

TAX HOT TOPICS

21 August 2020

Law no. 175/2020 for the amendment and completion of Law no. 17/2014 regarding certain measures for regulating the sale-purchase of agricultural lands located outside urban areas and for the amendment of Law no. 268/2001 regarding the privatization of commercial companies that administrate public and private lands for agricultural purposes and for the establishment of the State's Domains Agency

- ❖ Law no. 175/2020 for the amendment and completion of Law no. 17/2014 regarding certain measures for regulating the sale-purchase of agricultural lands located outside urban areas and for the amendment of Law no. 268/2001 regarding the privatization of the commercial companies that administrate public and private lands for agricultural purpose and for the establishment of the State's Domains Agency was published in the Official Gazette no. 741 of 14 August 2020.
- ❖ In this respect, several important amendments were brought with respect to the sale-purchase of agricultural lands located outside urban areas, as follows:
 - ❖ The sale of agricultural lands located outside urban area shall be made in accordance with the substantive and formal conditions provided under the Civil Code and based on the pre-emption right, at the same price and in equal conditions, in the following specific order, considering the newly introduced/ amended categories of pre-emptors, as follows:
 - i. co-owners, first degree relatives, spouses, relatives up to and including third degree;
 - ii. owners of agricultural investments in respect to tree cultures, grapevines, hops, private use irrigation and/ or lessees- in case certain projects have been developed on the lands subject to sale (i.e agricultural investments related to tree cultures, grapevines, hops, irrigation), the owners of these investments benefit of priority rights when buying these lands;
 - iii. the owners and/ or lessees of the agricultural lands located near the borders of the land subject to sale, in accordance with certain conditions;
 - iv. young farmers, respectively persons up to 40 years of age, who have the appropriate professional skills and qualifications and who have been assigned, for the first time within an agricultural holding, as supervisors of the respective exploited land, having the intention of carrying out or actually carrying out agricultural activities;
 - v. "Gheorghe Ionescu-Sisesti" Academy of Agricultural and Forestry Sciences and the research and development units in the fields of agriculture, forestry and food industry, who have the purpose of purchasing agricultural land located outside

- urban areas with the main purpose of agricultural research, located nearby existing plots of land in the patrimony thereof;
- vi. **individuals having their domicile/ residence located in the administrative-territorial units where the land is located or near the borders of those administrative-territorial units;**
 - vii. **Romanian state, through the State Domains Agency.**

❖ The above categories of pre-emptors who have the intention to purchase the agricultural land located outside urban area, can exercise their pre-emption right within a 45 working days period starting from the moment when the official offer is published by the city hall and with the condition of fulfilling the conditions provided per this law;

❖ As a newly introduced provision (article 4¹), if the holders of the pre-emption right do not express their intention of purchasing the land located outside urban area within the legal deadline, the sale of such agricultural lands can be performed to other potential categories of buyers, respectively:

a) Individuals who fulfil the following conditions:

- they have had their domicile/ residence located on the national territory, for a period of at least 5 years prior to moment when the sale offer was registered;
- they have undertaken agricultural activities on the national territory for a period of at least 5 years prior to the moment when the sale offer was registered;
- they have been registered with the Romanian fiscal authorities for at least 5 years prior to the moment when the sale offer was registered.

b) Legal entities that fulfil the following conditions:

- have had their headquarters or their secondary office located on the national territory, for a period of at least 5 years prior to the moment when the sale offer was registered;
- have undertaken agricultural activities on the national territory for a period of at least 5 years prior to the moment when the sale offer was registered;
- submit documents proving that, out of total income reported within the last 5 fiscal years, at least 75% of it represents income derived from agricultural activities;
- prove that the associates/ shareholders who control the company have had their domicile registered on the national territory for a period of at least 5 years, prior to the moment when the sale offer was registered;
- if within the structure of the legal entities, the associates/ shareholders who hold control over the company are other legal entities, the associates/ shareholders who hold control over the company must prove that they have had their domicile registered on the national territory for a period of at least 5

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years, prior to the moment when the sale offer was registered for the sale of agricultural lands located outside the built-up area.

- ❖ In case no pre-emption right is exercised, the potential buyers mentioned above must submit with the town's hall office, the relevant documentation justifying the fulfilment of the conditions above within a 30-day period starting from the moment when the 45 working day period applicable in case of pre-emptors has expired;

If the holders of the pre-emption right do not express their intention to buy the land located outside urban area within the legal deadline and the potential buyers, either individuals or legal entities, do not meet the above conditions or do not submit the relevant documentation within the legal deadline, the sale of agricultural land can be performed to any other individual or legal entity;

- ❖ As a newly introduced provision as well (article 4²), the sale of an agricultural land located outside urban area before the fulfilment of an 8 year period since purchase is conditioned by the payment of an 80% tax on the amount representing the difference between the sale price and the purchase price, as per the notaries relevant official documents from the respective period;
- ❖ The same newly introduced article 4² provides that, in case of direct or indirect sale of the shares of the companies that own agricultural lands located outside urban area and which represent more than 25% of their assets, before the fulfilment of an 8 year period since the purchase, **the seller will have the obligation to pay an 80% tax on the difference in value of the land, computed according to the documents available with the notaries, between the moment of acquiring the land and the moment when the sale of shares is performed.** In this case, the corporate income tax computed on the difference in value of the shares sold shall be applied on a proportionally (with the percentage of the share of the respective agricultural lands in the fixed assets) reduced base, any double taxation being prohibited;
- ❖ The above provisions do not apply in the case of reorganization or reallocation of assets within the same group of companies;
- ❖ The sale of agricultural lands located outside urban area without having respected the pre-emption right or without obtaining the related authorizations is forbidden and will be sanctioned with absolute nullity;
- ❖ The owners of agricultural lands located outside urban area have the obligation to use them exclusively for agricultural activities starting with the date of purchase and, in case the agricultural land has been used for agricultural investments in respect of tree cultures, grapevines, hops and private irrigation, they should keep the agricultural destination of this investment;

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- ❖ The sale of agricultural lands located outside urban area without having respected the pre-emption right and the conditions provided as per the newly introduced articles 4¹ and 4² constitutes contravention and shall be punished with a fine between RON 100,000 and RON 200,000;
- ❖ This law enters into force in 60 days from the date of its publication in the Official Gazette of Romania, Part I.

**Law no. 179/2020 for the approval of the Emergency Ordinance no. 70/2020 regarding the regulation of certain measures, starting with 15 May 2020, in the context of the epidemiological situation determined by the spread of SARS-CoV-2, for the extension of certain terms, for the amendment and completion of Law no. 227/2015 regarding the Tax Code, of the National Education Law no. 1/2011, as well as other normative acts
Official Gazette no. 755 of 19 August 2020.**

- ❖ **The normative act brings certain amendments and completions to Emergency Ordinance no. 70/2020, some of the most important being applicable to employers having more than 50 employees and who no longer have the obligation to set up particular work schedules, but have the possibility to set-up individualized working schedules, with the employee's consent, with the aim of ensuring of one hour distance between employees, at beginning and the end of the work schedule, within a three hour period.**

For additional details regarding the above, you can contact any member of the Taxhouse team or you can send us an e-mail at office@taxhouse.ro.