

Tax & Legal Weekly Alert

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Legislative measures with major impact approved by GEO at the end of last year

The Government has approved the Emergency Ordinance no 114/2018 which introduces a series of legislative changes with impact on the financial services, electricity, gambling, telecommunications, amongst others. The published emergency Ordinance brings a few minor changes as compared to the draft published on December 18 and summarized in [our newsletter sent on 21 December 2018](#):

- A tax on the assets of financial institutions – the rate is progressive, and is determined according to ROBOR;
- Set-up of a minimum contribution for granting and extending the licenses for telecommunications providers;
- A new tax for gambling organizers;
- Freezing of the gas selling price by 2022 to 68lei/MWh;
- New rules for setting tariffs and contributions owed by electricity operators;
- Increasing the financial contribution of electricity operators;
- Indexation of local taxes and fees;
- Tax incentives for employees in the construction sector;
- Substantial changes to pension pillar II.

Legislative measures with major impact approved by GEO at the end of last year

Tax on the assets of the financial institutions

The provisions of the so-called "greed tax" (the infamous term has been eliminated from the published Emergency Ordinance) has been amended in the sense of limiting the applicability and of increasing the ROBOR reference rate. First of all, the tax will be due only by banking institutions (initially, the tax was targeted for both financial and banking institutions) and the taxable base is limited only to financial assets, not assets in general.

Starting with January 1st, 2019, banking institutions will owe a quarterly tax on the financial assets if the quarterly average of ROBOR exceeds the benchmark of 2%. (the ROBOR benchmark rate was set at 1.5% in the draft ordinance).

The tax rates are progressive, ranging between 0.1% and 0.5%.

The tax on financial assets is calculated, declared and paid up to the 25th of the month following the quarter, and represents deductible expense in the calculation of corporation tax.

Establishment of minimum values for granting, respectively prolonging licenses for telecommunication operators

Granting and prolonging licenses for the use of radio frequencies will be based on a minimum value for each year the license is granted, as follows (the references to second and third generations of mobile telecommunications has been eliminated):

- 4% of the previous year's revenue multiplied by the number of years for which the license is granted for radio frequency bands ranging from 703-733 MHz/758-788 MHz (2x30 MHz), 738-753 MHz (1x15 MHz), 880-915 MHz/925-960 MHz (2x35 MHz)
- 2% of the previous year's turnover multiplied by the number of years for which the license is granted for for radio frequency bands ranging from 791-821 MHz/832-862 MHz (2x30 MHz), 1920-1980/2110-2170 MHz (2x60 MHz), 3400-3800 MHz (400 MHz).

Also, the extension of the availability period of the radio frequency bands via a selection procedure will be conditioned by the payments towards the state budget of a tax amounting to 4% of the previous year turnover multiplied by the number of years for which the extension is granted.

The monitoring fee due by the suppliers of electronic telecommunications networks will be increased to 3% of the previous year turnover.

A new tax for gambling organizers

Also, the applicability of the tax due by the gambling industry is reduced. Such as, starting January 1st, 2019, only the online gambling organizers regulated by GEO no. 77/2009 have the obligation to pay a new fee of 2% of the total fees cashed in the previous month.

The tax is calculated, declared and paid to the state budget until the 25th of the following month when the participation fees were cashed.

Gas selling price

Between 1 April 2019 and 28 February 2022, producers, including their subsidiaries and / or affiliates belonging to the same economic interest group carrying out both extraction activities and sales activities of natural gas extracted from Romania have the obligation to sell with the price of 68 lei/MWh the natural gas quantities resulting from the current domestic production activity to eligible suppliers and eligible customers.

The differences in purchase costs in the years 2018 and 2019 of the suppliers, not recovered by the prices charged, will be recovered until 30.06.2022.

Failure to comply is a contravention and is sanctioned by a fine of 10% of the turnover of the year preceding the application of the contravention sanction.

The cash contribution of electricity operators increases from 0.1% to 2%

The cash contribution charged by economic operators operating in the electricity sector will be calculated as 2% of the turnover achieved by them.

Indexing local taxes and fees

If the local council's decision on the indexation of local taxes and taxes has not been adopted at least 3 working days before the end of the fiscal year, they will be indexed with the maximum levels provided by the Fiscal Code in the following year.

Tax incentives for employees in building sector

Starting January 1, 2019, for a period of 10 years, some tax incentives are introduced for employees of companies operating in the building sector. Eligible employees will benefit from the exemption from income tax and social security contributions as well as from the 3.75% reduction of the social insurance contribution.

The employer will be responsible for assessing the eligibility conditions for accessing the facilities. These conditions include, among other things, the level of the salary, the employer's field of activity and the turnover in the eligible areas. Therefore, it is necessary to establish a process that supports the fulfillment of these criteria provided by the law before implementing the facilities and monitoring them during the implementation.

Increase of the gross base minimum wage in the construction sector

Starting January 1, 2019 and until 31 December 2019, for the construction sector, the gross base minimum wage, which cannot include increments or other benefits, is set at RON 3,000, for an average working schedule of 167.33 hours per month, representing 17.928 lei/hour. These provisions apply exclusively to domains of activity regulated under the amendments brought to the Fiscal Code through the GEO, as mentioned above.

However, at this moment it is unclear whether:

- (i) The granting of the increased gross base minimum wage is conditional upon meeting the other eligibility conditions for accessing the benefits regulated under the amendments made to the Fiscal Code;
- (ii) All employees are intended to benefit from the increased salary or only those actually performing construction related activities.

Extending reverse charge

With regards to VAT, reverse charge for delivery of grain, greenhouse gas emission allowance transfer, electricity supply, green certificates transfer, mobile phone provisioning, integrated circuit devices, gaming consoles, tablet PCs and laptops are prolonged until June 30, 2022.

Excise on tobacco

The excise tax on cigarettes will be 483.74 lei as of January 1, 2019, compared to the one of 448.74 that applies today.

Changes in pensions, Pillar II

The administration of pension funds will face increased minimum capital requirements. As such, the minimum share capital will increase from a fixed

amount of EUR 4 million to an amount computed based on the value of the managed contributions:

- 5% of the contributions, if their value is below EUR 100 million;
- 7% of the contributions, if their value is between EUR 100 million and EUR 500 million;
- 10% of the contributions, if their value is above EUR 500 million.

Additionally, the value of the administration fees have been reduced significantly from 2.5% to 1% and their value will vary depending on the fund profitability.

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



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