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Law no. 142/2022 for the amendment and completion of Law no. 227/2015 regarding the Fiscal Code

Modification of some aspects regarding the determination and reporting of the income tax for capital gains from transfer of securities and operations with derivative financial instruments

Government Emergency Ordinance no. 67/2022 regarding some fiscal measures, as well as for the modification and completion of the art. 59 of the Law 207/2015 regarding the Fiscal Procedure Code

Introduction of fiscal measures regarding the modification of salary for employees performing dependent activities based on an employment contract, at their main place of work, remunerated at the level of the minimum gross monthly salary guaranteed for payment, and a new tax reporting obligation for postal service providers for cash reimbursement parcels

I. Law no. 142/2022 for the amendment and completion of Law no. 227/2015 regarding the Fiscal Code

The Law no. 142/2022 for the modification and completion of Law no. 227/2015 regarding the Fiscal Code was published in the Official Gazette no. 502 from 23.05.2022 and introduces some fundamental changes as of January 1st 2023, in terms of taxation of capital gains from the transfer of securities and operations with derivative financial instruments.

In short, these changes are as follows:

- reduction of the income tax rate on capital gains from the transfer of securities and operations with derivative financial instruments made through intermediary entities from 10% to 1% or 3%, depending on the period for which the securities or derivatives were held by the taxpayer;
- introduction of the obligation to calculate, withhold at source and pay income tax by the entities that intermediate these transfers / operations;
- waiving the possibility to carrying forward or offset losses from the transfer of securities and operations with derivatives made through intermediary entities, these representing definitive losses of the taxpayer.

We detail below the changes brought by this law, as follows:

- ✓ This law modifies the definition of income sourced in Romania from operations with derivatives as being income obtained through an intermediary defined according to the relevant legislation, which is either a Romanian tax resident or a non-resident who has a permanent establishment in Romania that has the capacity of intermediary, with which the taxpayer has opened the account.
- ✓ Certain paragraphs are cancelled and article 96¹ is introduced, to establish the intermediaries' obligations, defined according to the relevant legislation. The intermediaries can be investment management companies, self-managed investment companies, alternative investment funds administrators, Romanian tax residents or non-residents, having a permanent establishment in Romania and the quality of an intermediary. These entities have the following obligations:
 - calculation of the capital gain/loss for each transfer/operation performed for the taxpayer;
 - calculation, withholding and payment of the income tax, in accordance with new paragraphs introduced under art. 97;
 - communication to each taxpayer of the information regarding the total capital gains/losses and the income tax calculated and withheld, in written statements or by electronic means. The deadline to communicate such information is the end of February of the current year for the previous year;
 - annual filing of the return provided by the art. 132, para. (2).
- ✓ A paragraph is also inserted to establish the obligations of entities through which transfers of investment gold are made.
- ✓ The income tax rates for capital gains from transfer of securities and operations with derivative financial instruments determined in accordance with the art. 94 and 95, for transfers/operations performed through intermediaries defined in accordance with the art. 96¹ para. (1) are modified. Such income is taxed at source, as per the following:
 - For securities:
 - 1% from each gain from transfer of securities which were acquired and sold in a period of more than 365 days, inclusive, from the acquisition date;
 - 3% from each gain from transfer of securities which were acquired and sold in a period of less than 365 days, inclusive, from the acquisition date.
 - For derivative financial instruments:
 - 1% from each gain from operations with derivative financial instruments which were held for a period of more than 365 days, inclusive, from the acquisition date;
 - 3% from each gain from operations with derivative financial instruments which were held for a period less than 365 days, inclusive, from the acquisition date.

- For the determination of the period in which they were held, same order for acquisition/selling is considered, respectively First In – First Out (also known as FIFO), on each symbol.
- ✓ For the calculation of the gain from transfer of securities/operations with derivative financial instruments, the fiscal value is determined by applying the weighted average price method, comprising also costs for the transfer/the operation, on each symbol, regardless of the period in which the securities/instruments were held.
- ✓ The income tax calculated and withheld is declared and wired to the State Budget by the entities mentioned at the art. 96¹ para. (1) by 25th of the following month and is final.
- ✓ The losses arising from transfers of securities and transactions with derivatives performed through the intermediary entities mentioned at the art. 96¹ para. (1), are not carried forward and are not compensated, representing final losses of the taxpayer.
- ✓ The law introduces rules to determine the income tax due for transfer of securities/operations with derivative financial instruments for the fiscal year from January 1st, 2022 to December 31st, 2022:
 - for the gains/losses related to the period, the tax obligations are those in force at the moment of realizing the gains/losses;
 - The net loss obtained from transfer of securities/operations with derivative financial instruments, which are not obtained through entities mentioned at the art. 96¹ para. (1), related to the fiscal year of 2022, is carried forward and compensated according to the reporting rules.
- ✓ Rules are also introduced for determining the income tax due in the case of transfer of securities and transactions with derivatives, carried out through the entities referred to in Article 96¹ para. (1), acquired before January 1, 2023, as well as in the case of losses obtained and not offset until January 1, 2023.
- ✓ The entities referred to in Article 96¹ para. (1) through which non-resident individuals derive income from the transfer of securities issued by Romanian residents are also required to calculate, withhold at source, report and pay income tax, according to the new paragraphs introduced in art. 97, for the non-resident individual who does not prove his residence in a state with which Romania has concluded a convention for the avoidance of double taxation.
- ✓ All the above provisions enter into force as of January 1st, 2023.

II. Government Emergency Ordinance no. 67/2022 regarding some fiscal measures, as well as for the modification and completion of the art. 59 of the Law 207/2015 regarding the Fiscal Procedure Code

The Government Emergency Ordinance no. 67/2022 regarding some fiscal measures, as well as for the modification and completion of the art. 59 of the Law 207/2015 regarding the Fiscal Procedure Code was published in the Official Gazette no. 494 from 18.05.2022.

Amendments to the Fiscal Code

Starting with June 1st, 2022, for employees performing dependent activities based on a full-time employment contract, at their main place of work, do not have income tax and social security contributions liabilities for an amount of RON 200 representing the salary and assimilated to salary income under the following circumstances:

- ✓ the employers voluntarily increase, anytime between June 1st to December 31st, 2022, the level of the monthly gross base salary with an amount of RON 200, from RON 2,550 to RON 2,750 for the existing employees, whose gross base salary at that date equals the level of the minimum gross monthly salary guaranteed for payment, without considering bonuses and other additions;
- ✓ the monthly gross base salary level, as per the employment contract, without including bonuses and other additions, is RON 2,750 in the case of newly employed persons in the period from June 1st to December 31st, 2022, inclusive.

The amount of 200 lei is not taken into account for the application of the personal deductions provided for in art. 77 para. (2) of Law no. 227/2015.

In addition, this tax measure is not applicable to personnel salaried in accordance with Law no. 153/2017 on the remuneration of staff paid from public funds.

Amendments to the Fiscal Procedure Code

There is a new tax reporting obligation introduced in the Fiscal Procedure Code, requiring postal service providers to report, on a monthly basis, to the National Agency for Fiscal Administration (NAFA) information regarding any parcels transmitted by them, whereby the recipient uses the cash settlement method (via the postal network).

The new tax reporting obligation entered into force on 18 May 2022.

The model of the declaration will be adopted in the next period by order of the president of NAFA.

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