

# Tax & Legal Weekly Alert

31 October – 03 November 2017

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### **Project of the Tax Code: Amendments of impact on Corporate Income Tax and Microenterprise Income Tax**

The draft Emergency Ordinance for the amendment of Tax Code, published on 26 October 2017, includes new fiscal rules, but also the amendment of certain rules currently in force. From the Corporate Income tax and Microenterprise Income Tax perspective, the following amendments are related to:

- Limited deductibility rules for interest and other economically equivalent costs
- Exit taxation
- General anti-abuse rule
- Controlled foreign company rules
- Conditions for classifying as microenterprise taxpayers

### **Deloitte events**

#### **Business Breakfasts: Transfer Pricing - Developments and practical aspects**

[Constanta](#), November 09

[Brasov](#), November 09

[Sibiu](#), November 10

[Targu Mures](#), November 22

For more details and registration click on the name of the cities above.

#### **Conference: National Cyber Security Risk Management Conference**

Bucharest | Hotel Sheraton | Monday - November 6, 2017 | 09:00 - 16:00  
For more details and registration, click [here](#).

## Project of the Tax Code: Amendments of impact on Corporate Income Tax and Microenterprise Income Tax

### **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) is transposed in the title Corporate Income Tax**

The Directive implements certain OECD/G20 recommendations through BEPS Action Plan. The amendments are intended to 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deductibility rules provided by article 27 from the Tax Code on the interest and foreign exchange net losses are repealed.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.

### **Microenterprise tax**

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

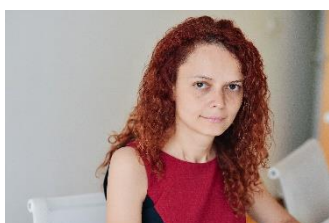
- The income threshold below which a legal entity is considered a microenterprise income tax payer is increased from the equivalent in RON of EUR 500,000 to the equivalent in RON of EUR 1,000,000.
- The provisions whereby a legal entity cannot fall into the category of microenterprise tax payers (deriving 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.

For further questions, please contact us.



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