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# Tax & Legal Weekly Alert

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On 31st of January, 2020 on Official Gazette no. 72 was published *Government Ordinance* 6/2020 for implementing in the Tax Code the *„VAT quick fixes*" agreed by the European Union, and also the provisions related to Directive 2017/952 on hybrid tax mismatches that occur in cross-border transactions.

## The deadline for the submission of the annual tax return and the payment of the related tax obligations has been extended

The new deadline for the submission of the annual tax return and the payment of the related tax obligations is May 25, 2020 instead of March 15, 2020, in accordance with Emergency Ordinance no. 6/2020, which was published in the Official Gazette no. 72 on January 31, 2020.

The extended term is also applicable to the 230 form regarding the redirection of a percentage from the annual income tax to the non-profit entities, cult units and private scholarships.

## BREXIT: immigration and social security implications

On January 31, 2020, the Brexit agreement was approved by the European Parliament, the Council of the European Union and the Parliament of the United Kingdom. The agreement enters into force on February 1, 2020.

The withdrawal agreement provides for a transitional period until 31 December 2020, in which the current European Union legislation continues to apply.

**Immigration implications**

From the immigration perspective, the withdrawal of the United Kingdom from the European Union is not bringing major changes, at least not in the transitional period.

Both British and European Union citizens will have the opportunity to travel between February and December 2020 only based on a valid ID or passport.

According to the European legislation in force, as of December 31, 2020, both British and EU citizens must find themselves in a legal residence situation, to be able to regulate their new right of residence in the host state under the aforementioned Agreement.

From a procedural point of view, the individuals mentioned above, who reside in the host state before December 31, 2020, will have to apply until June 30, 2021, to obtain their resident status. The individuals who will start their stay after the transitional period will be able to submit this request in maximum 3 months from the date of their arrival or until June 30, 2021, taking into account the longest period between these two.

Citizens of the United Kingdom, registered with the Romanian General Inspectorate for Immigration until January 31, 2020, can apply for a residence permit issued under this Agreement until the end of the transitional period. Such a permit will also be issued in the case of British citizens who will establish their residence on the territory of Romania during the transitional period. A similar process will be also followed by the Romanian citizens located on the territory of the United Kingdom, in order to extend their right of residence after December 31, 2020.

**Social security implications**

From a social security perspective, the European Regulations in the domain of social security will continue to apply. Thus, the A1 and S1 social coverage certificates issued by the United Kingdom and Romanian authorities respectively will continue to be valid. Based on the valid certificates the individuals will be socially covered without any interruption, throughout the transition period and possibly beyond.

It is expected that in the following period, the Romanian authorities will issue applying norms for transposing the agreement in the domestic legislation and thus, clarifying the procedure to be followed for each specific situation.

For further questions regarding the aspects mentioned in this alert, please contact us.

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## Changes to the Tax Code

## VAT "Quick fixes"

- ***The VAT exemption for intra-EU supplies of goods***

  Starting with the 3rd of February 2020, the VAT exemption for intra-Community supplies of goods can be rejected by the tax authorities, if the supply was not reported on the recapitulative statement (390) within the deadline or is reported incorrectly.

  The VAT exemption will be accepted if the supplier can justify to the satisfaction of the tax authorities, the shortcomings. However, current national law does not clarify the interpretation of the concept "to the satisfaction of". In this respect, we recommend reviewing the VAT compliance procedures to ensure that the intra-Community supplies are timely and correctly reported in the 390 statement.

  Also, please keep in mind that the VAT exemption for intra-Community supplies of goods is applicable as long as the client provides to the supplier a valid VAT number issued by the tax authorities of another Member State.

- ***Transport allocation in case of intra-EU „chain transactions"***

  In case of successive supplies of goods for which there is a single intra-Community transport of these goods, the VAT rules allow for the transport to be allocated to a single sale and only this one can be VAT exempt (except for triangular transactions).

  The VAT „quick fixes" present new rules for the allocation of the intra-EU transport in case of successive sales which determines only one movement of the goods (such as A → B → C). The new rules can be applied only if the transport falls under the responsibility of the intermediary operator (e.g. operator B).

  Thus, as a general rule, it will be considered that the transport will be allocated to the first sale and A → B transaction will be considered a VAT exempt intra-EU supply and B → C transaction will be a local supply in the Member State where the goods arrive.

  As an exception, if the intermediary operator provides to its supplier the VAT number issued by the Member State from which the goods are dispatched,

then the A → B transaction will be a local supply and the B → C transaction will be considered a VAT exempt intra-EU supply.

- ***Call-off stock***

  The rules related to the call-off stock regime have been aligned at the European Union level, thus ensuring reciprocity between all EU Member States.

  As such, the transfer of own goods in another Member State of the European Union as a call-off stock will represent at the moment of the dispatch a non-transfer from a VAT perspective (which will not entail the obligation to register for VAT purposes in the Member State of destination). When the client will calls-off the goods, it will be reported an intra-Community supply and an intra-Community acquisition.

  The regime described above will be applied if the following conditions are fulfilled:

  - The goods are sent/transported by the supplier or a third party on its behalf;
  - The customer has the right to „enter into the possession of the goods" based on an agreement;
  - The supplier is not established/ does not have a fixed establishment in the Member State of destination;
  - The customer is registered for VAT purposes in the Member State of destination;
  - The identity of the client and the VAT number are known when the transport begins;
  - The client calls-off the goods from the stock in maximum 12 months;
  - The supplier and the customer register the transfer of goods in a special register (similar, but more extensive than the non-transfer register);
  - The supplier reports the non-transfer, the identity and the VAT number of the client in the recapitulative statement (i.e. the 390 statement that shall be changed in the upcoming period).

## The implementation of the Directive 2017/952 in regards to hybrid tax mismatches that occur in cross-border transactions

With the purpose of restoring the tax equity at the level of the European Union, Directive 2017/952 brings a series of regulations regarding the tax obligations of the taxpayers.

The ordinance provides the implementation of this European Directive, among the main amendments of the Tax Code being:

- Introducing *new categories of taxpayers* who are considered to be corporate income taxpayers - e.g. entities established in other states that are treated as transparent for tax purposes;
- A specific definition for the term of *associated enterprise* is introduced;
- Introduction of concepts such as *hybrid tax mismatches, double deduction, double inclusion revenues and structured agreement. Thereby,*

  **Hybrid tax mismatches** represent a situation involving a taxpayer or an entity, which leads to a mismatched deduction treatment of non-inclusion or a double deduction. A mismatched treatment is a double deduction or a non-inclusion deduction. Double deduction is a deduction of the same

payment or of the same expense or loss in the jurisdiction in which the payment originates, while the non-inclusion deduction means a deduction of a payment or expected payment between the headquarters and the permanent establishment or between two or several permanent establishments in any jurisdiction in which the payment or expected payment is treated as being made;

- In case of a hybrid mismatch that results in a double deduction or a deduction without taxation at the counterparty, the deduction will not be granted or, as the case may be, an additional taxable income will be established.

- In the end, articles referring to the reverse mismatched hybrid treatments and the mismatched treatments of the fiscal residence are introduced.

Briefly, the amendments are intended to eliminate cases of double deduction or non-inclusion deduction, as well as payments, expenses or losses incurred as a result of operating with hybrid transactions or hybrid entities**.**

For further questions regarding the aspects mentioned in this alert, please contact us.


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