



Tax & Legal Newsletter June 2023

1. Extension of the RO e-Factura system to transactions between taxable persons (B2B)

The European Commission recently submitted to the European Council a proposal for a Council Implementing Decision through which Romania would be granted the right to introduce a special measure derogating from Articles 218 and 232 of the VAT Directive.

Subject to the adoption of the proposal by the European Council, Romania would be allowed to introduce mandatory electronic invoicing for transactions between taxable persons (i.e. Business-to-Business – B2B transactions).

It is proposed that the derogation will apply from 01.01.2024, until 31.12.2026 or until the date on which the Member States are to apply the national provisions implemented as a result of adopting the ViDA reforms (“VAT in the digital age”) – whichever comes first.

Context: it should be noted that, as of 1 July 2022, all economic operators who carry out transactions with public institutions (i.e. Business-to-Government – B2G transactions) or who sell high tax risk products are obliged to use the national RO e-Factura system when issuing and sending electronic invoices.

It should also be noted that Articles 218 and 232 of the VAT Directive, from which Romania has requested a derogation, stipulate that (i) Member States are obliged to accept all documents and messages, both in paper and electronic form, as invoices, and that (ii) the use of electronic invoices needs to be accepted by the recipient. Romania would like that only documents in electronic form be considered invoices by the tax authorities and that the issuer no longer be required to obtain the consent of the recipient when sending an electronic invoice.

Source: Proposal for a Council Implementing Decision authorising Romania to introduce a special measure derogating from Articles 218 and 232 of Directive 2006/112/EC on the common system of VAT, as published on 23 June 2023.

2. The procedure for applying the tax amnesty scheme regarding gift vouchers

The Romanian authorities have published the Procedure for the cancellation of principal and accessory fiscal obligations established by the tax authorities for companies that have granted gift vouchers to employees of other companies (following the reclassification of income obtained by individuals in the form of gift vouchers from income obtained from other sources to income obtained from wages and salaries).

Principal and/or accessory tax obligations subject to cancellation refers to those additional liabilities established by the tax authority for the period 26.05.2006 to 31.12.2020.

According to the Procedure, the cancellation of the tax liabilities is carried out ex officio (at the initiative of the tax authorities) or on the basis of a request submitted by the taxpayer (using the template included in the Procedure).

Taxpayers who have settled their principal and/or accessory tax liabilities may apply for a refund of the amounts involved within a period of 5 years from the date on which the Gift Voucher Amnesty Act came into



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force (27.02.2023).

Source: Order of the President of the National Agency for Fiscal Administration no. 906 approving the Procedure for the cancellation of fiscal obligations that may be cancelled under Law no. 43/2023 on the annulment of certain fiscal obligations, included on the list prepared and submitted by the control body, as well as the means of reimbursement thereof, as published on 28 June 2023.

3. Clarifications regarding public country-by-country reporting

Through Order no. 1730/2023, the Romanian authorities have made a series of clarifications regarding public country-by-country reporting.

More precisely, one of these clarifications refers to the fact that only medium and large subsidiaries whose parent company is based in a non-EU country are required to publish the public country-by-country report, when the consolidated revenues of the multinational group exceed the threshold of RON 3.7 billion for each of the last two consecutive financial years.

It was also clarified that the obligation to publish the public country-by-country report for subsidiaries having a non-EU parent company can be fulfilled by any subsidiary located within the EU on behalf of the entire group.

The deadline for publishing the first report has been kept the same as in the initial legislation (Order no. 2048/2022), meaning that the first financial year for which the public country-by-country report will be prepared is that starting on or after 01.01.2023. The report must be published within a maximum period of 12 months from the end of the fiscal year.

In cases where the parent company and the Romanian subsidiary have different financial years, the reporting year will align with the parent company's financial year, thus providing a consistent approach in reporting.

In addition to the initial legislation, it is now mentioned that entities based in a country within the European Economic Area (EEA) are considered, in terms of reporting obligations, as being established in a Member State rather than in a third country. This implies that EEA-based entities are subject to the same reporting requirements as entities within the EU.

Source: Order of the Minister of Finance no. 1730 regarding the regulation of certain accounting aspects, published on 21 June 2023.

4. The granting of holiday vouchers to private sector employees

Although GEO no. 8/2009 on the granting of holiday vouchers was initially adopted as a temporary solution to support employees and employers in the wake of the financial crisis of 2008, the provisions of this normative act have come back into public attention during the holiday period and in the context of current global events, which have had direct negative effects on small and medium enterprises in Romania.



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In exchange for legislating for this employee benefit, the Romanian state waived associated employer tax obligations, excepting corporate income tax. The main goal is to keep as much money as possible within the national economy, meaning that holiday vouchers can only be used in Romania, with corresponding beneficial effects for Romanian businesses. Application of the holiday voucher provisions is not mandatory, but many companies have adopted the regulation, attracted by the aforementioned tax benefits.

While some employers have adopted this mechanism in order to boost employee loyalty, encourage work relations based on trust between employee and employer, boost recovery of work capacity, increase employee productivity and motivate employees to retain their status as employees of the company, it may also help companies remain competitive on the labour market by allowing them to offer these fringe benefits as part of recruitment offers.

Holiday vouchers will be granted by employers pursuant to negotiations and consultations with employee representatives, with the outcome being laid down either in collective labour agreements or a company's internal regulations, as appropriate. Among the important provisions subject to negotiation between employers and employee representatives are those concerning categories of beneficiary and the value of an individual voucher, which can be up to a maximum of six gross national minimum monthly salaries during one fiscal year. At the same time, given that this non-salary benefit is the result of collective bargaining and consultation, the exclusion of any employee from a beneficiary category runs contrary to the provisions on equal treatment and the prevention and sanctioning of all forms of discrimination, unless objective and duly justified reasons are provided for refusing to grant an employer a holiday voucher.

By way of example, in the event of their suspension of the individual employment contract for reasons not attributable to the employee, and where the employee has taken several periods of sick leave in the course of a year, the employee still cannot be denied their entitlement to holiday vouchers.

The employee shall be entitled to holiday vouchers in the amount provided for in the collective labour agreement or internal regulations, in accordance with the law, commensurate to the number of days worked in a calendar year. For the employee this fringe benefit thus represents an increase in real income, and for the employer a major tax advantage, as the money used to purchase holiday vouchers constitutes company expenditure and is therefore deductible when calculating corporation tax.

In the event of a termination of employment, the law stipulates that the beneficiary must return any holiday voucher to the employer and, where a voucher has already been used, the employee must repay the value of said voucher to the employer. In other words, this non-salary entitlement will not be granted and cannot be retained as an employee benefit in the absence of an individual employment contract concluded between the parties.

While the employer currently pays the full cost of holiday vouchers, in future the Romanian state also intends to grant these fringe benefits from the state budget, with the proposal being to grant the same amount from state funds as that enjoyed by public sector employees. This would mean that some private sector employees would benefit from a higher amount of non-salary income. It remains to be seen what the tax policy will be in the case of tax-exempt companies in areas such as IT, agriculture and construction, as the value of holiday vouchers represents an exemption from the obligation to pay income tax up to the legal limit of RON 1,450 per employee.

Source: GEO no. 8/2009 on the granting of holiday vouchers.



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This newsletter is a service of TPA.

Kind regards,
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