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Tax Alert
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In this issue:

Methodological norms for the application of the regulations of the Tax Code regarding the minimum turnover tax and the microenterprise income tax

The Decision for amending and supplementing the Methodological Norms for the application of the Tax Code was published in the Official Gazette no. 1125 of November 11, 2024 and provides for a series of clarifications regarding the minimum turnover tax and the microenterprise income tax.

Amendment of the regulations of the Tax Code by Law 290/2024 and GEO 138/2024

The two normative acts amend certain regulations on the additional tax due by credit institutions and for legal entities operating in the oil and gas sectors, issues related to the functioning and implementation of the national system of electronic invoices RO e-Invoice, RO e-Transport, e-VAT, but also with regard to certain revenues.

I. Decision no. 1393/2024 for amending and supplementing the Methodological Norms for the application of Law no. 227/2015 on the Tax Code

Among the main clarifications and amendments made, we mention:

I. Minimum turnover tax

- Definition of the Total Revenue (VT) indicator;
- Clarifications are made regarding the determination of the limits on sponsorship/patronage expenses that can be deducted from the minimum turnover tax (MTT) due;
- It is specified that in order to establish the corporate income tax (CIT)/ minimum turnover tax due quarterly, the CIT or MTT due for the prior period is subtracted from the CIT/MTT calculated cumulatively from the beginning of the tax year, as the case may be;
- There are presented categories of taxpayers who can deduct from the tax base the income representing the excise duties that were reflected simultaneously in the expense accounts;
- The external tax credit determined according to art. 39 of the Tax Code can be deducted from the MTT;
- It is provided that MTT represents corporate income tax for the purposes of applying the Double Taxation Treaties;
- Provisions are included regarding the comparison made between CIT and MTT in order to establish the tax due;
- Examples are introduced for determining the corporate income tax and the minimum turnover tax;
- Provisions are included regarding the activities that fall within the scope of the electricity and natural gas distribution activity.

II. Microenterprise income tax

- Certain provisions are repealed to align the Methodological Norms with the regulations provided for in the Tax Code;
- Examples of calculation for determining the percentage of ownership are introduced;
- Clarifications are made regarding the condition for submitting financial statements.

II. Law no. 290/2024 for amending and supplementing Law no. 227/2015 on the Tax Code and Emergency ordinance 138/2024 for amending and completion of some normative acts in the fiscal-budgetary field, as well as for the regulation of other measures

Amendments to Law no. 227/2015 regarding the Fiscal Code

Corporate income tax

Starting with January 1, 2025, a new title is introduced – **Title II^1 – Additional tax**. Within this title, Articles 46^1 and 46^2 respectively regulate the additional tax for credit institutions and legal entities carrying out activities in the oil and natural gas sectors, which are currently provided for in Title II – Corporate Income Tax, at Articles 18^2 and 18^3 respectively.

The transposition of the articles under Title II^1 includes, *inter alia*, the following amendments:

- The new articles do not include the expression "by exception to art. 18^1". Therefore, credit institutions/legal entities operating in the sectors would also pay corporate income tax at the level of the minimum turnover tax and additional tax.
    - However, on December 5, 2024, Government Emergency Ordinance no. 138/2024 was published, whereby these entities will be exempted from Article 18^1.
- In the case of legal entities carrying out activities in the oil and natural gas sectors, the following amendments are additionally provided:

- taxpayers are defined as *"Romanian or foreign legal entities that individually or in a form of association deliver goods or provide services on the territory of Romania carrying out activities in the oil and natural gas sectors";*
- it is mentioned that the income obtained by non-resident persons from the aforementioned transactions is not part of the scope of the double taxation treaties concluded by Romania with another state;
- the applicability of the provisions on the minimum turnover tax starting with January 1, 2026 for this category of taxpayers is eliminated;
- categories of exempted taxpayers are provided.

III. Personal income tax

Rental income

- **Legal entities** that conclude rental contracts with individuals, will have, in addition to the obligation to withhold income tax due for the rent paid to the individual together with the **obligation to issue a document attesting the amount of tax withheld and paid**, at the request of the other contractual party. Additionally, legal entities will be **able to deduct a flat rate of 20% of the gross income** when computing the taxable base **for rental income in kind or received as deposit** for the payment of the rent from individuals.

Income from the transfer of ownership or its dismemberments

- When the **value declared by the parties in the deed by which the right is transferred is lower than the minimum value established by the market study carried out by the chambers of public notaries**, the taxable base will be deemed as:
  - In the case of **transfer of ownership**: the minimum value established by the market study;
  - In case of **constitution, transfer or termination by conventional means of dismemberments of the right of ownership**: 20% of the minimum value established by the market study, if the value declared by the parties is lower than this.
  - In case of transfer **of bare ownership**: 80% of the minimum value established by the market study, if the value declared by the parties is lower than this.

- In the case of income derived from the transfer of dismemberments of the right of ownership **under suspensive condition** or of the right of ownership over a real estate property that has been the subject of a transfer of the dismemberment of the right of ownership under suspensive condition, when the parties to the contract are natural persons, **the income tax is calculated by the taxpayers at the moment when the income is derived**, including in situations when this happens after the authentication of the contract by a public notary or after the final court decision attesting the transfer has been pronounced. The tax will be declared and paid by the taxpayers until the 25th of the month following the quarter in which the income was collected, by submitting a specific declaration.
  If the income payer is a legal entity that has the obligation to keep accounting records, the legal entity will withhold, calculate and pay the income tax due.

- The incomes obtained as a result of the transfer by succession of the de facto possession previously noted in the land register are non-taxable.

Pension income

- Clarifications are introduced regarding the method of calculating the taxable base for pensions obtained from abroad is clarified. The taxable base will be calculated by deducting the non-taxable monthly amount of RON 2000 from the gross income obtained.

Value Added Tax

- The invoices issued in the simplified system must also contain the VAT registration code or the tax identification code of the beneficiary, if he is a taxable person or a non-taxable legal person. This amendment enters into force from **1 January 2025.**

- The obligation of self-invoicing in order to **adjust the taxable base**, for cases where **the beneficiary is liable to account for VAT** and the supplier has not issued the correction invoice, **has also been extended to transactions for which local simplification measures apply** according to art. 331 of the Fiscal Code. The self-invoice must be issued no later than the 15th day of the month following the one in which the events determining the adjustment obligation occurred according to art. 287 letters a) -c) and e) of the Fiscal Code. This amendment enters into force **on the date of publication of the Ordinance (December 5, 2024).**

Excise duties

- The notion of high tax risk is introduced for registered consignees
- They will be required to provide a guarantee of 120% of the excise duties related to the quantity of excisable products they intend to receive
- The classification as high tax risk disappears if registered consignees do not register outstanding tax obligations to the general consolidated budget, of the nature of those administered by ANAF, for 36 consecutive months
- The criteria for assessing high tax risk will be established later by joint order of the president of the National Agency for Fiscal Administration and the president of the Romanian Customs Authority.
- In addition to registered consignees, the provisions regarding high tax risk will also apply to economic operators who are registered with the competent authority for the distribution and wholesale trade without storage of alcoholic beverages, processed tobacco and energy products - gasoline, diesel, kerosene, liquefied petroleum gas and biofuels, who trade in excise goods that are located in a tax warehouse belonging to a third party
- Entities that produce natural gas for their own consumption will be considered both producers and consumers

Amendments to the Government Emergency Ordinance no. 120/2021 on the administration, operation and implementation of the national system on electronic invoicing RO e-Invoice and electronic invoicing in Romania as well as for the completion of Government Ordinance no. 78/2000

- The invoices issued for operations carried out on the basis of public, sectorial acquisitions contracts, works concession and service concession contracts, and, as the case may be, public acquisition contracts in the fields of defence and security, **must include the corresponding CPV codes** provided for in the reference nomenclature in the field of public procurement.

- Clarifications are brought on B2B and B2C transactions within the scope of RO e-invoice: supplies and provision of services made by established persons for whom the place of supply of goods and services is in Romania according to the relevant provisions of **Title VII – Value Added Tax** of Law 227/2016 on the Fiscal Code are within the scope of RO e-invoice.

- The provisions of this ordinance confirm that **tax receipts**, **both in the B2B and B2C relationships**, **will be exempted from the transmission/reporting obligations in the national system regarding RO e-Invoice**.

  In addition, **in the B2B relationship**, invoices issued for intra-community supplies of goods**, for which the beneficiary, a taxable person established in Romania, communicates a VAT registration code from another Member State,** will also be exempted from the aforementioned obligation.

- As far as **the B2C relationship** is concerned, all invoices issued to individuals will be subject to the obligation to reported in the system, regardless of whether they choose to identify

themselves by their personal identification number or not. If the beneficiary is not identified by any tax identification code, **the invoices will be issued using a code consisting of 13 digits of zero**. We remind you that the reporting obligation in the RO e-invoice system for invoices issued in the B2C relationship by established taxpayers comes into force from January 1, 2025.

All of the above provisions are applicable from January 1, 2025.

Amendments to the Government Emergency Ordinance no. 70/2024 on some measures for the implementation and use of the pre-filled RO e-VAT return and data valorization

- The term by which the "RO e-VAT compliance notification" is not taken into account when establishing the fiscal risk indicators **is extended until** July 1, 2025.
- The term from which the obligation to respond to the "Notification of RO e-VAT compliance" comes into force, as well as the application of fines for non-fulfilment of the obligation to respond to the notification, **is extended until** July 1, 2025.

Amendments to Article LXXV of the Government Emergency Ordinance no. 115/2023 on some fiscal-budgetary measures in the field of public spending, for fiscal consolidation, combating tax evasion

The deadline until which the non-compliance with the obligations regarding the RO e-Transport system of **users who have the status of authorized economic operator** is not sanctioned is **extended until March 31, 2025**.

Other legislative provisions

- Persons who perfom acquisitions for which they have deducted VAT, in order to perform investment within programs of public or social interest, financed from public funds, which, after works receipt, they hand them overfree of charge to the beneficiary based on a protocol, must issue a self-invoice according to the provisions of art. 319 para. (8) of the Fiscal Code.

This obligation enters into force **on the date of publication of the Ordinance (December 5, 2024)**

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