

Tax & Legal Weekly Alert

January 22nd, 2019

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The amendments to the Tax Code and the Fiscal Procedure Code

A series of amendments, completions are introduced by Law no. 30/2019 published at January 17, 2019:

- Additional conditions for granting sponsorships for corporate tax payers;
- Amendments of the thresholds regarding interest deductibility and other equivalent costs;
- The regulation of income obtained from virtual currency transfers and the tax base calculation method for this type of income;
- The redistribution of the amount representing up to 3.5% from the income tax due on certain types of income to nonprofit entities, cult units and private scholarships;
- Amendments on the moment when it is allowed the adjustment of the VAT taxable amount in case of the bankruptcy of the beneficiary;
- Amendments on the application of the 5% VAT rate for the supply of residential housing as part of social policy;
- Amendments to the Fiscal Procedure Code, establishing the legal framework applicable to the criteria according to which the taxpayers are classified as fiscal risk categories.

Approval of the "Unique statement regarding the income tax and social security contributions due by individuals" form for 2019

Draft GEO on consumer protection: proposed increase in the sanctions to be applied by ANPC

The National Consumer Protection Authority (ANPC) has issued on 14 January, on its own web-site, in a decisional transparency procedure, an emergency government ordinance proposal regarding the amendment and supplementation of certain legal enactments governing consumer protection.

The amendments to the Tax Code and the Fiscal Procedure Code

The Law no. 30/2019 for the approval of Government Emergency Ordinance no. 25/2018 brings important changes to the Tax Code and Tax Procedure Code.

In brief, the amendments to Tax Code refer to:

A. Corporate income tax

Additional conditions for granting sponsorships for corporate tax payers

- Starting with the April 1, 2019, taxpayers can benefit from a tax credit related to sponsorships to **non-profit entities, including cult units**, provided that the beneficiary is enrolled at the date of conclusion of the contract in the **Register of Entities for which tax deductions are granted**. This condition adds to the already existing thresholds relating the maximum percentage of corporate income tax due and turnover.
- At the same time, **the conditions to be met by the entities / cult units requesting entry in the Registry of the entities / cult units** for which tax deductions are granted are also mentioned. The register is public and is displayed on the ANAF website.

Amendments of the thresholds regarding interest deductibility and other equivalent costs

- Starting with the January 1, 2019 or the first day of the modified tax year starting after January 1, 2019, exceeding borrowing costs are subject to the following deductibility limits:
 - **EUR 1,000,000** and
 - if they exceed the above-mentioned threshold, excess borrowing costs are treated as deductible expenses up to **EUR 1,000,000 and 30% of EBITDA**. If the basis of calculation is negative or zero, only excess borrowing costs over EUR 1,000,000 will be considered non-deductible and will be carried forward in future periods.

B. Income tax

The regulation of the income from virtual currency transfers and also the tax base calculation method for this type of income

- The income from virtual currency transfers derived starting with 2019 will be classified as income from other sources;
- The tax base will be determined as the positive difference between the sale price and the acquisition price, including the direct costs of the transaction;
- The earnings below 200 lei per transaction will be considered non-taxable if the total earnings from virtual currency transfer in the respective fiscal year do not exceed the 600 lei amount.

The redistribution of the amount representing up to 3.5% from the income tax due on certain types of income to nonprofit entities, cult units and private scholarships

- Starting with the April 2019 income, the taxpayers earning wages, pensions, income from self-employment, intellectual property rights can redirect amounts up to 3.5% of the income tax due to nonprofit entities, cult units and private scholarships.

The same provision applies to taxpayers who derive income from abroad, with the same nature as those obtained in Romania, for which there is the

right to redirect this percentage of the tax due in Romania after deducting the tax credit.

C. VAT

Amendments on the moment when it is allowed the adjustment of the VAT taxable amount in case of the bankruptcy of the beneficiary

- The term "*final or final and irrevocable judgment*" is replaced by the term "*sentence, or where appropriate, the closure decision by which it was decided the entry into bankruptcy*". Therefore, the VAT adjustment is allowed when the beneficiary goes bankruptcy and not at the end of the closure of the procedure.
- In case of bankruptcy proceedings initiated prior to 1 January 2019, for which the final/final and irrevocable judgment has not been issued, the adjustment of the taxable amount should be made within 5 years starting from 1 January 2019.

The amendments were based on the Court of Justice of the European Union decision in Case C-246/16 Di Maura, in which the Court ruled that "*a Member State may not make the reduction of the VAT taxable amount in the event of total or partial non-payment subject to the condition that insolvency proceedings have been unsuccessful when such proceedings may last longer than ten years*".

Amendments on the application of the 5% VAT rate for the supply of residential housing as part of social policy

- Any individual is allowed to acquire such residential housing.
- The condition for limiting the land surface on which the residential housing is built was eliminated.
- The condition for limiting the possibility of acquiring only one residential housing subject to 5% VAT reduced rate was eliminated.

D. Customs

Regarding the obligation of the authorized warehouse keeper, registered consignee, registered consignor and authorized importer to deposit a guarantee to the competent authority, this one can also consist, apart from the letter of guarantee, in an insurance policy. The insurance policy must be issued by an insurance society registered in EU and European Economic Area and must be deposited in favor of the territorial tax authority to whom the economic operator is registered as payer of tax and income.

E. Amendments to the Fiscal Procedure Code, establishing the legal framework applicable to the criteria according to which the taxpayers are classified as fiscal risk categories

- the procedure for assigning taxpayers' risk classes
- the enforcement procedures for fiscal obligations
- categories of tax obligations considered outstanding

Thus, with regard to the taxpayers' risk classes, taxpayers can be considered as being into one of the following classes: low tax risk / medium tax risk / high tax risk.

- a) In this respect, the following criteria are used:
- b) criteria for tax registration;
- c) criteria for filing tax returns;
- d) criteria regarding the level of declaration;
- e) criteria regarding the fulfillment of the payment obligations to the general consolidated budget and to other creditors.

Moreover, the new regulation establishes that taxpayers cannot object to how they were assigned in the respective risk class.

On the other hand, in order to clarify, the legislator states that the risk class / sub-class of the taxpayer is not relevant in the procedure for resolving the appeals against the administrative acts issued.

From the perspective of tax liabilities considered to be outstanding, the law adds a new category of tax liabilities that are not considered overdue, namely the fiscal obligations established in the administrative deeds that are contested in accordance with the law, tax liabilities which are guaranteed according to art. 210-211 or art. 235 (i.e., tax obligations secured by cash deposit, letter of bank guarantee, insurance policy, mortgage).

Consequently, these tax obligations will not be mentioned in the fiscal attestation certificate.

In respect to the enforcement proceedings, the new regulation introduces the mediation procedure.

The mediation procedure can be initiated upon notification of the taxpayer, within a maximum of 15 days since the receipt of the writ of execution. Enforcement proceedings shall not begin until the expiration of a 15 days deadline, calculated from the completion of the mediation procedure.

However, the fiscal body may set precautionary measures during the procedure.

The mediation procedure consists of:

- a) clarification of the extent of the tax obligation described in the writ of execution;
- b) analysis of the economic and financial situation of the debtor in order to identify optimal solutions for the elimination of fiscal obligations.

In addition, it has been expressly regulated that the enforcement proceedings are suspended or not commenced for the tax liabilities established in the administrative deeds that are contested in accordance with the law and guaranteed according to art. 210 - 211 Tax Procedure Code (i.e., tax obligations secured by cash deposit, letter of bank guarantee, insurance policy, mortgage).

During the period of suspension of enforcement, the enforcement deeds that were previously executed, as well as any other enforcement measures, including the unavailability of goods, incomes or amounts in bank accounts, remain in existence, except the cases in which the suspension of the enforcement proceedings was ordered the conditions of art. 235 (i.e. following the deposit of a letter of bank guarantee / insurance policy). In this case, the enforcement measures applied shall be raised by a decision rendered no later than two days after the date of the suspension.



Approval of the “Unique statement regarding the income tax and social security contributions due by individuals” form for 2019

The model, content, manners of submission and administration of the “Unique form regarding the income tax and social security contributions due by individuals” for the year of 2019 was approved by Order of the President of the National Agency for Fiscal Administration no. 49/2019, published in the Official Gazette no. 43 dated January 16, 2019.

For further questions regarding the aspects mentioned in this alert, please contact us.



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Draft GEO on consumer protection: proposed increase in the sanctions to be applied by ANPC

The relevant amendments proposed under the emergency government ordinance envisage mainly the increase of applicable sanctions, as follows:

- The amendments which may be imposed on the basis of GO 21/1992 regarding consumer protection may be of maximum 2% of the turnover, respectively 4% for repeated and serious breaches (i.e. in case the action led to the serious harm and in a repeated manner of the interests of more consumers or the breach had as consequence the physical harm of one or more persons), as well as in case where the economic agent did not comply with the measures imposed within the terms and conditions included in the sanctionary minutes and following the final decisions issued by the competent courts-of-law;
- The measures imposed under the sanctionary minutes will apply to all outlets (working points) pertaining to the controlled entity;
- The controlled entities have the obligation to display on the main entrance door, for a duration of 30 days, a notice with respect to the measures imposed through the sanctionary documents;

- The sanctions which may be imposed under Law 363/2007 regarding unfair commercial practices may be of maximum 3% of the turnover for certain unfair commercial practices (those aggressive and those which are not misleading), respectively 4% of the turnover for the misleading commercial practices, as well as for the failure to observe the measures imposed by ANPC.

Commonly for the two legal enactments previously mentioned, it is important to specify the fact that the legislative proposal does not grant any longer the possibility for the entities found in breach of these enactments, to pay half of the minimum fine thus imposed.

Other amendments, which may also be of interest, are:

- In case where the complementary measure regarding the definitive closure of the unit is decided, the sanctionary body can impose for the company, its director and its shareholders, the prohibition to perform the economic activities provided by CAEN Code for which the controlled entity has been sanctioned, for a period of up to 3 years;
- The measures disposed under art. 55 (including temporary/definitive cease from commercialization or products) shall not be, directly, through delegation, by order or by decision, decided any longer by the ANPC territorial unit leader – meaning that they will be directly imposed, without delegation and without any order or decision, by the controlling agents, through the sanctionary minutes;
- The reduced price sales must specify the initiating period and the final date, as well as the type of garments subject of the reduced price sale, in case where the operation does not regard all the products in the selling point;
- In case of food products originated outside EU, before placing the product on the market, another endorsement from ANPC (General Department of Market Surveillance and European Harmonization) has to be obtained, following the proposal issued by LAREX, attesting the conformity with the labeling information regarding composition, based on laboratory analysis and enclosing documentation;
- The measuring instruments used for determining the quantity of bulk products have to be clear and visible for the consumer.

In addition, for the services providers, the following amendments are relevant:

- The value of fines which may be imposed under Law 193/2000 regarding unfair clauses can be of maximum 5% of the turnover in case of breaching the interdiction to include unfair clauses in the contracts concluded with the consumers;
- Also, another impact amendment proposed under the emergency government ordinance, is that, in case where the competent court-of-law finds unfair clauses in the contract subject of its assessment, it may oblige the controlled entity to amend all the contracts in course of performance, as well as to remove the unfair clauses from the respective contracts, meant to be used in the business activity and without having any longer the possibility to include such clauses within the new contracts to be used in its business. Also, the court may decide the full reimbursement to the consumers of the amounts claimed on the basis of unfair clauses in the respective contracts.

Considering that until 25 January feedback and comments may be sent in connection with this legislative proposal, please let us know whether you would like us to help you in this regard.

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