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Clarifications regarding the additional tax for the oil and natural gas sectors

The Government of Romania has adopted an Ordinance for the amendment and completion of Article 462 of Law No. 227/2015 on the Fiscal Code, on January 31, 2025, that brings amendments to Article 46^2 of Law no. 227/2015 regarding the Fiscal Code. It provides clarifications regarding the additional tax for legal entities, both Romanian and non-resident, that carry out activities in the oil and natural gas sectors.

Ordinance for the amendment and completion of Article 462 of Law No. 227/2015 on the Fiscal Code.

I. <u>Main changes to the additional tax for legal entities operating in the oil and natural gas sectors ("additional tax")</u>

- Clarifications are provided regarding the situation of taxpayers with a modified fiscal year started in 2024 which were subject to the additional tax regulated by art. 18^3. Thus, they are required to pay the additional tax according to art. 18^3 until the end of the fiscal year that started in 2024.
- The reference to the exchange rate used for determining turnover is removed.
- The corresponding CAEN codes for activities in the oil and natural gas sector are introduced, for which taxpayers will owe the additional tax.
- According to the new provisions, non-residents engaged in income-generating activities in the oil and natural gas sectors, consisting of providing services within Romania or delivering goods from Romania, will be subject to additional tax, even if they do not have a permanent establishment in Romania. Additionally, clarifications are made regarding the amounts included in the VT indicator – specifically, the value recorded in the customs declaration or in the documents attesting to intra-Community deliveries.
- Taxpayers which obtain income from CAEN codes 4671, 4681, 4730, and whose main activity does not correspond to another CAEN code from those specified in Article 46^2, will not owe additional tax. The exception does not apply if these taxpayers also obtain income from secondary activities corresponding to the other CAEN codes mentioned in the article.
- Clarifications are introduced regarding the timing of the additional tax obligation in relation to income obtained from the specific CAEN codes, as follows:
  - the additional tax is due starting with the first quarter in which activities related to the CAEN codes are carried out;
  - the additional tax is no longer due starting with the quarter following the one in which no activities related to the CAEN codes are carried out.
- In the case of income obtained by non-resident persons from oil and gas activities, the additional tax is due by the 25th of the month following the end of each of the quarters I-IV.
- The additional tax is not subject to Double Tax Treaties.

II. <u>Procedural Aspects and Obligations for Non-Residents Subject to the Additional Tax</u>

- Appointment of fiscal representatives for fulfilling the obligations under Article 46^2:
  - optional for legal entities from the EU; and
  - mandatory for legal entities from outside the EU.
- The fiscal representative (Romanian legal entity) is jointly liable with the foreign legal entity for the obligations regarding the additional tax.
- Non-resident taxpayers (directly or through a fiscal representative) are required to provide a guarantee of 1 million EUR (bank guarantee letter or funds deposited with the Treasury). The deadline for establishment is 15 days:
  - from the date the ordinance comes into force, for non-resident legal entities that were already carrying out activities in the oil and natural gas sectors at that time;
  - from the date of publication of the ANAF president's order regarding the procedure and conditions for registering the fiscal representative, for non-resident legal entities designating a fiscal representative;
  - from the date revenue is generated by non-resident legal entities subject to the additional tax, or from the date of registration of the representative, in cases other than those mentioned above.
- Applicable sanctions:
  - in case of non-payment of the additional tax within 30 days, the guarantee will be executed, with an obligation to replenish it within 15 days;
  - failure to comply with the obligations regarding the establishment/replenishment of the guarantee may lead to the suspension of customs procedures.

For more details, please feel free to contact us.

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