

Retention obligation – A desire for simplification

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With the turn of the year, there are traditionally new changes in the area of taxes and accounting. This year, they concern, among other things, the obligation to keep documents.

The Accounting Law (Law 81/ 1991) obliges all companies operating in Romania that fall within its scope to keep accounting records and evidence documents based on which entries are made for certain periods of time.

While the minimum retention obligation was usually 10 years until January 15th, 2023, on the basis of Law 36/ 2023, published in the Official Gazette on 15th of January 2023, this has now been reduced to 5 years.

New retention periods

The new legislation provides for a period of 5 years for the retention of accounting records. This is calculated from July 1st of the year following the end of the fiscal year in which the documents were prepared. Law 36/ 2023 expressly provides for a period of 5 years for payroll records in addition to the retention period for accounting records.

Archiving through automatic data processing systems and cash registers

The new 5-year period also applies to those companies that organize their accounting records by means of automatic data processing systems. The same applies to companies that are obliged to use cash registers. More precisely, the fiscal memory of the cash registers must allow the collection and storage of data for 5 years instead of 10, and replaced fiscal memories must also be archived for 5 years instead of the current 10.

De-bureaucratization

According to the government, companies will be relieved of a resource-intensive obligation: the storage and archiving of numerous documents and registers imposes costs on companies in the form of rent, expenses for maintaining premises, their expansion over time and the accumulation of new registers and documents to be kept, expenses for archiving software or applications, etc.

In addition to the points mentioned above, the legislator's stated goal is to align the mandatory retention period with the statute of limitations, during which, according to tax procedure law, the tax administration has the right to determine tax claims.

Problems in practice

Although the amendments to the law are aiming for harmony, in practice they lead to a series of controversies. For example, the 5-year period for the retention of accounting records and the statute of limitations for the right of tax authorities to determine tax liabilities start to run at different times. This can be explained as follows:

The right of the tax authorities to assert tax claims is barred after 5 years, unless the law provides otherwise. This period begins on July 1st of the year following the year in which the tax liability arises. However, the retention obligation requirement provides for a period of 5 years beginning on July 1st of the year following the end of the fiscal year in which the records were prepared. Therefore, in the event of a tax audit, situations may arise where the accounting retention period has expired and the company is no longer in possession of the accounting records on which the tax calculation is based. If relevant tax evidence for a certain

period in the past is no longer available, the authorities are entitled to determine tax claims based on estimates, which may result in higher tax charges.

Conclusion

In fact, the new measures are another sign that lawmakers are striving to continuously reduce bureaucracy. This not only reduces costs and effort for companies, but could even free up space in the chronically overcrowded state archives in the long run. As a result of the dissolution of a company, its records must also be archived, but there is currently no space available for this in the state archives, which is why services provided by private companies must be used for archiving.

In our opinion, the new amendments would need to be more precisely aligned with the accounting records retention procedure.

In practice, as always, special caution is required. Removing documents older than five years from the archives may lead to changes in the tax result in the event of tax audits because of the different deadlines and the gap between the date of creation of the documents and the date of generation of the sales to which they relate.

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