



## In this issue:

### **Complex rules for ensuring a global minimum tax level of 15%, provided by Law 431/2023**

The law transposes EU Directive 2022/2523 on ensuring an overall minimum level of taxation of MNE Groups and Large National Groups in the Union ("Directive 2022/2523").

### **Social Security Agreement between Romania and the United States of America**

The normative act ratifies the Agreement and establishes the conditions and terms regarding its applicability.

### **Decision regarding the establishment of the quota of foreign workers newly admitted to the labor market in 2024**

The published decision establishes the quota of foreign workers newly admitted to the labor market in 2024.

### **Amendments to the procedure for issuing portable A1 documents and certificates attesting the applicable legislation in terms of social security**

The procedure for issuing portable A1 documents and the certificates attesting the applicable legislation will be carried out via RODPA1 application.

### **Form 212 "Unique tax return on income tax and social contributions due by individuals"**

The Order approving the model, content, submission, and administration of Form 212 (Unique tax return) was published.

### **Convention and Protocol between Romania Principality of Liechtenstein for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital**

Both the Convention and the Protocol for its implementation were published in the Official Gazette and govern the relationship between the two States regarding the taxation of income earned by a resident of one contracting state in the territory of another contracting state.

### **Amendments to Government emergency Ordinance no. 39/2018 regarding public-private partnership introduced by the approval law**

Law no. 7/2024 for the approval of Government Emergency Ordinance no. 39/2018 regarding public-private partnership introduces a series of substantial amendments over the legal framework applicable to public-private partnerships.

i. **Complex rules for ensuring a global minimum tax level of 15%, provided by Law 431/2023 on ensuring a global minimum level of taxation for multinational enterprise groups and large national groups ("Law 431/2023")**

**Law 431/2023** applies from 1 January 2024 and allows Romanian authorities to collect additional tax from large national and multinational companies, if the effective tax rate in Romania is less than 15%.

The 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 documents issued by the Organisation for Economic Co-operation and Development ("OECD") to use their explanations and examples.

Methodological norms for the application of the legislation will also be published by the end of 2024.

**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 law 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 if the average qualified income of all constituent entities in Romania or another jurisdictions is below EUR 10 million and profit less than EUR 1 million.

**Taxes regulated by the bill**

An additional corporate tax is **established** on the basis of the following alternative rules:

- i. **Income Inclusion Rule ("IIR")** – applies when the parent company of a national or multinational group is located in Romania and an additional tax will be applied in Romania both for it and for its subsidiaries that are taxed at a reduced level (below 15% effective tax rate). The tax payable 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 Profits 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 at head office. If the IIR rule has not been applied at the level of the parent company, the Romanian company(ies) that are part of an MNE Group will owe an additional tax proportional to the part of the additional tax not levied under the IIR at the level of the parent company for group companies that are taxed at a reduced rate; this rule will be implemented from January 1, 2025.
- iii. At the same time, the **national additional tax** is established, which is due for the excess profit of companies located in Romania, which are taxed at a reduced level, respectively have an effective tax rate below 15%. By exercising this option chosen by Romania, **Romanian subsidiaries** of multinational groups having their parent company abroad will owe in Romania the additional tax on the excess profit obtained in Romania if they have an effective tax rate in Romania of less than 15%.

The effective tax rate is determined according to OECD rules, being a calculation of high complexity, including multiple accounting, financial and tax adjustments and which starts from the financial data recorded in consolidated financial statements, either on the basis of common reporting standards (such as, for example, IFRS) or as a result of group reporting rules. In addition, in certain cases it will be necessary to carry out a consolidation at country

level, exclusively for the purpose of this legislation (for example, if there are several companies in Romania belonging to the same group).

A distinct change from the initial draft law that we want to highlight is the **obligation** that for purposes of **calculating the national additional tax**, the national excess profits are those recorded according to OMFP 1802/2014 for the approval of the Accounting Regulations on individual annual financial statements and consolidated annual financial statements ("OMFP 1802/2014"), with two exceptions:

- If there are several constituent entities in Romania and not all of them apply OMFP 1802/2014;
- The fiscal year of the constituent entities in Romania differs from the tax year taken as reference in the consolidated financial statements of the group.

### **Transitional period (Protection schemes)**

There are three ways in which the national additional 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 any of the following conditions:

- **De minimis test** – constituent entities based in Romania must cumulatively have total revenues of 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 must 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 must 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 property, plant and equipment 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 provisions of this legislation will have the obligation to submit the declaration and make 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, 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 as non-deductible expenses when determining the tax result.

### **Other relevant issues**

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 affect the calculation of the additional tax.

In addition, in certain cases, the additional tax may also apply to companies with tax losses.

## **II. Social Security Agreement between Romania and the United States of America**

- The scope of the Agreement includes, for Romania, the laws governing public pensions, death benefits from the public system and health insurance contributions.

- Provisions are included regarding the determination of the applicable legislation, in order to avoid subjecting workers, for the same period, to the social security legislation (and implicitly to the mandatory social security contributions) of both states and to avoid the risk that such individuals are not subject to the social security scheme of either state covered by the Agreement.
- The Agreement includes provisions which are applicable, in certain conditions, to individuals performing lucrative activities and self-employed individuals.
- This agreement shall enter into force on the first day of the fourth month following the date of the last note by which the Contracting States notify each other, through diplomatic channels, of the completion of the internal procedures necessary for the entry into force of this agreement.

### III. [Decision regarding the establishment of the quota of foreign workers newly admitted to the labor market in 2024](#)

The number of work permits that can be issued to foreign workers for admission to the Romanian labor market in 2024 is 100,000.

We reiterate that work permits are mandatory for third-country nationals (other than EU/EEA member states or Switzerland) in order to be employed, according to Ordinance no. 25/2014 regarding the employment and posting of foreigners on the territory of Romania.

### IV. [New procedure for issuing portable A1 documents and certificates attesting the applicable legislation in terms of social security](#)

As of 08.01.2024, a new platform (RODPA1) is used for the submission of applications and issuance of portable A1 documents and for the certificates attesting the applicable legislation.

### V. [Form 212 "Unique tax return on income tax and social contributions due by individuals"](#).

The new version of the declaration mainly includes changes in line with the new legislative provisions which were recently introduced and allows the reporting of income earned in 2023 and estimated income for 2024.

### VI. [Convention and Protocol between Romania Principality of Liechtenstein for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital](#)

The scope of the ratified convention covers the mechanism for the taxation of the various types of income that may be earned by residents of either state, as well as other elements such as the rules for determining the tax residency and the method for avoiding double taxation.

The Convention will enter into force on 18 January 2024.

### VII. [Law no. 7/2024 for approving Government emergency Ordinance no. 39/2018 on public-private partnership](#)

On 8 January 2024, Law no. 7/2024 for the approval of Government emergency Ordinance no. 39/2018 regarding public-private partnership was published in the Official Gazette of Romania, Part I. The approval law proposes a series of amendments to Government emergency Ordinance no. 39/2018 with respect to (i) amending the procedure of establishing the project company, (ii) amending the procedure for approving the substantiation study, and (iii) instituting the possibility to grant a concession or lease in favor of the project company free of royalties or rent.

## Main amendments introduced by Law no. 7/2024

### **I. Prior approval of the project's substantiation study**

According to the new regulation, prior approval of the project's substantiation study is required to justify the launch of a public-private partnership contract award procedure as well as the implementation of the project. The substantiation study is approved by:

- Government decision, in case of central government projects;
- Decision of the deliberative authority, in case of local government projects where the amounts are provided exclusively from local budgetary resources;
- Government decision, based on the decision of the deliberative authority, in case of local government projects requiring contributions from the State budget.

Additionally, the substantiation study can be approved jointly with the main technical-economic indicators, as provisioned under Government Directive no. 907/2016 regarding the stages of elaboration and standard content of technical-economic documentation pertaining to publicly funded investment objectives/projects, if the feasibility study was already performed.

### **II. Amendments to the procedure for set up of the project company**

The private investor designated as winner of the award procedure, in case of contractual public-private partnership, will establish the project company with which the public-private partnership contract is concluded. For institutional public-private partnerships, the parties will jointly establish the project company which will become part of the public-private partnership contract.

### **III. Supplementing the investments' financing instruments**

In accordance with the approval law, financing of the investments made in public-private partnership projects will also be possible through the issuance of corporate bonds by the project company.

### **IV. Eliminating the financing limit for investments**

The financial financing limit pertaining to the financial contribution of the public partner of maximum 25%, as previously included, has been eliminated under the new regulation.

### **V. Amending the procedure for the award of public-private partnership contracts**

By derogation from the public procurement procedures, sectoral public procurement and works and services concessions legal framework, the award of the contract begins with the submission of the tender documentation and ends with the signing of the award procedure report and its annexes. The conclusion of the public-private partnership contract will be carried out in accordance with G.E.O. no. 39/2018.

### **VI. Exception concerning the concession rights constituted for the project company's benefit**

The exploitation of public property by the project company, through concessions or lease of the public property, shall be exercised free of royalties or, where appropriate, rent related fees.

### **VII. Representation in case of dispute at international arbitral jurisdictions**

In the case of institutional public-private partnerships, where contracts provide for dispute settlement procedures by international arbitration tribunals, representation shall be provided

by the legal entities managing the State's shareholdings in the project companies implementing such public-private partnership contracts.

The concerned entities are authorized to initiate and participate in international arbitration proceedings and before national courts in those jurisdictions, as appropriate. Where legal advice, assistance or representation cannot be provided by the specialist staff employed under such entities, local or international lawyers may be selected.

The above-mentioned rules shall retroactively apply to all contracts in which the State is represented in the project companies implementing such contracts, irrespective of the date and the law under which they were concluded.

The entry into force of Law no. 7/2024 will have a significant impact in the field of public-private partnership contracts, with regard to award procedures and the execution of the substantiation study. According to the new regulation, the Ministry of Finance, through its specialized structure, namely the Public Investment Management Unit, will issue a series of guidelines and methodologies for the preparation of public-private partnership projects within 6 months from the date of the law's entering into force.

[For further questions regarding the aspects mentioned in this alert, please contact us.](#)



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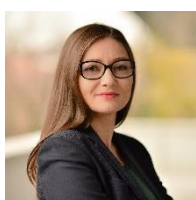
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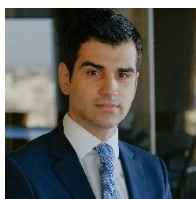
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