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The Government adopted an Emergency Ordinance for amending and supplementing the Tax Code and the Accounting Law

On February 26, 2021, the Government Emergency Ordinance no. 13/2021 was adopted to amend and supplement Law no. 227/2015 on the Tax Code and the Accounting Law no. 82/1991, taking into account the need to make legislative correlations in order to ensure the unitary application of tax regulations.

The Government adopted an Emergency Ordinance for amending and supplementing the Tax Code and the Accounting Law

Corporate income tax

- Article 25 para. (4) (f¹) is amended and clarifies that the rule on the non-deductibility of expenses incurred as a result of transactions with a person located in a State which, at the date of recording the expenses, is included in the EU List of non-cooperative jurisdictions for tax purposes published in the Official Journal of the European Union **shall apply only to those jurisdictions in Annex I, for transactions carried out from 1 January 2021, only if the expenses are incurred as a result of transactions which lack economic purpose.**
- Additionally, it is also expressly provided that for taxpayers paying income tax, expenses incurred as a result of transactions with a person located in a State which, at the date of recording the expenses, is included in **Annex II of the European Union List of non-cooperative jurisdictions for tax purposes**, published in the Official Journal of the European Union, **are deductible expenses for determining the tax result from the first quarter of 2021**, respectively for determining the tax result for 2021 for taxpayers who apply the annual corporate income tax system, according to the provisions of art. 25 of Law no. 227/2015 regarding the Fiscal Code. These provisions apply accordingly also in the case of taxpayers with a modified fiscal year that fall under the incidence of art. 16 para. (5) of Law no. 227/2015.

Value added tax

- In accordance with the amendments brought previously to the Tax Code by Law no. 296/2020, which provided **the increase of the turnover threshold for the application of VAT cash accounting system**, starting with January 1st, 2021, the amendments brought by this GEO have the role of uniformly establishing that the threshold for VAT accounting system is **RON 4.5 million** in all cases.
- In addition, Romanian resident companies which opt for the application of the system, after the registration for VAT purposes, during the year of registration, became eligible for the application of the VAT cash accounting system. In this case, the system becomes applicable from the first day of the tax period following the one in which they exercised their option.
- Another relevant aspect is the application of the **5% VAT rate** on the taxable base for the supply of homes with a usable area of maximum **120 m²**. It is a return to the previous threshold, so that the value of these homes must not exceed the amount of **RON 450,000** (excluding VAT).

This change comes after previously, in December 2020, it was established by Law no. 296/2020, an increase of this threshold to EUR 140,000 (excluding VAT).

Individual taxation

- Clarifications regarding reporting and payment liabilities applicable to salary income for cash and/or nature advantages granted by third parties, regardless of the existence of a permanent establishment in Romania.

Amendments brought to the Accounting Law - 82/1991

- The obligation to organize and manage the accounting process, according to the accounting provisions, is introduced for foreign legal entities operating through a permanent establishment/ several permanent establishments in Romania, as well as foreign legal entities that have the place of effective management in Romania.
- The provisions regarding the entities for which the accounting regulations are issued by the Romanian National Bank ("NBR") are clarified and completed, as follows:
 - The deposit guarantee fund in the banking system and the deposit guarantee schemes supervised by the NBR;
 - Any other entity that falls within its scope of accounting regulation

- The obligation to carry out the general inventory of the elements of the nature of assets, liabilities and equity held for foreign legal entities operating through a permanent establishment / several permanent establishments in Romania is introduced, as well as foreign legal entities having the place of exercise of effective leadership in Romania.
- Also the accounting records of operations determined by the merger, division or transformation or liquidation, according to law, of the activity of foreign legal entities operating through a permanent establishment / several permanent establishments in Romania, as well as of foreign legal entities for which the place of effective management is in Romania are performed based on the corresponding documents prepared in such situations.
- The obligation to prepare and audit the statutory annual financial statements is also introduced in the case of other forms of legal reorganization (other than merger and division or liquidation).
- The obligation to keep the following financial documents for a period of ten years is included:
 - The financial statements and accounting reports prepared for periods other than annually during the financial year;
 - Consolidated annual financial statements;
 - Interim financial statements.
- Clarification and completion of the provisions regarding the documents accompanying the annual financial statements. In the present case, the following shall be added alongside the administrator's report:
 - The audit report or the report of the audit committee as the case may be;
 - The report on payments to the government, if the applicable accounting regulations provide for the obligation to prepare it;
 - The proposal for the distribution of the profit or the cover the accounting loss.
- A new provision is included regarding the consolidated financial statements, which need to be accompanied by:
 - The consolidated report of the administrators;
 - Audit report;
 - The consolidated report on payments to the government, if the applicable accounting regulations provide for the obligation to prepare it.

Also, non-compliance with the provisions regarding their preparation and submission within the legal term, constitutes a contravention, being sanctioned with a fine as follows:

- With a fine from 300 lei to 1,000 lei, if the delay period is between 1 and 15 working days;
 - With a fine from 1,000 lei to 3,000 lei, if the delay period is between 16 and 30 working days;
 - With a fine from 1,500 lei to 4,500 lei, the delay period exceeding 30 working days.
- The list of legal entities of public interest is completed by adding the Bank Deposit Guarantee Fund and the Deposit Guarantee Schemes supervised by the NBR.
 - Provisions are introduced that establish the categories of public information, included in the annual financial statements / accounting reports. These categories, as well as the manner of transmission and the periodicity with which this information will be transmitted, are established by the order of the Minister of Finance. The information will be extracted from the financial statements / annual accounting reports submitted by taxpayers. Also, the Ministry of Finance may conclude collaboration protocols with other institutions, directly or indirectly through the NAFA, having as object the exchange of information when their establishment / regulation provides for the need to use information included in financial statements / accounting annual, respecting the applicable legal framework regarding data confidentiality.
 - The contraventions regarding the non-compliance with the regulations regarding the preparation, signing, legal submission and the obligation of with respect to the audit of the

interim financial statements, including their non-submission according to the present law are added;

- A clarification is provided regarding the persons who ascertain the contraventions and apply the fines from this law, these being persons within the directions of the Ministry of Finance, respectively of NAFA, established by order of the Minister of Finance, respectively of the President of NAFA.

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



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