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New changes regarding the Government's Ordinance no. 16/2022 for the amendment of Law no. 227/2015 regarding the Tax Code have been introduced through Law 370/2022

The law brings changes in various areas, respectively corporate tax, microenterprises income tax, withholding tax, local taxes, income tax, and exercise duties.

Law 376/2022 on the amendment of Government Emergency Ordinance no. 28/1999 regarding to the economic operators' requirement of using fiscal electronic cash registers

The law provides clarity regarding the tax treatment of tips.

New Order issued by the Minister of Research, Innovation and Digitalization, the Minister of Education, the Minister of Labor and Social Solidarity, and the Minister of Finance on the classification of the software development activities

The new Order on the classification of software development activities has been published. The previous Order is repealed and replaced by this Order, which entered into force on 01.01.2023.

Order of the Minister of Finance regarding the assets used in the production and processing activity and the assets representing refurbishment for which the tax exemption of the reinvested profit is applied, according to art. 22 of Law no. 227/2015 regarding the Fiscal Code

The order brings a series of clarifications regarding the assets used in production eligible for the application of the reinvested profit facility.

Government Emergency Ordinance no. 188/2022 amending and supplementing Law no. 207/2015 regarding the Tax Procedure Code and Government Emergency Ordinance no. 74/2013 regarding the measures for improving and reorganizing the activity of the National Agency for Tax Administration, as well as for amending and supplementing other normative acts

The Ordinance brings significant changes to the Tax Procedure Code, especially in the matter of fiscal controls, among the most important regulated aspects being: changes regarding the risk class/subclass

following the risk analysis, the modification of the rules regarding requests for information from ANAF and the flow of communication with the tax authority, changing certain rules for carrying out the tax inspection, issuing the provisional tax assessment decision, regulating the compliance notice, changes regarding the documentary verification procedure, changes regarding the anti-fraud control and verification of the tax status of natural persons.

Order for the approval of the procedure for the use and operation of the RO e-Transport national system for monitoring the transport of goods with high fiscal risk.

The new RO e-Transport implementation procedure has been published.

Order of the Minister of Finance and of the Minister of Agriculture and Rural Development on the application of the reduced VAT rate of 9% for the delivery of fertilizers and pesticides of the kind normally used in agricultural production, seeds and other agricultural products intended for sowing or planting, as well as for the provision of services of a kind normally used in agricultural production

The order details the tariff positions of goods representing fertilizers, pesticides, seeds, and planting materials, but also the provision of services for which the VAT rate on delivery on the territory of Romania is 9% as of January 1, 2023.

I. [New changes regarding the Government Ordinance no. 16/2022 for the amendment of Law no. 227/2015 regarding the Tax Code have been introduced through Law 370/2022](#)

Legislative updates brought in the area of corporate income tax, microenterprise income tax and taxation of taxpayers in the field of hospitality ("HoReCa")

- In relation to the deductions for R&D expenses, the R&D activities eligible for granting the additional deduction when determining the tax result should be from the categories of applied research and/or experimental development activities, relevant to the activity carried out by the taxpayers.
- The application of the microenterprise tax regime for entities obtaining income from management and/or consulting was clarified. As a result, taxpayers obtaining more than 20% of their revenues from consulting and management activities, do not fall into the category of microenterprise taxpayers. There is an exception for those who obtain income from tax consultancy, accounting and financial audit activities, corresponding to NACE code 6920.
- If a microenterprise, during a fiscal year, exceeds the threshold of EUR 500,000 or obtains more than 20% of their income from consulting and management activities, except for those corresponding to NACE code 6920, will be liable to pay corporate income tax starting with the quarter in which they exceeded any of these limits. These provisions apply starting with the income of 2023.
- Taxpayers applying the corporate income tax or microenterprises tax regime, which carry out activities in the HoReCa field and also simultaneously obtain income from other activities than those provided by the NACE codes related to HoReCa activities, will apply the corporate income tax for the income obtained from those activities (in if certain conditions are met).

Legislative updates in relation to local taxes (tax on buildings)

- Buildings operating under the coordination of the Ministry of Research, Innovation and Digitization, as well as the Ministry of Family, Youth and Equal Opportunity will be tax exempt for tax on buildings.
- Tax on building for new or rehabilitated buildings for which the owner will carry out at his own expense works to improve the energy performance, for the installation of panels photovoltaics and/or the implementation of wastewater treatment solutions, will be reduced or eliminated, subject to Local Councils' decision.
- Certain amendments regarding the taxation of buildings, brought by Ordinance 16/2022 (points 106 respectively 107-116), will be applicable starting from 2025.

Clarifications on the dividend tax rate

In the context of the tax rate increase for dividends from 5% to 8%, the tax regime is clarified for dividends distributed based on interim financial reports drawn up during 2022, for which adjustments based on annual financial reports intervenes. In this situation, the tax rate applicable to dividends is 5%, without recalculating the tax after adjustments based on the annual financial statements for the 2022 financial year.

Clarifications on tax incentive applicable in the construction field

The method of computing the indicator "total turnover" used to determine the share of turnover from construction activities carried out in Romania is modified. In contrast with the previous regulation, the indicator "total turnover" will include only the revenue from the activity carried out on the territory of Romania.

Changes regarding the Government's Emergency Ordinance no. 193/2002 on the introduction of modern payment systems

- Legal entities that carry out retail and wholesale trade activities, as well as those that carry out service activities, have the obligation to implement the card payment method, through POS terminals, if they have made cash receipts with a value greater than RON 50,000.
- If the material threshold has not been exceeded for 2 consecutive years, the obligation to implement this payment method becomes optional.

II. [Law 376/2022 on the amendment of Government Emergency Ordinance no. 28/1999 regarding to the economic operators' requirement of using fiscal electronic cash registers](#)

The law defines the concept of „tips” and establishes the accounting registration procedure and listing on the tax receipts and invoices of such amounts collected by economic operators that perform activities corresponding to NACE - CAEN code 5610 – „Restaurants”, 5630 – „Bars and other activities of serving drinks”. Additionally, the tax treatment of tips is clarified.

- An obligation is established for economic operators to record the amounts received from the collection of tips separately in the accounting system, and to distribute the entirety of the amounts to the employees based on a nominal record and an internal procedure of distribution as defined in the internal regulation.
- From a tax perspective, the tips distributed by the economic operator to its employees according to the internal rules are taxable as income from other sources and exempt from social contributions.
- Tips distributed in accordance with the legal provisions cannot be reclassified for tax purposes as wage or salary-like income.

III. Order no. 21813/6421/2246/4433 issued by the Minister of Research, Innovation and Digitalization, the Minister of Education, the Minister of Labor and Social Solidarity, and the Minister of Finance on the classification of the software development activities

- The restriction that the beneficiaries of the exemption must be Romanian citizens, EU citizens or citizens of the EEA and the Swiss Confederation is removed. All employees may benefit from the exemption under the conditions of the order.
- The possibility to apply the tax incentive for certain situations of secondment within Romania is introduced if the employees and the payer of the income meet the conditions established by the order.
- The income tax incentive is extended under certain specific conditions to employees of public institutions.
- Additional documentation obligations are introduced for employers to correctly apply the tax incentive for certain employees.
- The roles eligible for the tax incentive are supplemented including the software development engineer role.

IV. Order of the Minister of Finance regarding the assets used in the production and processing activity and the assets representing refurbishment for which the tax exemption of the reinvested profit is applied, according to art. 22 of Law no. 227/2015 regarding the Fiscal Code

- The list of eligible assets for the application of the reinvested profit facility has been published. Thus, this category will also include the assets used in the production activity, processing and the assets representing refurbishment. The list is made in accordance with the Fixed Assets Catalog.

V. Government Emergency Ordinance no. 188/2022 amending and supplementing Law no. 207/2015 regarding the Tax Procedure Code and Government Emergency Ordinance no. 74/2013 regarding the measures for improving and reorganizing the activity of the National Agency for Tax Administration, as well as for amending and supplementing other normative acts

Definition of the tax file and the administrative file of the tax control action

- The notions of "**administrative file of the tax control action**" and "**tax file**" are defined;
- It is introduced the obligation of the tax body **to provide the administrative file of the tax control action** at the written request of the taxpayer/ payer subjected to a tax control action.

Determination of the risk class/subclass following the risk analysis

- With respect to the risk analysis, a **new criterion – i.e. economic – to be considered** is introduced;
- Following the periodical risk analysis performed by the tax body, **the taxpayer may require the communication of the class/ subclass of tax risk in which he was classified**. However, given that the operationalization of the IT application for risk analysis is scheduled for the fourth quarter of 2025, the measure will enter into force on January 1st, 2026.

Request for information/ documents and the communication flow between the taxpayer and the tax body

- According to the new regulation, if documents/ information are requested in order to clarify the tax situation, **the tax body will be able to request from the taxpayer only those that were not previously in the possession of the tax body;**
- The provision of the documents, either at the tax body's headquarters or in the context of a tax control procedure/ settlement of a tax appeal, **can be done *alternatively* through post with delivery receipt, or by submitting them to the registry of the tax body or through the Virtual Private Space.**

Amendments regarding the tax inspection

Amendments that will enter into force on January 1st, 2026:

- The tax inspection performed by the central tax body will be exercised based on the principles of independence, uniqueness, autonomy and hierarchy, **without the principles of territoriality and decentralization, applicable until now;**
- In the case of tax receivables administered by the central tax body, **the selection of taxpayers to be subjected to the tax inspection will be carried out at the level of the central body of ANAF, based on the risk analysis; the tax inspection bodies will have jurisdiction throughout the entire country;**
- Article 120 of the Tax Procedure Code regarding the competence delegation is repealed;
- By way of exception to the rule of selecting the taxpayers who will be subjected to a tax inspection according to the level of risk established on the basis of the risk analysis, it is introduced **the possibility of randomly selecting taxpayers to be subjected to a tax inspection.**

Amendments in force starting with December 29th, 2022:

- It is regulated a **notification of compliance** which will be transmitted by the tax inspection body to the taxpayers presumed to be selected to be subjected to the tax inspection after planning and selecting the taxpayers for inspection;
- **The notification will include the identified tax risks, granting the taxpayer the possibility to reconsider its tax situation and, as the case may be, to submit or correct its tax statements;**
- It is regulated a **30-day period** starting from the date of communication of the notification during which the tax inspection body will not take any action to select the subject to the tax inspection;
- **After the expiry of the 30-day period, taxpayers with high tax risk who have not addressed the tax risks for which they were notified are mandatorily subjected to a tax inspection or a documentary check;**
- The tax inspection notice is supplemented with a mention according to which the taxpayer is notified that during the period between the communication of the tax inspection notice and until the actual beginning of the inspection, it may proceed to the submission or correction of the tax statements related to the tax periods and receivables that will be subjected to inspection;
- The tax inspection will no longer be performed, as a rule, at the taxpayer's headquarters, but at the headquarters of the tax inspection body. **Only by way of exception, it will be performed at the taxpayer's headquarter, either on the initiative of the tax inspection body or at the reasoned request of the taxpayer;**
- If the inspection will be carried out at the headquarters of the tax body, **the beginning of the tax inspection is no longer needed to be recorded in the unified control register;** the beginning date will be the date stipulated in the tax inspection notice.

Amendments relevant for pending tax inspections at the moment of entry into force of GEO:

- It is regulated the right of the taxpayer to request the issuance of a provisional tax assessment decision after the completion of half of the legal period for carrying out the tax inspection, if he was not informed about the finalisation of a verification of a fiscal period/type of fiscal obligation in term of 5 working days;

- The provisional tax assessment decision is issued and communicated within no more than 10 working days from the date of the request, in the case of large taxpayers, or within no more than 5 working days for other taxpayers, in order to extinguish additional tax obligations. Otherwise, the taxpayer will not owe interest and non-declaration penalties starting from the day following the deadline for issuing and communicating the provisional tax assessment decision until the date on which the decision was communicated to the taxpayer;
- The provisional tax assessment decisions are debt titles that becomes enforceable upon meeting the payment deadlines provided by art. 156 para. (1) of the Tax Procedure Code, and the tax obligations established through such decisions are included/regularized in the final tax assessment decisions and are challenged together with the latter.

Amendments regarding the documentary check

- It is regulated the competence of the **tax anti-fraud control bodies and tax authorities performing the control of the personal tax situation to perform the documentary check throughout the entire country**, together with the tax inspection structures within the central tax body;
- **One or more operations and documents relating to a given period of time** may be subjected to documentary check;
- In case of irregularities, the taxpayer will be notified by the tax body, **requesting documents and written explanations to be submitted within a 30-day period**, starting from the communication of the notification; the taxpayer can request the extension of this period, for duly justified reasons;
- **The tax decision resulting from the documentary check issued without the hearing of the taxpayer is void** unless the taxpayer has submitted a written notice to the tax authority with respect to the waiving of the hearing.

Amendments regarding the anti-fraud control

- Within art. 137 of the Tax Procedure Code it is regulated the reference to the provisions of art. 6 of GEO no. 74/2013 regulating the powers and rights of the tax anti-fraud control bodies;
- **The taxpayer's rights during the anti-fraud check are now expressly regulated, such as:** the right to request the legitimation of the fiscal anti-fraud control bodies, to benefit from specialized assistance, to be informed about the observations made during the control, the right of the taxpayer's activity to be as less affected as possible, to receive a written proof in case of retention of documents, the right of certain persons to refuse to provide information etc.

Amendments regarding the personal tax situation control

- The above-mentioned aspects related to **the regulation of the compliance notification prior to the tax inspection, the performance of the risk analysis in order to identify the taxpayers who present a tax risk and the possibility of randomly selecting them in order to be subjected to a control action will also be applicable in the case of personal tax situation control.**

VI. Order no. 2545/6316 for the approval of the procedure for the use and operation of the RO e-Transport national system for monitoring the transport of goods with high fiscal risk.

- The new procedure regarding the reporting and submission of the data required to be declared under the RO e-Transport system is approved. The old procedure approved by order 1190/4625 of 2022 is repealed.
- Amendments/clarifications made to the previous procedure include:
 - The concept of "commercial relations" has been replaced by the "party of goods";
 - The permissible technical mass for the categories of road vehicles subject to monitoring is 2.5 tons (compared to 3.5 tons);
 - The depositary of high tax risk goods subject to intra-Community transactions in transit is required to declare under the RO e-Transport system data about all transported goods, if the available documents do not contain information for classifying the goods in the risk categories;
 - For the transports performed under grouped system, the number of UIT codes must be equal to the number of parties of high-tax-risk goods covered by the transport;

- When determining the total gross mass of the goods, the packaging necessary for the marketing and transport of the goods shall also be taken into account;
- When determining the total value of the goods, the value without VAT will be taken into account, and in the case of foreign currency transactions the conversion into RON will be made at the NBR rate valid on the date of declaration in the RO e-Transport system;
- Goods that were not received by the beneficiary/recipient will return to the sender based on the original UIT code. However, for the subsequent return of the goods that have been received it is necessary to obtain a new UIT code. There is also the obligation of the supplier/beneficiary to mention the return accordingly under the RO e-Transport system;
- In the case of transport with more than one means of transport (and other than by road, e.g., naval, air, etc.), only the road transport component will be declared – in which case the place of loading/unloading will be the place where the means of road transport takes over/hands over the goods;
- Further clarifications are made regarding the way in which the transport of goods is reported for non-transfers or call-of stock;
- If, exceptionally, the declared transport under the RO e-Transport system is not completed within the validity term of the UIT code, the declarant shall invalidate the transport in the RO e-Transport system and resume the operation of declaring the transport and obtaining a new UIT code;
- During the 3 calendar days, but no later than the actual start of the vehicle, the data declared under RO e-Transport may be modified under the initial UIT code;
- The notions of similar products and average unit value were clarified - for the purpose of applying the sanction of confiscation.

VII. [Order no. 4634/397 of the Minister of Finance and of the Minister of Agriculture and Rural Development on the application of the reduced VAT rate of 9% for the delivery of fertilizers and pesticides of the kind normally used in agricultural production, seeds and other agricultural products intended for sowing or planting, as well as for the provision of services of a kind normally used in agricultural production](#)

Specific categories and related CN codes for fertilizers, seeds and agricultural products intended for sowing or planting and pesticides classified for the application of the reduced quota of 9% from 1 January 2023 are published. Also, the types of specific services are published subject to the same reduced rates, respectively, fertilizing, plowing, discoiting, sowing or planting, spraying, chopping plant residues, etc.

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