Tax&Legal Highlights

Romania

New rules governing the financial insurance sector

On October 1st, 2018 the Law no. 236/2018 on insurance distribution entered into force. The law transposes the provisions of Directive (EU) 2016/97 and repeals Law no. 32/2000 on the activity and supervision of intermediaries in insurance and reinsurance.

The regulations issued by the Financial Supervisory Authority (FSA) prior to October 1st, 2018 will continue to apply until the new regulations will be enacted, except for contradictory provisions, where Law no. 126/2018 shall prevail. The FSA is expected to issue in the near future implementation rules for the application of the Law no. 236/2018.

We summarized below some of the key aspects provided by Law no. 236/2018.

Scope

The new law applies to the following individuals and legal entities:

- established or which intend to establish in Romania in order to take up and pursue insurance distribution activity;

- carrying out or which intend to carry out the insurance distribution activity in Romania;
- with the registered office or the residence in Romania and which intend to be established or to take-up and pursue the insurance distribution activity in another Member States.

The law regulates several aspects in relation to:

- the distribution of insurance and reinsurance products;
- the organization and functioning conditions for the insurance and/or reinsurance distributors;
- the supervision of the insurance distribution activity and other related activities;
- the registration of the intermediaries, including their authorization and licensing by the FSA.

The law provides several exemptions from its application in relation to ancillary insurance intermediaries carrying out insurance distribution activities in certain conditions, as well as in relation to the insurance or reinsurance distribution activities carried out in third countries.

Key aspects:

- **Changes in terminology:** The new law classifies the insurance market players in the following categories:

  - "insurance distributors", respectively:(i) insurance undertakings, (ii) insurance intermediaries (primary and secondary), (iii) ancillary insurance intermediaries; and

  - "reinsurance distributors", respectively: (i) reinsurance undertakings and (ii) reinsurance intermediaries (primary and secondary).

  The notions of "insurance agent", "insurance broker", "assistant in brokerage" or "subordinated insurance assistant" are no longer provided in the new law.

- **Stricter organisational and reporting requirements**: insurers shall approve, implement and regularly review their internal policies and procedures regarding the compliance by their employees with the professional competence requirements and with the moral probity requirements by the persons within the management structure, and shall create an internal function to ensure the proper implementation of the endorsed policies and procedures.

- **The insurance distributors cannot**:

  - be remunerated or remunerate or assess the performance of their employees in a way that conflicts with their duty to act in accordance with the best interests of their clients;

  - make any arrangement by way of remuneration, sales targets or otherwise that could provide an incentive to itself or its employees to recommend a particular insurance product to a client when the insurance distributor could offer a different insurance product which would better meet the client's needs;

- accept or receipt fees, commissions or other monetary or non-monetary benefits paid or provided by any third party, or a person acting on behalf of a third party, in relation to the distribution of insurance products.

- **Within the pre-contractual stage, the insurance distributor shall provide its clients with extended information on:**

  - **conflict of interests** referring, *inter alia*, to: (i) the qualifying holdings of the insurance intermediaries in a given insurance undertaking and *vice-versa*, (ii) the nature and type of remuneration received in connection with the insurance contract, (iii) the nature of advice, (iv) the names of the insurance undertakings with which it does (or may) conduct business.

  - **advice** referring, *inter alia*, to: (i) the performance of the suitability tests of the recommended products on the basis of the information obtained from the clients and (ii) the provision of objective information about the insurance product by using an insurance product information document (PID) drawn up by the manufacturer of the insurance product on the basis of the information and characteristics provided by the new law.

  - **the selling of a package of products (i.e. when an insurance product is offered together with an ancillary product or service which is not insurance)**, which includes: (i) an adequate description of the different components of the package, as well as separate evidence of the costs and charges of each component (in case there is the possibility to buy the different components separately), and (ii) an adequate description of the different components of the package and the way in which their interaction modifies the risk or the insurance coverage (where the risk or the insurance coverage resulting from such a package offered to a client is different from that associated with the components taken separately).

- **Means of providing information**: there are imposed specific conditions regarding the provision of pre-contractual information: (i) by using a durable medium (other than paper), (ii) by using a website and (iii) in the case of telephone selling.

- **Product governance requirements**: before marketing and distributing the insurance products to clients, the insurance undertakings and the primary intermediaries that manufactures insurance products shall maintain, operate and review a process for the approval of each insurance product (e.g. identification of the target markets, assessing all relevant risks to such identified target markets etc.).

- **Specific requirements regarding the insurance-based investment products**: the new law imposed, *inter alia,* additional requirements in connection with the identification of conflict of interests between insurance distributors and their clients, pre-contractual information provided to the clients, performance of the suitability tests of the products, disclosing to clients all the costs related to the recommended products.

- **Sanctions**: the new law imposes stricter sanctions and administrative measures for non-compliance with its provisions. In case of insurance undertakings and primary intermediaries, **the pecuniary fines may amount up to RON** 5,000,000.

- **Transitional provisions:**

  - Within a maximum of 120 days from the date of October 1st, 2018, the credit institutions and the investment firms carrying out the activity of banc-assurance, or respectively acting in the capacity of assistants in brokerage, have the possibility to carry out insurance distribution activity in accordance with the new provisions as primary intermediaries and shall notify the FSA in this respect. After the elapse of this legal deadline, the credit institutions and the investment firms that have not submitted such notification may carry out insurance distribution activity only as secondary intermediaries.

  - The professional competence requirements under art. 10 para. (1) in the new law will apply starting with February 23rd, 2019.

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Amendments to Tax Code – The final form of the law

The amendments to the Tax Code proposed by the draft emergency ordinance of 29 September 2018 were published in the Official Gazette. The most relevant are: 5% VAT rate to certain services, regulations for taxpayers applying IFRS and updates on the applicable deductions for early reporting and/or payment of income tax and social contributions.

Emergency Ordinance no. 89/2018 includes, with some changes, the provisions of the draft published by the Ministry of Finance on 29 September 2018, provided in the Deloitte tax alert of October 3rd, 2018.

In brief, the final form of the Ordinance states that:

Corporate Income Tax

Specific rules are introduced for taxpayers applying IFRS 9 – Financial instruments standard starting with 2018:

- tax treatment applicable to reserves generated from the fair value valuation of financial instruments through other comprehensive income

(FVTOCI) at the moment when the respective instruments are sold/ transferred;

- tax treatment applicable to certain amounts booked as retained earnings following changes triggered by the adoption of new IFRSs.

VAT

5% VAT rate for the following categories:

- accommodation in the hotel or in similar facilities, including rental of camping sites [currently taxable with 9%];
- restaurant and catering services, with the exception of alcoholic beverages (other than beer) [currently taxable with 9%];
- the right of usage of sporting facilities (activities classified under NACE 9311 and 9313), for the purpose of performing sports and physical education (other than those already exempted);
- services consisting in allowing access to fairs, amusement and recreational parks (activities classified under NACE codes 9321 and 9329).

The amendments would enter in force starting with 1st of November 2018.

Income tax

The deadline for submitting the individual annual tax returns by electronic means for which a 5% income tax deduction can be granted is modified from 31st of July 2018 to **15th of July 2018**.

The method of applying the deduction is clarified – the annual income tax to be paid is to be diminished (and not the "income tax paid"). In other words, the authorities will apply the deductions within the final tax decision.

Other fiscal-budgetary measures proposed

A deduction of 10% will be granted for the full payment of the following, due as per tax decisions:

- income tax due for the year 2017,
- social security contributions due for the period 2016-2017,

if paid by 15th of December 2018, the legal deadline being 30th of June 2019.

- health insurance contributions due for the period 2014-2017, if paid by 31st of March 2019, the legal deadline being 30th June 2019.

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Starting January 1st, 2020, foreign companies will not be able to perform more than 3 customs operations per year, unless they are established in the European Union

A draft amendment of Order no. 2460/2016 on customs representation norms was published on the Romanian General Customs Directorate website.

On October 23rd, 2018, a draft Order amending the Norms on the application of the right of customs representation no. 2460/2016 was published on the General Customs Directorate website.

Currently, companies not established in the European Union (e.g. from Turkey, Switzerland, Serbia, etc.) can carry out frequent customs operations (more than three operations per year) only by indirect representation. A company is deemed to be established within the European Union if it has (1) its headquarters in the EU customs territory or (2) a central administration or (3) a permanent establishment where human and technical resources are permanently present and where customs operations are conducted totally or partially.

According to the draft Order, as of January 1st 2020, these companies would no longer be able to carry out more than three customs operations per year in the EU, without being established in this territory.

For example, an exporter established in Switzerland intending to export goods from Romania could no longer be mentioned in box 2 of the export customs declaration, even if the indirect representation method will be used. In this context, the application of the VAT exemption for exports of goods becomes debatable for the Swiss exporter, specifically given the current approach of the tax authorities.

Most importantly, besides export operations, the planned restriction will also affect release for free circulation, bonded warehouse, inward and outward processing customs regimes if done by non-EU established entities.

What does this mean for you?

If you frequently import/ export goods to/ from the European Union and your company is not established in this territory, you will not be able to do such operations after December 31st, 2019, according to the draft order.

We recommend reviewing the impact of these changes early on your business.

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The Combined Nomenclature in force in 2019

The European Commission has published the Combined Nomenclature ("CN") applicable starting January 1st, 2019. Consequently, starting January, you will need to use the new CN codes for customs and excise operations, Intrastat declarations and for operations performed on the basis of a customs and fiscal authorizations issued on CN 2018 tariff codes.

Among the changes in the new CN, applicable from 1st of January 2019, new tariff codes have been introduced or the existing ones have been modified for:

- Fresh, chilled sea products suitable for human consumption of CN heading 0308 30;
- Light oils and preparations of heading 2710 12;
- Aluminium sheets and strip of heading 7606 12 for bodies, lids and beverage cans defined by a new Additional Note 2 to Chapter 76.

What does it mean for you?

The new CN may include new classifications for your products. If you import / export goods into / out of the EU starting 1st of January 2019, you will need to use the new CN codes in your import / export declaration processes.

The amendment of the Combined Nomenclature has implications not only for customs operations, but also for operations with excisable products and the Intrastat statistical reporting, namely the tariff codes of goods traded between EU Member States.

In addition, the holders of the customs and tax authorisations that include reference to tariff codes issued in accordance with NC 2018 (e.g. for suspensive customs regime) will be subject to the new rules.

What to do?

To avoid any administrative and operational inconveniences as of 1st of January 2019 (e.g. extended stay of goods in customs), we recommend that you adjust the codes as soon as possible.

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Excisable products: On December 31, 2018 certificates for engross trading of energy products and alcoholic beverages/processed tobacco with no storage will lose their validity

According to a draft order published on the website of the General Customs Directorate, the deadline for economic agents to re-authorize under the new conditions will be extended (initially the re-authorization deadline was set for November 9, 2018).

At the time of publication, Order no. 1960/2018 provided the date of November 9, 2018 as the deadline by which economic agents authorized to distribute and trade energy products/alcoholic beverages/processed tobacco, in a wholesale system without storage, can be re-authorized under the new conditions (i.e. holding of storage facilities).

According to a draft amendment to Order no. 1960/2018 published on the General Customs Directorate's website, the re-authorization deadline will be extended until December 31, 2018.

Economic agents who will submit requests for re-authorization within the aforementioned term will be able to operate until their settlement, but no later than 30 days from the filing of the application.

We encourage you to make sure that by 31 December 2018 you have taken the necessary steps to obtain the new certificates. After this date, customs authorities are expected to check if you fulfil the new conditions.

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