



Fiscal Council's Opinion on the legislative proposal for amending and complementing Law no. 227/2015 regarding the Fiscal Code – b478/2021

On October 27, 2021, the Fiscal Council received the address of the Romanian Senate no. XXXV/5073 dated 18.10.2021, by which it is requested, in accordance with the provisions of the Fiscal Responsibility Law no. 69/2010 republished (FRL), the opinion on a legislative proposal for amending and complementing Law no. 227/2015 regarding the Fiscal Code - b478/2021.

In what concerns this request, the provisions of art. 21 of the FRL are relevant, according to which: *"in cases where proposals are made for normative acts that lead to a decrease in budgetary revenues, the financial statement will be prepared according to the provisions of art. 15 of Law no. 500/2002, as subsequently amended and complemented, which must meet at least one of the following conditions:*

- a) to have the approval of the Ministry of Public Finance and the Fiscal Council, according to which the financial impact has been taken into account in the budget revenue forecast and does not affect the annual and medium-term budgetary targets;*
- b) to be accompanied by proposals for measures to compensate for that financial impact, by increasing other budgetary revenues."*

Brief description of the legislative proposal

The legislative proposal subject to examination by the Fiscal Council envisages the implementation of a system of withholding tax for individual investors, by applying a tax of 1% on the gain from the transfer of securities held for more than 1 year, respectively a tax of 3% on the gain from the transfer of securities held for less than 1 year, without any losses being compensated or declared. At the same time, the proposal aims at canceling the tax loss carryforwards accumulated on the basis of the losses registered in the previous years.

In the explanatory memorandum it is argued that the reduction of the tax burden and bureaucracy will stimulate the participation of individual investors on the capital market with positive consequences for the financing operations of companies and the Romanian state. Also,

it is expected that the simplification of the tax application system (by withholding tax) will contribute to its faster and more secure collection.

Budgetary impact of the proposal

Considering the results of a study carried out by the Bucharest Stock Exchange (BSE), the budgetary impact of the legislative proposal, estimated for the period 2016-2020 in the hypothesis of a total collection of taxes due, would result in a reduction of revenues of the general consolidated budget between 31 and 49 million lei for each year. The explanatory memorandum considers that this budgetary impact is insignificant and argues that the development of the local capital market has the potential to increase budget revenues in the medium and long term.

Assessment of the Fiscal Council regarding the legislative proposal

- Regarding the opportunity of the legislative project, the Fiscal Council has no attributions in deciding, establishing the ways to stimulate the participation of investors on the capital market representing the prerogative of the Parliament, the Government and other institutions.
- Regarding the compliance with the provisions of art. 21 of the FRL, previously described, the Fiscal Council notes that the legislative proposal is accompanied by an estimate of its budgetary impact. The Fiscal Council agrees with the results of the assessment of the budgetary impact of the legislative proposal, as well as with the fact that this impact is small in size and is not likely to have a significant effect on the overall consolidated budget. Thus, the legislative proposal has the potential not to affect the annual budgetary targets, especially if it is taken into account in the elaboration of the fiscal strategy and the draft budget.
- In view of the above, the Fiscal Council endorses this legislative proposal.
- On the other hand, it should be emphasized that the legislative proposal under consideration introduces a new category of exceptions to the income tax system, in this case for investors operating on the capital market. This is not in line with the efforts to standardize the legislation in the field of income taxation, assumed by Romania through National Resilience and Recovery Plan (NRRP), disagreeing with the position expressed by the Fiscal Council, which has repeatedly called for a fair tax system, by eliminating the legislative exceptions for certain areas of activity.

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 November 23, 2021.

November 23, 2021

Chairman of the Fiscal Council

Professor DANIEL DĂIANU