives to improve the relationship between the central and local tax authority, on the one hand, and taxpayers, on the other hand. Moreover, in its Reports and Opinions issued over the years, the FC emphasized the importance of increased transparency of the tax administration and the digitalization of its activities, as well as of the pro-active fiscal policies aiming at increasing tax compliance.

We also remind that, in the Methodological Norms related to the Fiscal Code, it is provided in SECTION 4 - Calculation of the tax on non-residential buildings, art. 39 para. (3) that: *“starting with June 2016, the local tax authorities communicate to the Ministry of Public Finance, until the 15th of each month, the information from the evaluation reports submitted by taxpayers, in order to be listed in an electronic register. The electronic register shall be published on the website of the Ministry of Public Finance and may be consulted by any person.”* However, the lack of the necessary funds determined that this provision has not been implemented up to now.

Regarding the compliance with the fiscal principles and rules set out in the FRL, the Fiscal Council has the following observations:

- Although the legislative proposal will generate some reductions in the budget revenues (by not collecting differences in taxes, debits and accessories due to the local authorities), and increases in the budget expenditures (for additional administrative costs for collection, recording supplementary volume of data, as well for the configuration of the necessary IT applications, and additional expenses regarding the notifications transmission to individuals and legal persons), the legislative initiative is aiming at consolidating a correct relationship between the taxpayers and the tax authority.
- The FC evaluates as minor the budgetary impact of this measure.

In conclusion, the FC appreciates this legislative initiative and considers it can have a positive impact on the relationship between the taxpayers and the tax authority. The FC evaluates as negligible the budgetary impact of this measure.

The opinions and recommendations formulated above by the Fiscal Council were approved by the Chairman of the Fiscal Council, according to the provisions of art. 56, para. (2), letter d) of Law no. 69/2010 republished, after being agreed by Council members, through vote, in the meeting of October 13, 2021.

October 13, 2021

Chairman of the Fiscal Council

Professor DANIEL DĂIANU