



## In this number:

**The Order on the approval of the procedure for the use and operation of the national system on the monitoring of the transport of goods with high fiscal risk RO e-Transport was published in the Official Gazette 656 of June 30, 2022.**

This order clarifies the way of reporting the transport of goods with high fiscal risk on the territory of Romania, as well as the categories of vehicles that are subject to monitoring in the RO e-Transport system.

**In the Official Gazette 657 of 30 June 2022 was published the Emergency Ordinance to support the granting of reductions in gasoline and diesel prices, to modify some provisions regarding the national system for monitoring road transport of goods with high fiscal risk RO e-Transport and repealing Article 28 of Government Emergency Ordinance no. 130/2021 regarding some fiscal-budgetary measures, the extension of certain deadlines, as well as for amending and supplementing certain normative acts.**

An important provision contained in this ordinance is the one regarding the modification of the deadline for the application of sanctions in the case of RO e-Transport. Although reporting in this system remains mandatory as of July 1, 2022, failure to report or incorrect reporting in the system of these shipments will not be sanctioned until October 1, 2022.

**New changes with respect to the sale of agricultural lands located outside the city limits meant to clarify aspects which have raised multiple questions in practice**

The Ordinance aims to clarify certain aspects which have generated deadlocks on the real estate market and, respectively, to remedy some deficiencies in the application of the law. Mainly, the Ordinance sets forth a series of clarifications regarding the obligation to calculate, withhold, transfer and declare the 80% tax, as well as to establish the budgets where this tax shall be allocated.

In the Official Gazette 656/ 30 June 2022, an order was published on the approval of the procedure for the use and operation of the national system on the monitoring of the transport of goods with high fiscal risk RO e-Transport.

By Emergency Ordinance no. 41/2022 published in April 2022 it was established the obligation to monitor the transport on the national territory of goods with high fiscal risk, respectively the obligation to hold a UIT code during the transport of these goods.

The recently published order clarifies the way of reporting the transport of goods with high fiscal risk on the territory of Romania, as well as the categories of vehicles that are subject to monitoring in the RO e-Transport system, respectively vehicles that:

- have a maximum authorized mass of at least 3,5 tons;
- are loaded with goods with a high fiscal risk with a total gross mass of more than 500 kg or
- are loaded with goods with high fiscal risk a total value of more than 10.000 lei, for at least one commercial relationship covered by the transport.

For the declaration of shipments of goods with high fiscal risk, the declarant may use electronic identification means to access the Virtual private space (SPV), for:

- automatic exchange of information: Interconnecting the declarant's application with the RO e-Transport System, using a series of microservices displayed in the form of an API (application Programming Interface);
- use of the application made available free of charge by the Ministry of Finance.

Regarding the data to be declared in order to obtain the UIT code and to comply with the obligations from the perspective of the RO e-Transport system, they will consist of: Data relating to the dispatcher, beneficiary or recipient, the name, characteristics, type and purpose of the operation, quantities and value of the goods transported, places of loading and unloading, details of the means of transport used and the carrier, the date declared for the start of the transport, as well as the generated UIT code.

#### Technical specifications:

- the declaration of shipments of goods with high fiscal risk is made by sending a file in formal .xml completed according to the scheme published on the ANAF website;
- after transmission of the file, semantic, structural and syntax checks and validations will be carried out;
- if the file is valid, A reply message will be generated and the file containing the electronic signature of the Ministry of Finance (considered to be the original copy of the statement) will be available for download;
- in case of identified errors, the declaration shall be deemed not to have been filed, so the declaration process will have to be resumed;
- the file thus signed will be available in the system for download for 60 days.

Regarding the sanctions applied in case of non-compliance with the provisions on the reporting of goods in RO e-Transport system, the procedure clarifies how the value of the undeclared goods to be confiscated will be determined (according to Article 13 of GEO 41/2022). Thus, the value of the goods with fiscal risk for the application of sanctions will be equal to:

1. their value stated in the sales invoice = if it is presented at the time of the finding of the offense;
2. the value of similar products from the previous purchase = if the sales invoice is not presented;
3. the average value of high fiscal risk goods declared in the previous week in the RO e-Transport System for high fiscal risk goods of the same category = if no information is available according to points 1 and 2 above;

4. market price value of goods with similar fiscal risk = if the value of goods with high fiscal risk cannot be determined according to paragraphs 1, 2 or 3 above.

In the Official Gazette 657/30 June 2022 was published the Emergency Ordinance to support the granting of reductions in gas and diesel prices and to amend Article 18 of the Government Emergency Ordinance no. 41/2022 for the establishment of the national system for the monitoring of road transport of goods with high fiscal risk RO E-transport and repealing Article XXVIII of Government Emergency Ordinance no. 130/2021 on certain fiscal-budgetary measures, the extension of certain deadlines, as well as for amending and supplementing certain normative acts:

By the Emergency Ordinance issued just one day before the initial date set for the entry into force of GEO 41/2022 regulating the establishment of RO e-Transport system, the date from which sanctions are applied in case of non-compliance with the provisions of GEO 41/2022 has been amended.

Thus, although the reporting of transports of goods with high fiscal risk on the national territory through the RO e-Transport system remains mandatory as of July 1, 2022, failure to report or incorrect reporting in the system of these transports will not be sanctioned until October 1, 2022.

This measure, long awaited by the business environment, will enable taxpayers to take the necessary steps to implement technical solutions for reporting the transport of goods with high fiscal risk through RO e-Transport system, without being fined for a period of 3 months.

**New changes with respect to the sale of agricultural lands located outside the city limits, meant to clarify aspects which have raised multiple questions in practice**

On 30 June 2022 the changes regarding the sale of agricultural land have entered into force through the publication in the Official Gazette no. 657 of the Emergency Ordinance no. 104/2022 for the amendment and completion of Law no. 17/2014 (hereinafter referred to as the “**Ordinance**”).

The Ordinance aims to clarify some aspects which have generated deadlock on the real estate market and, in consequence, to remedy some deficiencies regarding the applications of this law.

Mainly, the Ordinance sets forth a series of clarifications regarding the obligation to calculate, withhold, transfer and declare the 80% tax, as well as to establish the budgets where this tax will constitute an income.

Although the clarifications implemented are not exhaustive compared to the various situations encountered in practice, we highlight below the main changes set forth by the Ordinance.

**The 80% tax applicable to the sale of agricultural lands located outside the city limits (i.e. “asset deal” type of sale) before the fulfilment of 8 years as of its acquisition**

- The Ordinance specifies the fact that this tax shall represent an additional tax to the taxes due under Law no. 227/2015 regarding the Fiscal Code.
- The Ordinance clarifies the manner of establishing the tax base for the application of the 80% tax. Thus, the tax base will represent *the positive difference between (i) the value of the agricultural land from the date of the sale and (ii) the value of the land from the date of the purchase. Such value will be determined by reference to the indicative value established by the expertise prepared by the chamber of public notaries or the minimum value established by the market study carried out by the chamber of public notaries, as the case may be, from the relevant date.* Undoubtedly, it will be necessary to identify, in each particular case, one of the two alternative methods in order to determine the relevant values of the agricultural lands.
- The tax is calculated and collected by the public notary before the authentication of the notarial deed by which the ownership right is transferred. Thus, the seller must pay the 80% tax before signing the sale contract.

- The tax will be transferred to the accounts opened with the units of the State Treasury. A quota of 60% will be paid to the state budget, while a share of 40% will be paid to the budget of the administrative-territorial units where the agricultural lands subject to the sale are located.
- In case of taxpayers who have the obligation to pay the profit tax, the 80% tax established by this law represents *a non-deductible expense when determining the fiscal result*.
- The incomes obtained by non-residents from the sale of the agricultural lands located outside the city limits will not be subject to the double taxation avoidance agreements concluded by Romania with another state.

### **The 80% tax applicable to the acquisition of the control package in the situation of the legal entities that own agricultural lands located outside the city limits**

The Ordinance provides a series of clarifications and completions regarding the method of calculation and payment of the 80% tax in the situations of alienation of the control package of legal entities (i.e. “share deal” type of sale):

- Thus, according to the new regulation, the 80% tax will be applied in case of the sale of the control package of legal entities owning one or more agricultural lands located outside the city limits and which represent more than 25% of their assets, to the extent that the alienation takes place before the fulfilment of 8 years since the purchase of any of such lands.
- The Ordinance removes the term of “indirect sale” and includes the definition of terms such as “assets”, “control package” and “participation titles”, as follows:
  - the term “**asset**” to which the 25% threshold to the real estate of a legal person representing any land, building or other built or incorporated constructions within a land, as registered in accordance with the relevant accounting regulation;
  - the term “**control package**” will include the participation to the share capital/to the patrimony of a legal entity, owned by another individual or legal entity, directly or indirectly, and which exceeds 50% of the value/ participation shares or voting rights;
  - the term “**participation shares**” will include the shares, joint stock or any other form of holding directly or indirectly by individual and/or legal entities in the share capital/patrimony of another legal entity, depending on the form of organization.
- The obligation to pay the 80% tax shall pertain to the individual and/or legal person assigning the control package.
- According to the Ordinance, the tax base will consist of the positive difference between (i) the value of the agricultural lands upon assignment of the control package and (ii) the value of the lands at the time of the lands acquisition. Such values will be determined by reference to the indicative value established by the expertise prepared by the chamber of public notaries or to the minimum value established by the market study carried out by the chamber of public notaries, as the case may be, from the relevant period.

- We note that the new regulation provides that in case the legal entity owns several agricultural lands located outside the city limits, the 80% quota is applied to the total amount calculated by adding up the positive differences for the lands acquired less than 8 years prior to the assignment of the control package, without taking into account the negative differences determined in accordance with above-mentioned calculation method.
- Additionally, the Ordinance also regulates the cases when agricultural lands located outside the city limits were acquired as a result of an in-kind contribution to the share capital of the entity in which the control package is assigned.

In this case, the term of 8 years will also include the period of time when the shareholder held as owner the lands subject to in-kind contribution.

- The taxpayers having the obligation to pay profit tax are required to declare the income obtained from the alienation of the package control within 10 days from the transfer date to the relevant tax authority, for tax calculation.
- The procedure for calculating, collecting and paying the tax levied as per the above, as well as the obligations for fiscal declarations, will be approved through a joint order issued by the Ministry of Agriculture and Rural Development and the Ministry of Finance, with the advisory approval of the National Union of Public Notaries from Romania, within 60 days from the date of entry into force of the Ordinance.

At the same time, the Ordinance includes various additions and amendments regarding the calculation of the 80% tax in case the forced sale of the lands, namely through the issuance of a court decision replacing the sale contract. In this case, the tax will be calculated and collected by the competent tax authority on the basis of the final court decision communicated by the court to the tax authority.

#### **Other amendments and/or completions implemented by the Ordinance**

- The change of priority between first rank pre-emptors (in Romanian: “preemptori de rang I”) in the sense that spouses will have priority over relatives, regardless of the kinship degree, in case there is competition between spouses and relatives. Thus, in the previous regulation, the first-degree relatives (i.e. parents and children) had priority over spouses.
- Clarifying the definition of second rank pre-emptors (in Romanian: “preemptori de rang II”), namely the category of owners of agricultural investments (e.g. tree crops, vines, exclusively private irrigation). Thus, the text is amended in the sense that the owners of the agricultural investments will be deemed second rank pre-emptors solely if such agricultural investments are *located on the lands that are the object of the sale offer*.
- The Ordinance included a new article, namely art. 20<sup>1</sup> which regulates the situation of transfer between co-owners, spouses, relatives up to the third degree and in-laws up to the third degree (all first rank pre-emptors in accordance with the law). Thus, the previous regulation expressly indicated that the procedure provided under Law 17/2014 will not be applicable in case of alienation between co-owners, spouses, relatives and in-laws up to the third degree.

However, the new regulation clarifies that the procedure will not be applicable solely to the extent that the owner does not request the display of sale offer at the City Hall.

On the contrary, if the seller requests/opts to display the sale offer, the pre-emptors mentioned above (co-owners, spouses, relatives and in-laws up to the third degree) may accept the sale offer as first rank pre-emptors, while the sale contract shall be concluded in accordance with the permits provided by the law.

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