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The proposals for fiscal changes provided by the Draft Law, published on September 19, 2023, on some fiscal budgetary measures to ensure Romania's long-term financial sustainability

The draft law proposes a series of amendments to the Fiscal Code with impact on several taxes and fees, but also on the RO e-Invoice system expected to enter into force in Romania starting with 2024. Please note that the proposals are in the stage of public debate and may undergo changes until publication in the Official Gazette.

The proposals for fiscal changes provided by the Draft Law on some fiscal budgetary measures to ensure Romania's long-term financial sustainability

The most important changes:

Corporate income tax - companies

From 1 January 2024:

- ✓ Taxpayers, except for those mentioned in Article 15, who registered a turnover of more than EUR 50,000,000 in the previous year, are obliged to pay corporate income tax (CIT) at the level of the minimum turnover tax (MTT), if the corporate income tax (CIT) calculated cumulatively from the beginning of the tax year until the end of the calculation period is lower than MTT.
- ✓ The percentage stated in the MTT calculation formula shall be 1%.
- ✓ Where application of the calculation formula for determining the MTT results in a negative value, the minimum tax shall be zero.
- ✓ For the purpose of comparing CIT and MTT, the corporate income tax to be taken into account will be adjusted as follows:
 - **there are deducted:** sponsorship / patronage expenses, other amounts that are deducted according to the law, tax reduction according to GEO 153/2020.
 - **not subtracted:** external tax credit, tax on reinvested profit, exempt profit tax according to the Law on agricultural cooperation no. 566/2004.
- ✓ Special provisions are laid down for cases where the taxpayer registers a taxable tax loss/profit at the end of a tax quarter/year.
- ✓ A detailed procedure is established for calculating and comparing the minimum turnover tax with advance payments made during the tax year. This includes special rules for taxpayers applying the annual payment system with prepayment, as well as for tax groups.
- ✓ A set of rules is introduced for tax groups, detailing how members of the tax group or responsible legal entity must calculate and communicate the minimum turnover tax, depending on the payment system applied by the tax group.
- ✓ The categories of amounts that are not deducted from the MTT due are provided, respectively the amounts representing: exempted or reduced profit tax, credit related to sponsorships / patronage, other amounts that are deducted from the CIT, reduction according to GEO 153/2020.

Corporate income tax – credit institutions

From 1 January 2024:

- ✓ An additional tax is introduced for Romanian credit institutions and Romanian branches of foreign credit institutions, in the form of a 1% turnover tax, which is added to the existing corporate tax.
- ✓ It provides for a turnover tax (TT) of 1% applied on turnover by credit institutions (Romanian legal entities and Romanian branches of credit institutions foreign legal entities), in addition to the CIT.
- ✓ An exhaustive list of income and expenses on the basis of which turnover is calculated is mentioned.
- ✓ TT declaration and payment calculation:
 - **Q1 to Q3:** by the 25th day inclusive of the month following the quarter for which payment is made;
 - **Q4:** by 25 March inclusive of the following year.
- ✓ It is specified that turnover tax is considered a non-deductible expense in determining the tax result.
- ✓ The TT due quarterly shall be determined as the difference between the TT calculated cumulatively since the beginning of the tax year and the TT due for the period prior to the calculation period.

Microenterprise income tax

From 1 January 2024:

- ✓ The rate of 3 % in addition to the 1 % rate shall be reintroduced under the following conditions of application:
 - a. 1% – if revenues do not exceed EUR 60,000 inclusive and the legal entity does not carry out economic activities classified under certain NACE codes in the IT, HoReCa, some legal activities and medical/dental assistance activities.
 - b. 3% – if revenues exceed EUR 60,000 or the micro-enterprise carries out activities classified under certain NACE codes in the IT, HoReCa, legal activities and medical/dental assistance activities.

If the taxpayer does not meet the above specific conditions, it will apply the new corresponding tax rate starting with the quarter in which it registers such a situation.

If the taxpayer carries out activities corresponding to the NACE codes provided above and obtains income from activities other than those corresponding to these NACE codes, the 3% tax rate is also applied to income from these other activities.

Special tax on high-value immovable and movable property

From 1 January 2024:

- ✓ The special tax on high-value immovable and movable property is introduced, applicable to:
 - individuals who own / jointly own residential buildings located in Romania of which calculated taxable value, individual or cumulative, as the case may be, exceeds RON 2,500,000;
 - individuals and legal entities owning cars that must be registered in Romania of which individual purchase value exceeds RON 375,000. The tax is due for a period of 5 years starting with the fiscal year in which the delivery-receipt of the car takes place / for the fraction of years remaining from its delivery-receipt.

The tax rate is 0.3% and applies to:

- the difference between the taxable value communicated by the tax body through the tax decision and the ceiling of RON 2,500,000, respectively
- the difference between the purchase value of cars and the ceiling of RON 375,000.

Taxpayers will calculate and declare the special tax by:

- 30 April of the current year (for buildings) and
- 31 December of the current year (for cars).

Income tax and social security contributions

Tax incentives in the fields of information technology (IT), construction, agriculture, and the food industry

- ✓ The income tax exemption applicable for the salary income obtained by employees in the field of information technology (IT) will be limited to a monthly salary/salary assimilated amount of RON 10,000, conditioned by the fulfilment of the eligibility criteria. This tax incentive will only be available until 31 December 2028.
- ✓ The income tax exemption for salary income obtained by employees in the field of information technology (IT), construction, agriculture and the food industry will apply only for a single employer/income payer and only for the salary income obtained under a single full-time or part-time employment agreement (or, for the IT sector, work report, delegation or secondment or special status provided by law).
- ✓ Employees in the agriculture, construction, food, and IT industries will benefit from a reduction of the due pension contribution (CAS) with the rate corresponding to the contribution to the pension Pillar II (the rate provided in Law no. 411/2004 which will increase to 4.75% starting with 1 January 2024). Employees can still opt to pay the contribution related to Pillar II.

- ✓ The obligation to pay health insurance contribution (CASS) at a 10% rate will be reintroduced for employees in the construction, agriculture and food industry, regardless of the level of salary or salary-assimilated income obtained.
- ✓ The provisions through which the work insurance contribution (CAM) could be reduced to the level of 0.27% for employees in the construction, agricultural sector and food industry will be eliminated. Thus, the standard CAM rate of 2.25% will be applicable for the employees working in these sectors.
- ✓ All the above provisions/amendments are applicable starting with the salary income derived in the month following their publication in the Official Gazette.

Other provisions regarding salary and salary-assimilated income

- ✓ The tax regime applicable to meal vouchers granted to employees will also be extended to amounts representing the RON equivalent of meal vouchers, within the same limits and under the same conditions provided by law, for the employees who do not receive such meal vouchers.
- ✓ The value of tourist and/or treatment services granted by the employers to their employees and their family members cannot be exempted from income tax and social contributions in the case of employees who also benefit from holiday vouchers.
- ✓ The nominal value of meal vouchers, the cash equivalent (RON) of meal vouchers and holiday vouchers granted by employers will be subject to health insurance contribution (CASS). Presently, meal vouchers and holiday vouchers granted by employers are only subject to income tax, and not to social security contributions.
- ✓ All the above provisions/changes will come into force starting with the income derived in January 2024.

Income obtained from independent activities and income from intellectual property rights

- ✓ Health insurance contribution (10%) for income obtained from independent activities will be determined by reference to a taxable annual computation base that is equal to the gross/net annual income obtained or to the annual income quota applicable, and which cannot exceed 60 gross minimum national wages. When determining the annual health insurance computation base, annual tax losses are not taken into account.
- ✓ For income from independent activities obtained from one or more sources, a minimum health insurance computation base of 6 gross national minimum wages will be introduced. If the estimated or withheld health insurance contribution (in the case of income obtained based on sports contracts) has been calculated based on an amount lower than 6 gross minimum national wages, the taxpayer will owe a difference up to the level of health insurance contribution calculated by reference to 6 gross minimum national wages. This difference is not due if the taxpayer has earned during the previous tax year either salary income amounting to at least 6 gross minimum national wages, or different types of income (e.g., investment income, income from other sources, etc.) for which they owe health insurance contribution by reference to at least 6 gross minimum national wages.
- ✓ Introduction of limited deductibility of the due health insurance contribution from the taxable base which is used to calculate income tax in case of income from independent activities from intellectual property rights
- ✓ All the above provisions/changes will come into force starting with the income derived in 2024.

Income from sources that could not be identified

- ✓ The income ascertained by the Romanian tax authorities, whose source has not been identified, will be subject to a tax rate of 70% (compared to the current 16% rate). These provisions will come into force starting with 1 June 2024.

Other aspects

- ✓ Individual prosumers, as defined by the specific legislation, will be exempted from health insurance contribution (10%) for the income obtained from the sale of electricity to energy suppliers, under certain conditions.

- ✓ These provisions will be applicable starting with the income derived in the month following their publication to the Official Gazette.

RO e-Invoice starting as of 1st of January 2024

The current draft issued by the Ministry of Public Finance proposes the establishment of an invoice reporting system between January 1 and June 31, 2024, without applying sanctions in the first three months and the transition to the mandatory issuance and transmission of invoices through the RO e-invoice system in the B2B relationship starting July 1, 2024.

1. Taxable persons established in Romania have the obligation between 1 January 2024 and 30 June 2024 to submit issued invoices in the national system regarding the electronic invoice RO e-Invoice, regardless of whether or not the recipients are registered in the RO e-Invoice Register, for taxable transactions in Romania, performed in the B2B relationship,
2. Taxable persons established in Romania have the obligation, between January 1, 2024 and June 30, 2024, to submit issued invoices in the national system regarding the electronic invoice RO e-Invoice, regardless of whether or not the recipients are registered in the RO e-Invoice Register, for taxable transactions in Romania, performed in relation to public institutions (B2G) for transactions other than those already covered by the current legislation on B2G electronic invoicing that entered into force in the year 2022.
3. Taxable persons not established, but registered for VAT purposes in Romania (i.e., non-resident taxpayers), for taxable transactions in Romania, performed in the B2B relationship, have the obligation, starting with January 1, 2024, to submit issued invoices in the national system regarding the electronic invoice RO e-Invoice.
4. The following are exempt from the above:
 - a. exports of goods carried out by the supplier or another person on his behalf;
 - b. intra-Community supplies of goods with the place of departure in Romania.

The suppliers referred to in para. (1) – (3) are obliged to transmit invoices issued to recipients according to the provisions of Article 319 of Law no. 227/2015, as subsequently amended and supplemented, unless both the supplier / provider and the recipient are registered in the RO e-Invoice Register.

The deadline for submitting invoices to the national system regarding the electronic invoice RO e-Invoice **is 5 working days from the date of issuing the invoice**, but not later than 5 working days **from the 15th day** of the month following that in which the chargeable event for the tax arises or from the date of receipt of advances. **Failure to comply with** this provision is a contravention and is **sanctioned with a fine** from:

- RON 5,000 to RON 10,000 for legal entities classified as large taxpayers;
- RON 2,500 to RON 5,000 for legal entities classified as medium taxpayers;
- RON 1,000 to RON 2,500, for other legal entities, as well as for individuals.

By exception, failure to comply with this provision **between January 1 and March 31, 2024, is not sanctioned.**

Value added tax ("VAT") - from 1 January 2024

- ✓ Revision of the meaning of the expression *"housing which at the time of supply are habitable as such"* in order to establish a degree of finishing and necessary facilities, so that VAT at the reduced rate applies only to housings that can be occupied without significant additional investment. The cumulative conditions to be fulfilled for the application of the reduced VAT rate are defined.

**Housings that can be inhabited at delivery, according to Article 291(2)(m)(3), must meet the following cumulative conditions:*

- a. *They must have free individual access to the living space, without interference with the exclusive possession and use of the space by other persons or families.*
- b. *It must have access to electricity and drinking water, with a controlled discharge of wastewater and household waste.*
- c. *They must consist of at least a resting area, a place for preparing food and a toilet.*
- d. *Exterior finishes must include at least the roof (if provided for in the construction), glazing and entrance door.*

- e. *Interior finishes shall include at least walls finished with paint, wallpaper, tiles or other finishing elements, tiled floors, parquet or other finishing elements, and interior doors, depending on the project.*
 - f. *It must have sanitary facilities, including sanitary ware such as toilet bowl, washbasin and washer bowl, with appropriate batteries.*
 - g. *They must be equipped with electrical installations including switchboard, cans, switches/switches and sockets.*
- ✓ A number of changes are foreseen with regard to the VAT rate applicable to certain categories. The main changes are as follows:
 - It is proposed to move from 5% to 9% for the delivery and installation of photovoltaic panels, solar thermal panels, heat pumps and other efficient heating systems.
 - It is proposed to apply the 9% rate for the delivery of housings with a usable area of maximum 120 sqm, excluding household annexes, whose value, including the land on which they are built, does not exceed the amount of RON 600,000, excluding VAT, purchased by individuals. As an exception, for housings for which documentation providing for advance payment were concluded during 2023 and delivered during 2024, the reduced VAT rate of 5% is maintained.
 - It is proposed to apply the standard VAT rate (19%) to gyms, fairs, amusement parks and recreational parks and sports events.
 - It is proposed to move from applying the reduced VAT rate of 9% to applying the standard VAT rate for the supply of non-alcoholic beer and foods with added sugar, whose total sugar content is at least 10g/100g produced (other than Sweet Bread “cozonac” and biscuits);
 - The "Register of housing acquisitions with reduced VAT rate" is organized in electronic format and the obligations of public notaries are established. The procedure for organizing the "Register of housing acquisitions with reduced VAT rate" will be established by order of the President of the National Agency for Fiscal Administration.
 - ✓ Abolition of the VAT exemption with the right to deduct for transactions carried out to state hospital units pursuant to Article 294(5).

Value added tax ("VAT") - from 1 July 2024

- ✓ In Article 319 of the Fiscal Code, after paragraph (1), a new paragraph is inserted emphasizing that for transactions carried out between taxable persons established in Romania, only electronic invoices that comply with the conditions established by Government Emergency Ordinance no. 120/2021 regarding the electronic invoice RO e-Invoice and the electronic invoice in Romania will be considered valid invoices (being also those under which the right to deduct VAT can be exercised).
- ✓ At the same time, if a taxable person established in Romania receives and registers an invoice issued by economic operators in Romania in a B2B relationship without complying with the provisions of RO e-Invoice, this shall be considered a contravention. It is proposed to be sanctioned, by imposing a fine equal to the amount of VAT entered on the invoice, aspect that would be contrary to the applicable European principles in the matter of VAT.
- ✓ Additionally, if a taxable person established in Romania receives an invoice issued by economic operators in Romania in a B2G relationship, it can be paid only if the provisions of art. II of Law nr. 139/2022 regarding the RO-e Invoice system are observed. Failure to comply with the provisions is a contravention, which is sanctioned with a fine from RON 500 to RON 1,000.

Excise duties – from the 1st of January 2024

- ✓ New non-harmonised excise duties are introduced. More specifically, it is about excise duties on
 - products intended for inhalation without burning, containing tobacco substitutes, with or without nicotine, falling within CN 2404 12 00, 2404 19 10, including those contained in refills supplied with electronic cigarettes and similar electric personal vaporizers, falling within CN code 8543 40 00 (RON 1,094.93 per kg);
 - non-alcoholic beverages with added sugar for which the total sugar level is between 5g – 8 g / 100 ml (RON 40 per hl);
 - non-alcoholic beverages with added sugar for which the total sugar level is above 8 g / 100 ml (RON 60 per hl).

- ✓ New obligations are introduced for economic operators producing or importing non-alcoholic beverages with added sugar, subject to non-harmonised excise duty, who will have to notify these facts to customs authorities.
- ✓ It is intended that the level of excise duties on products in the category of alcohol and alcoholic beverages (no. crt. 1-5 of Annex 1 to Title VIII) will no longer be updated with the increase in consumer prices.
- ✓ It is proposed to increase the level of excise duties on alcohol and alcoholic beverages from January 1, 2024.
- ✓ For manufactured tobacco products, it is proposed to increase the excise duty rate as of 1 January 2024.
- ✓ It is proposed to increase excise duties on all energy products (except leaded gasoline).
- ✓ A uniform tax regime is proposed for products intended for inhalation without burning, regardless of their ingredients, to avoid fraud and ensure uniform application of the law.

These proposals aim at changes in the tax system to address certain needs and concerns related to excise duties and public health.

❖ **Other measures to combat tax evasion**

Amendment with regard to sanctions

In order to ensure an efficient application of the rules and to achieve the legislative objectives, it is proposed to eliminate the possibility to pay only half of the minimum fine, thus strengthening the operational discipline in this area, with applicability to the Accounting Law no. 82/1991, Law no. 207/2015 on the Fiscal Procedure Code, Law no. 227/2015 on the Fiscal Code and the sanctions provided by the RO e-Transport system.

E-Seal for carriers

This is a system based on the use of smart electronic seals and an IT application allowing competent authorities to monitor in real time the transport of goods by road, regardless of whether they are in transit or have as their destination an economic operator on the national territory.

The application of smart seals and the monitoring of road transport of goods is carried out by the National Agency for Fiscal Administration and the Romanian Customs Authority based on a risk analysis. In case of affixing smart seals on means of transport, the driver has the obligation to ensure their integrity.

Failure by the driver to fulfil the obligation is a contravention, if it was not committed under such conditions as to be considered, according to the criminal law, an offense and is sanctioned with a fine from RON 20,000 to RON 50,000.

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



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