

Tax & Legal Weekly Alert

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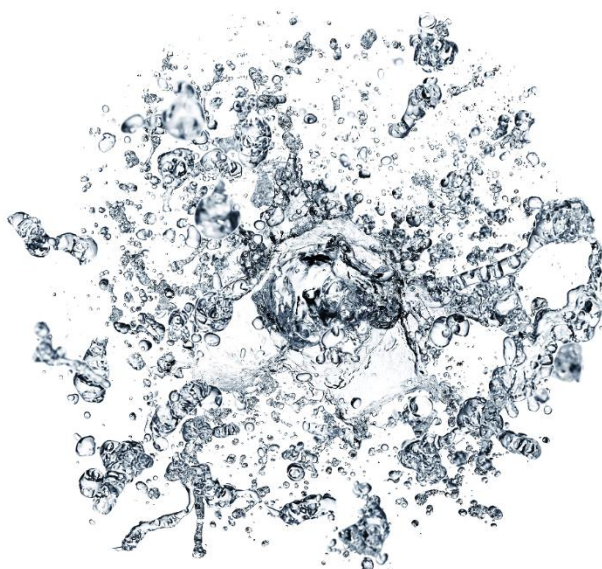
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Amendments to the Fiscal Code

The Law no. 227/2015 regarding the Fiscal Code has been amended by the Emergency Ordinance no. 79/2017, published in the Official Gazette no. 885/10.11.2017.

The changes will enter into force starting with 1 January 2018. The main amendments include:

- Limited deductibility of interest and other costs economically equivalent to interest for corporate income tax purposes
- Amendments of the conditions applicable to the microenterprise regime
- Decrease of the salary income tax to 10%
- Mandatory social security contributions rates due by the employee and the employer for salary income were amended
- Amendments of the mandatory social security contributions rates and of the computation base cap related to independent activities



Amendments to the Fiscal Code

The amendments and new provisions brought by the Emergency Ordinance no. 79/2017 related to corporate income tax and microenterprise are the same as the proposed provisions detailed in our Tax Alert issued on 3 November 2017. Considering their importance, we reiterate them, as follows:

Title II Corporate income tax

The Corporate Income Tax title transposes the EU Directive 2016/1164 laying down rules against tax avoidance practices that directly affect the functioning of the internal market (Anti-Tax Avoidance Directive).

The Directive implements certain recommendations included in the BEPS Action Plan. The amendments will enter into force starting with 1 January 2018:

Limited deductibility rules for interest and other costs economically equivalent to interest

- The current deductibility rules provided by article 27 from the Tax Code on the interest and foreign exchange net losses are repealed. Instead, new rules on the limitation of deductibility of interest and other costs economically equivalent to interest are introduced in line with the Directive.
- The deductibility limitation does not cover only interest expenses and foreign exchange net losses any longer, but also items defined as "borrowing costs".
- Hence, exceeding borrowing costs (the difference between borrowing costs and interest income and other economically equivalent income) higher than the deductible limit of EUR 200,000, will be subject to limited deductibility up to 10% of the base computation.
- The base computation is determined as the difference between income and expenses recorded as per the accounting rules, out of which the non-taxable income are subtracted, and the corporate income tax expenses, exceeding borrowing costs and tax depreciation amounts are added back.
- If the base computation is negative or zero, the exceeding borrowing costs are non-deductible in the respective tax period, with the possibility of reporting them without time constraint over the next tax years.
- By exception, exceeding borrowing costs may be fully deductible if the taxpayer is an independent entity (does not form part of a financial accounting consolidated group and has no associated enterprise nor permanent establishment).
- Starting with 1 January 2018, the tax value of assets will not include interest costs and other economically equivalent costs.
- Interest and foreign exchange net losses carried forward as per article 27 in force as at 31 December 2017 will be subject to deductibility as per the rules which will be introduced starting with 1 January 2018.

Exit taxation

- Starting with 1 January 2018, the below transactions will be subject to corporate income tax if, following their performance, Romania would lose the right to taxation of the transferred assets:
 - transfer of assets from the head office from Romania to its permanent establishment from another member state or third state;
 - transfer of assets from the permanent establishment from Romania to another permanent establishment from another member state or third state;

- transfer of tax residency from Romania into another member state or third state, with the exception of those assets that effectively remain to a permanent establishment in Romania;
 - transfer of economic activity carried out in Romania through a permanent establishment to another member state or third state.
- Corporate income tax is applied on the difference between the market value and tax value of these assets.
 - Any resulted tax loss will be offset against any gain having a similar nature.
 - A deferral in the payment of the corporate income tax is allowed, in certain cases, under the conditions laid down by the Tax Procedure Code.

General anti-abuse rule

- The general anti-abuse rule transposed by the Directive is similar, in principle, to the rule already included at article 11 of the Tax Code (arrangements that are not genuine, but put into place for the main purpose or one of the main purposes of obtaining a tax advantage and not for economically valid reasons, will not be taken into consideration for the purpose of determining tax liabilities).

Controlled foreign company rules

- Starting with 1 January 2018, Romanian corporate income tax payers that control a foreign company will include in their taxable base certain income of this controlled foreign company.
- In this respect, the controlled foreign company is the entity or permanent establishment that cumulatively meets the conditions:
 - The corporate income tax payer directly or indirectly holds at least 50% of the foreign company capital or has the right to receive at least 50% of its profits;
 - The corporate income tax effectively paid by the foreign entity is less than the difference between the corporate income tax that would have been imposed in Romania, as per the Romanian tax rules and the effectively corporate income tax paid.
- The income of the controlled foreign company that will be included in the taxable base of the Romanian corporate income taxpayer includes interest, royalties, dividends, capital gain, finance lease income, insurance activity income, banking activity income, income from invoicing companies that earn sales and services income from goods and services purchased from and sold to associated enterprises, and add no or little economic value.
- The income of controlled foreign companies mentioned above is included in the taxable base of the corporate income taxpayer proportionally with its participation in the controlled entity.

Title III Microenterprise tax

Starting with 2018, the following amendments will enter into force:

- The income threshold below which a legal entity is considered a microenterprise income tax payer is increased from the equivalent in RON of EUR 500,000 to the equivalent in RON of EUR 1,000,000.
- The provisions whereby a legal entity cannot fall into the category of microenterprise tax payers (deriving income from banking, insurance and reinsurance, gambling, oil and gas exploitation activities or if it obtains 80% of revenue from management and consultancy activities) are repealed.
- The provision under which taxpayers may opt for the corporate income tax regime if the share capital value is of at least RON 45,000 will be repealed.

- The taxpayers that opted to apply the corporate income tax regime on the basis of minimum share capital requirement and taxpayers which did not apply the microenterprise income tax regime due to their activities, that were excluded from the scope of this tax until 31 December 2017, will apply the microenterprise income tax regime.
- New clarifications are being made regarding the change in microenterprise income tax rates in the event of a change in the number of employees.

Title IV – Income tax

- The income tax rate is reduced from 16% to 10% for the following types of income:
 - Independent activities;
 - Salary and salary assimilated income;
 - Rental income;
 - Investment;
 - Pensions;
 - Agriculture, forestry and fish farming activities;
 - Awards;
 - Other sources.
- The tax rate representing withholding tax on anticipated payments for intellectual property rights is reduced from 10% to 7%.
- Both the cap regarding the gross income applied for the personal deduction and the amount of personal deduction is increased.
- The provisions of this Title apply from the income derived as of January 2018.

Title V – Social security contributions

- Mandatory social security contributions rates due by the employee and the employer for salary income were amended, as follows:

Social security contribution:

- employee – 25%;
- employer, only in the case of particular and special work conditions, 4% and respectively 8%.

Health insurance contribution – employee 10%.

Insurance contribution for work – employer 2,25%.

- Social security contribution rate for the income derived from independent activities changes to 25%.
- Health insurance contribution rate for other types of income (i.e., independent activities, rental income, investment income) changes to 10%.
- The liability to compute and withhold the mandatory social security contributions due by the individuals for salary or salary assimilated income stays with the employer.
- The minimum cap regarding the monthly base for social security contribution for individuals who derive income from independent activities is charged at the level of the gross minimum salary per country.
- The minimum cap regarding the monthly base for health insurance contribution due for other types of income (i.e., independent activities, investment income, rental income) changes at the level of the gross minimum salary per country in force for the month for which it is due.
- The provisions of this Title apply from the income derived as of January 2018.

Title VII - Value added tax

Knew or should have known

The tax authority will have the right to refuse the deduction of VAT only if, based on the evidence provided by law, it proves beyond doubt that the taxable person knew or should have known that the transaction claimed to justify the right to deduct was involved in a VAT fraud that occurred upstream or downstream of the supply chain.

This provision is not new in the VAT world, being inspired from the jurisprudence of European Court of Justice.

Title VIII Excise duties

Contravention applicable upon holding outside of a tax warehouse or trading in Romania of excisable products subject to marking, without markings, with improper or false markings will be tighten. More precisely, among the applicable fine of maximum RON 100.000, such actions will be also sanctioned with seizure of the tanks, containers and vehicles used during transportation of the products.

[For further questions, please contact us.](#)



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