

Tax & Legal Weekly Alert

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The Chamber of Deputies had formally approved on September 20, 2016 the Law for tax on specific activities

The Law regarding the tax on specific activities (activities performed in the area of hotels, restaurants and bars), also known as the “HoReCa Law”, was adopted in the final form by the Chamber of Deputies on September 20, 2016, being applicable as of January 1, 2017.

By exception from the Title II of the Fiscal Code regarding corporate income tax, “HoReCa Law” establish a new type of a tax on specific activities.

Bill granting National Authority for Consumer Protection similar sanctioning powers to those of the Competition Council

A bill for amending the statute of the National Authority for Consumer Protection (“NACP”) is currently pending before the Senate. Among other substantial changes, the bill provides the NACP sanctioning powers similar to those of the Competition Council, and in some instances it would allow the Authority to take even stricter measures. More precisely, if the bill is adopted, NACP may impose fines ranging from 0.5% to 10% of a company’s turnover. If the penalized company is part of a group of companies, in order to determine its turnover, the cumulative turnover of the group will be taken into consideration, according to its consolidated financial statements. If applying sanctions by reference to turnover is justified in the competition field due to the negative impact that anticompetitive practices have on the market, applying a similar sanctioning mechanism in the consumer protection field seems disproportionate.

The Chamber of Deputies had formally approved on September 20, 2016 the Law for tax on specific activities

The Law regarding the tax on specific activities (such as: activities performed in the area of hotels, restaurants or bars) also known as the "HoReCa" Law, after being sent back for re-examination and subject of several amendments, was adopted in the final form by the Chamber of Deputies on September 20, 2016, being applicable as of January 1, 2017.

The HoReCa law, by exception from the Title II of the Fiscal Code regarding corporate income tax, establish a new type of a tax on specific activities. The derogation is applicable for Romanian legal entities performing their activities under specific CAEN¹ codes, generally referring to those having its primary or secondary activity in the area of hotels, restaurants, or bars.

The taxpayers that fall under the payment obligation of the tax on specific activities are legal entities that fulfil the following two conditions as at the 31st of December of the previous year:

- The primary or secondary activity of the legal entity according to the specific CAEN codes is stipulated in the act of incorporation;
- Is not under liquidation, according to the law.

However, the following additional obligations must be fulfilled at the level of the corporate income tax payers:

- Keeping the evidence of the fiscal depreciation;
- Declare, withheld and pay the dividend tax;
- Keeping the fiscal evidence registry.

The computation of the tax on specific activities is performed based on a formula established in the appendix of the law, varying based on the following: the type of activity, the useful surface used for performing the activity, the rank of the place, the number of accommodation number for hotels, etc.

Please note that the annual standardized level of the tax on specific activities used in the calculation may be amended by the Ministry of Economics, Commerce and Relations with the Business Environment.

At the level of European Union, in general, application of progressive rates of tax was seen by European Commission as a potential state aid as it gives to small companies a selective advantage over their competitors. The European Commission analyzed the specific situation from Hungary and Poland as it is mentioned the press release available [here](#).

It remains to see whether the application of HoReCa Law may get the attention of European Commission in light of the previous case laws.

¹ 5510 – "Hotels and other facilities of accommodation", 5520 – "Facilities of accommodation for holidays and for short periods", 5530 – "Parks for r.v., camping and camps", 5590 – "Others accommodation services", 5610 – "Restaurants", 5621 – "Catering for events", 5629 – "Other services of food supply", 5630 – "Bars and other activities of serving of the drinks"

For further questions regarding the aspects mentioned in this alert,
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Bill granting National Authority for Consumer Protection similar sanctioning powers to those of the Competition Council

A bill for amending the National Authority for Consumer Protection's statute is currently pending before the standing committees of the Senate (hereinafter referred to as the "Bill"). In June 2016, the bill was adopted by the Chamber of Deputies and registered at the Senate for debate.

As adopted by the Chamber of Deputies, the Bill contains a series of substantial changes regarding the statute of the National Authority for Consumer Protection (hereinafter referred to as "NACP "). One of the most important changes regards the possibility for NACP to apply contravention fines by reference to the turnover of the penalized company. Under the Bill, the sanctioning mechanism applied by NACP (including the amount, procedure, calculation of the turnover) is similar to the one currently applied by the Competition Council, as provided by Law no. 21/1996 on competition, and in some cases the Authorities' measures are even stricter. The sanctioning mechanism provided by the Bill as adopted by the Chamber of Deputies:

- **The amount of the sanction:** NACP can sanction offenders with a fine between 0.5% and 10% of a company's turnover or an association of companies in the financial year prior to the sanctioning of the deeds committed intentionally or with negligence;
- **Admission of guilt:** If a company explicitly acknowledges committing the deed before the hearings and, if possible, proposes remedies that eliminate the causes of the breach, NACP may reduce the fine by between 10% and 30 % of the determined base value in accordance with the norms to be adopted for applying this provision. The reduction applies even if a fine is established at the minimum amount allowed by law, as long as the fine is not lower than 0.2% of the turnover achieved in the financial year prior to the sanction.
- **Determining the turnover's amount to which the fine is applied**
 - The amount of turnover to which the fine is applied is composed by the sum of revenues obtained from product sales and/or service provision performed by the company during the last financial year minus the amounts due as tax liabilities and the accounted value of exports carried out directly or through a representative, including intra-Community supplies.
 - If one of the sanctioned companies is part of a group of companies, the cumulative turnover of that group will be taken into consideration, according to the consolidated financial statements. While the Competition Council applies the fine only by reference to the turnover of the sanctioned company, the Bill provides a more severe sanction for the company that is in breach of consumer protection legislation, by applying the fine based on the turnover of the entire group.

The Bill is currently under debate and it may be amended with respect to the sanctioning mechanism. The debates can be followed on the Senate website at the following [LINK](#) (no. 468/2016). The Bill must pass the Senate to become law.

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