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Tax changes provided by the Draft Law published on 4 October 2023 by the Ministry of Finance aimed at Romania's obligation to transpose EU Directive 2022/2523 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union ("Directive 2022/2523").

Romania should ensure the transposition of the provisions of Directive 2022/2523 and its entry into force within the national law by 31 December 2023, with the provisions to be applicable as of 1 January 2024.

We emphasize that the proposals are in the draft stage and may undergo changes until publication in the Official Gazette.

Amendments to Government Emergency Ordinance No 77/2009 on the organisation and operation of gambling and to Government Emergency Ordinance No 20/2013 on the establishment, organisation and operation of the National Gambling Office and amending and supplementing Government Emergency Ordinance No 77/2009

The GEO 82/2023 introduced a number of amendments to the legislation on the organizing and operation of gambling, mainly aiming that all gambling operators (including online) should be located on Romanian territory, this being a condition for licensing and authorization.

I. [Draft Law aimed having a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union](#)

The draft legislation published on October 4, 2023, on the website of the Ministry of Finance, as part of the decision-making transparency process, refers to the introduction of legislation that allows member states to collect an additional tax from large national and multinational companies, if the effective tax rate in that member state is less than 15%.

The draft law generally took over the provisions of Directive 2022/2523 **of the Council of the EU of 14 December 2022** and contains specific references to certain documents issued by the Organisation for Economic Co-operation and Development ("OECD") to use their explanations and examples.

Relevant taxpayers

The provisions apply to taxpayers who are headquartered in Romania and are part of a national or multinational group that obtained, within at least two of the four financial years prior to the reference year (2020 – 2023), consolidated annual revenues registered at group level of at least EUR 750,000,000.

The legislative proposal also provides for a number of entities that are excluded from the application of these legislative provisions.

There is also a general materiality threshold exemption, which applies to companies with an annual turnover of less than EUR 10,000,000 and a profit of less than EUR 1,000,000.

Taxes regulated by the Draft Law

The Draft Law establishes a top up tax, based on the following alternative rules:

- i. **Income Inclusion Rule ("IIR")** – it applies when the parent company of a national or multinational group is located in Romania and a top - up tax will be applied in Romania both for it and for its subsidiaries that are taxed at a low level (below 15% effective tax rate). The tax to be paid by the parent company is the additional amount necessary to achieve an effective tax rate of at least 15% in each jurisdiction in which the group operates. This rule will be implemented from January 1, 2024.
- ii. **Undertaxed Profit Rule ("UTPR")** – the secondary rule, which will apply if the ultimate parent company is established in a third country (non-EU) and the income inclusion rule (IIR) has not been applied by the head office. If the IIR rule has not been applied at the level of the parent company, the Romanian company/ companies that are part of a multinational group will owe an additional cash tax expense equal to its share of top-up tax that was not charged under the IIR in respect of the low-taxed constituent entities of the group. This rule will be implemented from January 1, 2025.
- iii. Additionally, the **qualified domestic top-up tax** is established that is due for the exceeding profit of Romanian companies which have an effective tax rate below 15%. By exercising this option by Romania, Romanian subsidiaries of multinational groups with their parent company abroad will owe in Romania the qualified domestic top-up tax on the excess profit obtained in Romania if they have an effective tax rate in Romania smaller than 15%.

The effective tax rate is determined based on the OECD rules, being a high complex computation, including multiple accounting, financial and tax adjustments starting from the financial data recorded in the consolidated financial statements, either based on common reporting standards (such as, IFRS) or as a result of group reporting rules. In addition, in certain cases a consolidation at country level may be necessary to be carried out exclusively for the purpose of this legislation (for example, if there are several companies in Romania belonging to the same group).

Transition period (de minimis exclusion)

There are three ways in which the qualified domestic top-up tax can be reduced to *zero*, for a limited period of time (i.e., 2024 - 2026 for taxpayers using the calendar year as a financial year), provided that the national or multinational group prepares and files the CbCR (country-by-country reporting) return and meets at least one of the following conditions:

- **De minimis test** – constituent entities located in Romania should cumulatively have total qualifying revenues less than EUR 10,000,000 and a profit (loss) before tax of less than EUR 1,000,000;
- **Effective tax rate test** – the simplified effective tax rate of constituent entities established in Romania should be equal to or higher than the following transitional rates: 15% for 2024, 16% for 2025 and 17% for 2026;
- **Routine profit test** – profit (loss) before tax should be equal to or less than the value of excluded profits based on economic substance. Specific rules are laid down to determine the amount of the latter, applying certain percentages to the book value of tangible assets and to the salary costs of constituent entities established in Romania.

The CbCR statement is a country-by-country report prepared and filed with the tax administration using qualified financial statements (e.g., the separate financial statements used to prepare the consolidated financial statements of the ultimate parent).

Filing the tax return and paying the tax

Taxpayers subject to the current draft legislation will have the obligation to submit the declaration and perform the payment within 15 months from the last day of the financial year. For the first year of application, the deadline is extended to 18 months. The first year of application being 2024 and the first reporting and payment date will be June 30, 2026 (with the relevant changes in the case of taxpayers with a modified tax year).

The expenses recorded with the taxes mentioned above will be considered non-deductible expenses when determining the corporate income tax computation.

Other relevant matters

Given the standard tax rate in Romania of 16%, any additional deduction, such as the deduction for research and development activities, or even the tax credit related to sponsorship, may impact the computation of the top-up tax.

In addition, in certain cases, the top-up tax may also be applicable to companies registering tax losses.

II. [Government Emergency Ordinance no. 82/2023 amending the legislation on the organizing and operation of gambling](#)

On 6 October 2023, in the Official Gazette of Romania, Part 1, was published the Government Emergency Ordinance no. 82/2023 amending the Government Emergency Ordinance no. 77/2009 on the organizing and operation of gambling and the Government Emergency Ordinance no. 20/2013 on the establishment, organizing and operating of the National Gambling Office and for amending and supplementing the Government Emergency Ordinance no. 77/2009 ("**GEO 82/2023**").

The GEO 82/2023 introduced a number of amendments to Emergency Ordinance 77/2009 on the organizing and operation of gambling, mainly aiming that all gambling operators (including online) should be located on Romanian territory, this being a condition for licensing and authorization.

Main changes introduced by GEO 82/2023

1. **Persons eligible to organise and operate gambling:**

Licenses for organizing gambling may only be granted to the following entities:

- a. companies registered in Romania; or

- b. legal entities incorporated in EU or EEA Member States or in the Swiss Confederation, which have registered a permanent establishment in Romania, at which level the revenues from the organization and operation of the gambling activity are fully recognized.

The provision applies to the organisation of all types of gambling activities, including remote or online gambling.

In addition, GEO 82/2023 amends the regime applicable to the joint organisation of gambling. More specifically, unlike the former framework which permitted carrying out gambling activities, jointly or not, by a gambling organiser and one or more companies or natural persons, the GEO 82/2023 aims for joint organization of gambling to be carried out only by licensed gambling organisers or legal entities under common control with those.

Companies holding licenses issued by the Romanian National Gambling Office („RNGO”) but which do not meet the newly introduced eligibility conditions, will have a 6-month deadline for compliance, having at their disposal the following mechanisms:

- a. request that the RNGO approves the transfer of the license and authorization to operate gambling to an existing or newly registered company that meets the localization requirement (including as a result of a spin-off, merger or business transfer);
- b. register a permanent establishment in Romania and request that the RNGO allocates the existing license and authorization to the permanent establishment;
- c. obtain a new license.

2. Other changes

Other changes brought by GEO 82/2023 with impact for gambling organizers in Romania include:

- prohibition of outdoor advertising exceeding the size of 35 m² / billboard / advertising material, and the establishment of a fine between RON 50.000 and 100.000 for non-compliance with this provision;
- establishing a special tax, due in addition to the taxes already in place, which would partly finance RNGO’s activities aimed at promoting compliance with the principles and measures of socially responsible gambling. By way of example, the amount of the fee for Class I license holders for remote (including online) gambling is amounting to EUR 500.000;
- increase of the annual fees due by each gambling organiser and the guarantee due for the risk of default, including by removing value thresholds from 2025 onwards.

The entry into force of the GEO 82/2023 will have a significant impact on non-resident Class I licence holders, both from an operational and tax perspective. They will need to identify the right ways to transfer business in order to continue operations.

For further questions regarding the aspects mentioned in this alert, please contact us.



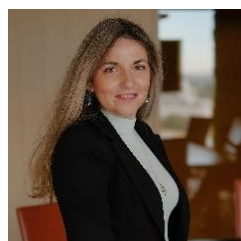
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