



Tax & Legal Highlights

Romania

New criteria for assessing the fiscal risk in case of optional VAT registration and cancellation of VAT number

New procedures for optional VAT registration, but also for cancellation of the VAT number were implemented through Order no. 2856/2017.

The normative act, applicable starting October 2017, also contains the new criteria for the assessment of fiscal risk, criteria that remind us of the 088 form for assessing the intention and ability to perform economic activities.

The new VAT registration procedure, provided in ANAF Order no. 2856/2017, applies to taxable persons requesting optional VAT registration or to those that had their VAT number canceled due to high fiscal risk and request re-registration.

The new order also presents the criteria set for fiscal risk assessment, but the score assigned to each criterion is not public.

According to the procedure, taxable persons with scores of less than 51 points have a high fiscal risk, but taxpayers cannot evaluate themselves.

Companies applying for optional VAT registration will be assessed in view of 15 criteria, including: headquarters, accounting services, number of

Tax&Legal Highlights

employees, existence of a bank account, acts of associates / administrators (e.g. insolvency, bankruptcy, fiscal inactivity, contraventions or offenses).

Companies applying for re-registration after their VAT number has been canceled due to high fiscal risk will be assessed in view of five criteria, namely: headquarters, number of employees, accounting services, fiscal residence of administrators and inconsistencies from ANAF records. These criteria will be applied by ANAF also for cancellation of the VAT number of the companies with high fiscal risk.

According to the order, the significant inconsistencies recorded at the level of statements 394 and 390 will be analyzed. However, tax authorities have not yet detailed what significance procedures and thresholds will be used to determine "significant discrepancies".

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New obligations for exporters on declaring origin of goods

New regulations and rules on declaring origin of goods in trade between the European Union and third countries will come into force. Among these, the most important is the obligation of registration of exporters in the Registered Exporter System (REX). In specific cases, deadline for required registration is December 31, 2017.

In the context of trade between the EU and GSP countries

On December 31, 2017, customs authorities of EU Member States will complete the process of registering European exporters in the Registered Exporter System (hereafter "REX").

After this date, European exporters wishing to issue a proof of origin for export of goods worth more than EUR 6,000 per transport, to GSP countries, for the purpose of bilateral cumulation, will have to obtain REX exporter status. Certificates of preferential origin EUR 1 or form "A" can no longer be used.

In the context of trade within the Agreements governing preferential trade between the EU and partner countries

Exporters wishing to prove the origin of goods whose value exceeds EUR 6,000 per transport, exported from EU to partner countries, will have to obtain the status of registered exporter in REX, if the applicable FTA stipulates this obligation.

Until present, the abovementioned obligation is expressly provided for only in the FTA between the EU and Canada, with effect from January 1, 2018 and in FTA between EU and Vietnam.

Therefore, in the context of new levers of surveillance and control of origin, there is a possibility that in the future, this obligation could be also introduced in other free trade agreements concluded between the EU and the partner countries.

In the context of trade within the governing preferential trade Agreement between the EU and the overseas countries and territories

Exporters wishing to prove the origin of goods whose value exceeds EUR 10,000 per transport exported to overseas countries and territories will have to register in the REX, until January 1, 2020.

National technical norms and transitional provisions for approved exporters

According to new national norms in force (Order no.2792/2017), Romanian companies authorized as "approved exporters", which export goods to GSP countries accompanied by a proof of origin, are required to register in the REX until December 31, 2017.

Also, companies certified as approved exporters in Romania have the obligation to register in the REX, if they intend to carry exports to Canada, Vietnam and Overseas countries and territories.

What to do?

If you trade goods for which you issue proof of origin, we recommend that you review the impact of the new rules above on your activity.

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New national regulations on excise duties

The Order of the minister of public finance, which stipulates the procedure and the conditions under which the tax warehouses, registered consignees, registered consignors and authorized importers, are authorized, was recently published.

Recently, the Order no. 2482/2017 on the procedure and the conditions under which the tax warehouses, registered consignees, registered consignors and authorized importers, are authorized, entered into force. It establishes the membership structure and competence of the Commissions for authorization

of the operations of products subject to harmonized excise duties. More precisely:

- authorization is carried out by the regional directorates general of public finance, through the regional commissions for the authorization of operators of products subject to harmonized excise duties;
- by exception, authorization of tax warehouses for exclusive wine production carried out by taxpayers, other than large and medium-sized taxpayers, small distilleries as well as small independent beer factories, is made through the territorial commissions for the authorization of operators of products subject to harmonized excise duties, set up at the level of the territorial structures of the regional directorates general of public finance;

What to do?

We recommend that you review the impact of the legislation changes on your activity.

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Decision of the Court of Justice of the European Union on deduction of VAT invoiced by inactive taxpayers

The Court of Justice of the European Union ("CJEU") allows the deduction of VAT incurred by taxable persons on purchases made from inactive taxpayers. The decision is general and mandatory and its effects are not limited in time. Thus, the decision can also be applied for operations performed prior to its issuance.

Moreover, we believe that CJEU decision opens the right to deduct VAT also for other cases where VAT deduction was blocked because the supplier had its VAT number cancelled.

On 19 October 2017, the CJEU decided in case C-101/16 Paper Consult SRL to grant the VAT deduction right to taxable persons that performed purchases from taxpayers declared inactive by the National Agency for Tax Administration (ANAF).

Background

At the end of 2010, Rom Packaging SRL (Rom Packaging), a company established in Romania, was declared inactive for failing to submit the tax statements imposed by law and removed from the register of taxable persons registered for VAT purposes by ANAF.

Based on an agreement from 2011, Rom Packaging supplied services to Paper Consult SRL ("Paper Consult"), a company established in Romania. The VAT related to the acquisition of services was deducted by Paper Consult and paid by Rom Packaging to the state budget.

Based on the Tax Code, ANAF considered that Paper Consult was not entitled to deduct the VAT related to the purchased services as Rom Packaging was an inactive taxpayer at the signing date of the agreement.

Paper Consult appealed, considering that the decision by which ANAF declared Rom Packaging as an inactive taxpayer does not concern it and cannot be a reason for cancelling the VAT deduction right. In return, exercising the VAT deduction right depends exclusively on complying with the conditions provided by art. 178 of the EU VAT Directive (Directive 2006/112/EC on the common system of VAT).

Domestic provisions in force until 31 December 2016

Beneficiaries who purchased goods and/or services from inactive taxpayers were not entitled to deduct VAT related to those purchases, regardless of whether the respective taxpayer was reactivated and would register for VAT purposes later on.

Domestic provisions in force starting with 1 January 2017

Starting from 1 January 2017, the Tax Code allows VAT deduction in relation to purchases made from inactive taxpayers after they are reactivated and re-registers for VAT purposes.

The amendment was introduced following EU-Pilot procedure 8399/16 opened by the European Commission, which imposed the Romanian authorities to grant the VAT deduction right. However, the provision is applicable in the case of re-registration for VAT purposes after 1 January 2017, retroactive application not being available.

For entire article, please click [here](#).

Romania has received EU Council's approval to increase the VAT exemption threshold to EUR 88,500 (RON 300,000)

The UE Council has authorized Romania to increase the VAT exemption threshold for small enterprises from EUR 65,000 to EUR 88,500. The measure derogates from the provisions of the VAT Directive and is valid only for a period of three years (1st of January 2018 to 31st December 2020).

The EU Council has approved the increase in the VAT exemption threshold applicable to small enterprises by EUR 23,500, reaching up to EUR 88,500. However, the equivalent in national currency of the new threshold is only RON 300,000 because it is calculated based on the valid exchange rate at the date of Romania's accession to the European Union (i.e. RON 3.3817).

Currently, the VAT registration threshold is set at EUR 65,000, equivalent to RON 220,000, as an approval obtained by Romania in 2014 that was due to expire at the end of 2017.

Tax&Legal Highlights

Thus, Romania obtained the extension of the derogation from art. 287 of the VAT Directive (providing for a threshold of only EUR 35,000), but also an increase of the VAT exemption threshold.

The purpose of the VAT exemption threshold applicable to small enterprises is not to burden them with additional VAT obligations as it is presumed that the budget revenue that they may generate is low. The increases from the EUR 35,000 threshold provided by the VAT Directive for Romania are granted as a derogation for a limited period, as they should be treated as an exception designed to support entrepreneurs during the start-up period.

The exception is valid from 1st of January 2018 until the end of 2020 or until the VAT Directive is amended.

Romania has motivated the request with the mitigation of VAT burden on small enterprises and the relief of the tax administration of the task of monitoring the collection of a low amount of revenues from a large number of small enterprises.

The decision is already transposed in a draft law sent to the Parliament, where it has been adopted by the Senate and is due to receive the final vote from the Chamber of Deputies.

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