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The amendments provided as per Ordinance no. 16/2022 for the amendment and completion of Law no. 227/2015 regarding the Fiscal Code, the abrogation of some normative acts and other financial - fiscal measures

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The main amendments are:

Corporate income tax

- ✓ A new category of assets for which the reinvested profit exemption can be applied is added (namely, the assets used in the production, processing and refurbishment activities). These assets shall be defined by order of the Minister of Finance.
- ✓ It is clarified how the reinvested profit incentive applies to micro-enterprises that become corporate tax payers during the year.
- ✓ The tax rate on dividends distributed/ paid to a Romanian legal entity will increase to 8%.
- ✓ The conditions for tax exemption on dividends paid/ distributed between Romanian legal entities are aligned with the European Directive, in respect of the form of organization of the taxable person/ beneficiaries and their status as a payer of profit tax or any other tax that substitutes the profit tax; thus the exemption also applies if the beneficiary/ the taxpayer has the form of organization of *another legal person as defined by the Romanian legislation* (apart from "joint stock company", "limited partnership", "limited liability company", "general partnership").
- ✓ The provisions on the taxation of dividends distributed to another Romanian legal person will also apply to dividends distributed/ paid to privately managed pension funds and/ or to voluntary pension funds.

Micro-enterprises tax

- ✓ New definition of micro-enterprise, i.e. a Romanian legal person that:
 - a) has revenues, *other than those from consulting and/ or management*, in a proportion of over 80% of the total revenues;
 - b) has at least one employee;
 - c) has shareholders who hold over 25% of the value/ number of participation titles or voting rights to maximum three Romanian legal entities that fall under micro-enterprises tax system, including the person for whom the fulfillment of the conditions is verified;
 - d) the revenue threshold is amended (it decreases from EUR 1 million to EUR 500,000).
- ✓ The micro-enterprise tax regime **becomes optional**. The provisions according to which only companies with a subscribed a share capital of at least 45,000 lei and that have at least 2 employees can opt for the application of the micro-enterprise tax regime are removed.
- ✓ Horeca companies can opt for the payment of the micro-enterprises income tax even if they do not meet the conditions regarding the realized revenues.
- ✓ If a shareholder holds over 25% of the value/ number of participation titles or voting rights to more than three Romanian legal entities that fall under micro-enterprises tax system, only 3 of them can apply the micro-enterprise tax regime. For the rest, corporate income tax regime should apply. The choice is of the shareholder(s).
- ✓ The provisions applicable to micro-enterprises that do not have employees – including the tax rate of 3% are removed (given the new condition of having at least 1 employee). Thus, the unique tax rate of micro-enterprises will be 1%.
- ✓ New rules on leaving the system in case of non-fulfilment of the new conditions are introduced.
- ✓ A new rule according to which dividends received from a subsidiary of the micro-enterprise, located in another Member State of the European Union may be non-taxable is introduced (under the same conditions as in case of corporate income taxpayers).
- ✓ New rules are introduced regarding the order in which a micro-enterprise can deduct sponsorships, respectively the acquisition cost of fiscal electronic cash registers from the tax due.

Withholding tax

- ✓ The tax rate on dividends obtained by non-residents from Romania will increase to 8%.
- ✓ The exemption for dividends can also be applied if the beneficiary/ taxpayer has the form of organization of *another legal person as defined by the Romanian legislation* (apart from "joint stock company", "limited partnership", "limited liability company", "company in collective name").
- ✓ The tax exemption applicable to dividends paid to pension funds (as defined by the legislation for a EU / SEE member state) is removed. The exemption still applies to interest paid to such persons, if a legal instrument concerning the exchange of information exists between Romania and the respective state of residence.

Local taxes

- ✓ Tax rates on buildings are increased and the method of computing the taxable base of buildings is changed.
- ✓ Thus, the applicable tax rates will be:
 - A minimum percentage of 0.1% for residential buildings;
 - A minimum percentage of 0.5% for non-residential buildings.
- ✓ As regards the taxable value of the buildings, there will no longer be a different tax treatment applied depending on the type of owner (legal or natural person). The taxable value of the buildings will be determined according to the market studies administered by the National Union of Public Notaries in Romania.
- ✓ By way of exception:
 - For non-residential buildings -if the values are not available in these studies, the last taxable value recorded in the records of the tax authorities will be used;
 - For residential buildings, if the values are not available in these studies or are lower than the value determined as per the rules in-force as of 31 December 2022, the latter value will prevail for calculating the tax due starting with 2023.

Horeca specific tax

- ✓ Starting with January 1, 2023, Law no. 170/2016 on the specific tax for certain activities is repealed. These taxpayers can opt for the application of the micro-enterprise tax regime or the corporate income tax regime.

Income tax

The chapter dedicated to income tax undergoes the most important changes being substantially amended almost all categories of income (tax rates, taxable bases, formal conditions, etc.).

Amendments with impact at the employers' level

Tax incentives in the construction field, the agricultural sector, and the food industry

- ✓ A series of amendments are introduced to the conditions and limits of the application of these facilities, among which we mention: The tax facilities available to employees in these areas will be limited to
 - Monthly gross salaries of up to RON 10,000 – applicable for income derived starting August 2022.
 - income from salaries and assimilated to salaries based on the individual employment agreements – applicable for income derived starting January 2023.
- ✓ For the application of the facilities by the employers in the field of constructions existing on January 1st of each year, the indicators regarding the turnover will be calculated cumulatively from the beginning of the year, until the month for which the exemption applies - in force from July 18, 2022.
- ✓ The calculation of the turnover actually achieved from the construction activity from the total turnover will be calculated differently by reference only to the turnover afferent to the eligible activities carried out on the Romanian territory - in force from July 18, 2022.

Tax incentives for seasonal activities

The tax incentives available for individuals carrying out activities based on a 12-months employment contract associated with certain seasonal activities have been eliminated - applicable from 01.01.2023.

Salary income and salary assimilated income

Starting with January 2023, the rules regarding the tax treatment for the vast majority of benefits granted to employees are significantly modified, among which we mention:

- ✓ implementation of a 33% ceiling applicable to the base salary of each employee for applying the non-taxation regime (both for income tax purposes and for social security contributions) available for certain benefits and salary assimilated income cumulatively calculated (respecting the specific conditions of each such benefit / income), as:
 - Contributions for private pensions, as well as voluntary insurance premiums and medical services provided as subscription granted and borne by the employer within the limits of the annual thresholds of EUR 400 for each type of benefit.
 - Remote work allowance granted to employees within the limit of a monthly basis of RON 400.
 - The equivalent food value provided by the employer to its employees, within the limit of a meal ticket/ individual/ day, under certain conditions.
 - Accommodation and the rent equivalent amount for the accommodation/ living spaces granted by employers, within the limit of a non-taxable ceiling of 20% of the minimum gross salary per country/ month/ individual, under certain conditions.
 - The equivalent value of the tourist and/or treatment services, including the transportation during the holidays, within the limit of an amount equal to the average gross salary income used to substantiate the Romanian social insurance budget for the year in which those were granted, under certain conditions.
 - Certain income related to mobility clauses, except the additional benefits granted as per the law to the mobile employees who carry out activities in the road transport field, within the limit of 2,5 times of the legal threshold for delegation agreement/ assignment allowance established for the staff of Romanian public institutions.

The order in which the benefits are considered in order to classify them within the limit of 33% of the basic salary is established by the employer.

Starting with January 2023, the system of personal deductions is modified, and they will be applied within the limit of the monthly taxable income derived.

- ✓ Basic personal deduction:
 - within the limit of a gross monthly income of up to RON 2,000 above the level of the minimum gross salary, established per country and in force in the month in which it was obtained (e.g., for 2022, the limit is RON 4,550).
 - is determined according to the level of the gross salary obtained in that month, number of dependents and is granted as a percentage of the minimum gross salary per country.
- ✓ Additional personal deduction:
 - 15% of the minimum gross salary established per country for individuals under the age of 26 who obtain salary income within the aforementioned limit regarding the basic personal deduction.
 - RON 100 for each child under the age of 18 and enrolled in an education unit (e.g., school, college, university, etc.). The deduction is granted only to one parent, regardless of the salary level obtained.
- ✓ The definition of dependents has been amended and the concept of "Parent" has been introduced.

For income obtained starting with August 2022, the tax regime is modified in the case of individual with full-time or part-time employment contracts (e.g., part-time)

For them, the social security contributions and social health insurance contributions may not be less than those applicable to the minimum gross national salary in force in the month for which the contributions are due, calculated in accordance with the number of working days in the month in which the contract was active. Thus, if there are differences between the compulsory social contributions due under the agreed salary and the compulsory social contributions applicable to the minimum gross national salary, the difference is borne by the employer, on behalf of the employee. Exceptions are certain categories of taxpayers (e.g., pupils, students up to 26 years of age, certain retirees, etc.).

Amendments with impact at the employees' level

Dividend income – applicable from 01.01.2023

- ✓ The tax rate applicable to dividend income is increasing (including earnings from holding shares defined by the relevant legislation in collective investment undertakings) from 5% to 8%.

Rental income – applicable from 01.01.2023

- ✓ Elimination of the 40% deduction flat rate used for the calculation of the taxable base in case of income from the transfer of use of goods (rental income), others than rental of the agricultural goods and/or rental for tourist purposes of rooms located in personal property. The taxable base for this income will be the gross income.
- ✓ The obligation to register the contract concluded between the parties with competent tax authorities is reintroduced, within 30 days since its concluded or if any changes occur to it.

Income from independent activities – applicable to income obtained starting January 2023

- ✓ The annual gross income threshold based on which the taxpayers determine the applicable tax regime (i.e., in real system or based on income norms) is decreased from EUR 100,000 to EUR 25,000;
- ✓ The annual base for computing the social security contribution for income from independent activities and intellectual property rights is amended. The computation base is chosen by the taxpayer, which cannot be less than:
 - the level of 12 gross national minimum salaries for a ceiling between 12 and 24 gross national minimum salaries, or
 - the level of 24 gross national minimum salaries for income obtained above the threshold of 24 gross national minimum salaries.
- ✓ For the social health insurance contribution due for certain types of income for which there is an obligation to withhold it at source (e.g., from intellectual property rights, agricultural lease) the payer has the obligation to withhold the health contribution if the estimated income for the current year is at least equal with 6 minimum gross salaries per country. The calculation method for this contribution is set out in the new amendments and detailed in the section below "Other aspects regarding the mandatory social security contributions".

Gambling income - applicable to income obtained starting August 2022

- ✓ The base and computation method for the income obtained from gambling are amended, the tax rates changed are between 3% and 40%, compared to 1% and 25% which were recently applicable.

Income from the transfer of immovable property – applicable from 01.01.2023

- ✓ The method of computing the tax is amended for the incomes obtained from the transfer of the property right and its dismemberments on the constructions and lands, from personal patrimony.

- ✓ The tax is calculated at the value of transaction (without deducting the non-taxable threshold) by applying separate rates depending on the holding period, respectively:
 - 3% for holding up to 3 years,
 - 1% for holding over 3 years.

Other aspects regarding the mandatory social security contributions

- ✓ Amendments are made with respect to the individuals exempt from paying the health insurance contribution for certain categories of individuals (e.g., students, apprentices aged 18-26 years old). More exactly, they are liable to pay health insurance contributions in cases of deriving income from salary, agricultural activities, or independent activities, regardless of their value – applicable with 18th of July 2022.
- ✓ For income derived starting with January 2023, other than salary income (e.g., rental income, independent activities, income from investments, etc.), health insurance contribution is due if the estimated/ derived annual income exceeds the value of 6 gross national minimum salaries. Also, the annual base for computing the health insurance contribution due for these incomes is amended:
 - 6 gross national minimum salaries for a total income between 6 and 12 gross national minimum salaries, or
 - 12 gross national minimum wages for a total income between 12 and 24 gross national minimum wages, or
 - 24 gross national minimum salaries for a total income obtained above the threshold of 24 gross national minimum salaries.

Value Added Tax

- ✓ The reduced rate of 9% will be applied instead of 5% for:
 - accommodation in the hotel sector or in sectors with a similar function, including the rental of lands arranged for camping;
 - restaurant and catering services, with the exception of alcoholic beverages and non-alcoholic beverages falling within CN codes 2202 10 00 (beverages containing sugar or other sweeteners or flavored) and 2202 99 (other beverages);
- ✓ The reduced rate of 9% will be applied for:
 - delivery of chemical fertilizers and chemical pesticides of the kind normally used in agricultural production, provided for by a joint order of the Minister of Finance and the Minister of Agriculture and Rural Development. Previously, the reduced rate was applied to a narrower range of fertilizers and pesticides.
- ✓ The maximum threshold of 700,000 RON will be reduced to 600,000 RON for the supply of residences with a usable area of maximum 120 sqm, excluding household annexes, excluding value added tax, purchased by individuals individually or jointly with another individual / other individuals. Any individual may purchase, starting with January 1, 2023, individually or jointly with another individual / other individuals, a single house whose value does not exceed the amount of 600,000 RON, excluding VAT, with a reduced rate of 5%. (Previously, from the point of view of value, the limitation of one residence per individual was applied only if its value was between 450,000 – 700,000 RON, not being applicable for residences with a value below the threshold of 450,000 RON).
- ✓ A temporary limitation on the application of the reduced rate for certain products will be introduced, namely:
 - by 31 December 2031, the application of the 9% quota for the delivery of chemical fertilizers and chemical pesticides;
 - until 31 December 2029, the application of the reduced rate of 5% for the delivery of firewood.
- ✓ Also, the level of excise duties for tobacco products systematically has been modified.

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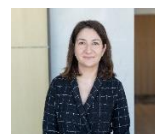
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