

Tax Newsletter December 2023

1. Amendments to the Fiscal Code

A new emergency ordinance on various fiscal-budgetary measures has been promulgated, introducing, among other things, a number of tax changes. The most important amendments are summarised below.

1.1. Corporate tax / minimum turnover tax

- **Minimum turnover tax**

Taxpayers who deduct the value of assets/assets under construction from the minimum turnover tax calculation are required to keep the assets in their possession for at least half of their economic useful life, but not more than 5 years. Failure to comply with this condition will trigger a recalculation of the minimum turnover tax and potential additional tax liabilities.

These provisions do not apply to assets that are (i) transferred during reorganisations, (ii) disposed of during liquidation/bankruptcy procedures, (iii) destroyed, lost or stolen, or (iv) written off as a result of the fulfilment of obligations provided for in law.

- **Tax losses**

As of 2024, tax losses are recoverable from taxable profits up to a limit of 70% for the following 5 consecutive years.

Tax losses carried forward from periods prior to 31 December 2023 are recoverable from subsequent taxable profits up to a limit of 70% for the remaining period of the 7 years.

- **Financing costs**

Excess borrowing costs resulting from transactions/operations that do not finance the acquisition/production of assets in progress/assets with affiliated parties are deductible up to an annual threshold of EUR 500,000.

Total excess borrowing costs incurred in a fiscal period from transactions carried out with affiliated and non-affiliated persons should not exceed the deduction threshold of EUR 1,000,000.

- **Bad debts**

As of 2024, bad debt receivables booked in relation with customers for products, semi-finished goods, materials, goods sold, works performed and services rendered are deductible, under certain conditions, up to 30% of the adjustment amounts (previously 50%).

- **Early education**

Two new types of expenses are included in the social expenses category, as follows: (i) expenses for the operation of nurseries and kindergartens run by taxpayers; and (ii) expenses for the early education of employees' children up to a monthly ceiling of RON 1,500 per child.

- **Private scholarships and sponsorships**

Private scholarships have been removed from the category of expenses for which tax credits can be applied. Taxpayers who grant private scholarships can deduct these amounts up to a limit of RON 1,500 per scholarship. The total amount of expenses is also subject to the deductibility threshold for social expenses (i.e. a 5% rate applied to the value of salary expenses).

From 2024, taxpayers can redirect their corporate income tax relating to fiscal credits for unused sponsorships and/or acts of patronage (after the amounts carried forward have been deducted) up until the submission

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deadline for their annual corporate tax return (this was previously within 6 months of submission of their annual corporate tax return).

1.2. Micro-enterprise income tax

As of 1 January 2024, new conditions will come into force regarding the application of the microenterprise regime, as follows:

- the shareholders hold, directly or indirectly, more than 25% of the value/number of shares in a single microenterprise
- by 31 March 2024, taxpayers must have the financial statements filed up to date. In other words, if the financial statements for 2022 and/or for previous years are not submitted by the said deadline, the taxpayer will lose the right to apply the micro-enterprise tax regime in 2024.

The EUR 500,000 threshold is calculated by taking into account the company's income together with the income earned by its related companies (as defined under Law no. 346/2004).

As of 2024, companies working in the HoReCa sector will be subject to the general rules for the application of the microenterprise tax regime.

Temporarily inactive microenterprises will continue to apply the microenterprise tax regime for the entire period of their inactivity.

As of 2024, the option to apply fiscal credits to sponsorships/scholarships and the purchase of electronic cash registers is eliminated.

1.3. Income tax

• Changes regarding the taxation of salaries and salary-related income

The main modifications are as follows:

- clarification of the method used to calculate tax incentives granted to employees earning salary income in the fields of computer software development, construction, agriculture and the food industry. These incentives are to be calculated commensurate to the period of the month during which employees occupied a basic position with one or more consecutive employers (applicable to income earned as of January 2024);
- employees earning salary income in the fields of computer software development, construction, agriculture and the food industry may choose to opt out of the payment of contributions to privately managed pension funds starting with income earned during the month following submission of an application to this end, with the rules regarding the option/withdrawal from contribution payments being established by the employer in the form of internal regulations or other internal documents (applicable to income earned as of January 2024);
- removal of the non-taxable amount of up to RON 400 available to employees working remotely (applicable as of 1 January 2024);
- amounts paid by an employer or directly by employees for the placement of employees' children in early education units, in keeping with the law, within the limit established by the employer but not exceeding RON 1,500/month for each child, are to be included in the monthly limit of a maximum of 33% of the base salary (applicable as of 1 January 2024);
- the favourable difference between negotiated preferential interest and market interest on loans and deposits is included in the monthly limit of a maximum of 33% of the base salary (applicable as of 1 January 2024);

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- the non-taxable limit for sports and fitness subscriptions paid for by the employer for its own employees will be reduced, as of 1 January 2024, to 100 euros per year for each person, provided that this value falls within the monthly limit of a maximum of 33% of the base salary (the value of subscriptions paid for by employees can be deducted from the salary tax base up to 100 euros annually);
 - clarifications have been made regarding the date on which the following types of salary benefits are accumulated with salary income for reporting and taxation purposes in the event that the non-taxable limits become exceeded, in the sense that these benefits are considered as income for the months corresponding to those for which the payment was made/the month in which the settlement was approved/the months in which the credit is due: the value of tourist and/or treatment services, contributions to an optional pension fund paid for by the employer, premiums for voluntary health insurance/medical services in the form of a subscription, the value of sports and fitness subscriptions, amounts paid for/granted by the employer for the early education of employees' children, the favourable difference between the negotiated preferential interest and the market interest on loans and deposits (applicable as of 1 January 2024);
 - health insurance allowances granted under Emergency Government Ordinance no. 158/2005 are to be included in the calculation base for health insurance contributions for individuals earning salary income (applicable to allowances received as of January 2024);
 - medical allowances for temporary incapacity, granted under Law no. 346/ 2002 on the insurance of occupational accidents and professional diseases, continue not to be included in the calculation base for health insurance contributions;
 - the facility whereby the amount of RON 200 /month is not included in the calculation base for income tax and mandatory social contributions, in the case of employees who meet the conditions set out in Emergency Ordinance no. 115/2023, is also to be maintained during 2024 (applicable to income earned in the months January-December 2024 inclusive);
 - clarification of the method used to calculate the limit, pertaining to the value of 3 base salaries corresponding to the position held, for delegation allowances, detachment allowances, including specific allowances for transnational detachment, and additional benefits received by mobile workers under Government Decision no. 38/ 2008, according to which the limit is calculated separately for each month, by relating the 3 salaries to the number of working days in the respective month. The result is then multiplied by the number of days corresponding to each month of the delegation/ detachment/ activity performed in another location, both within Romania and abroad (applicable from date of publication in the Official Gazette of Emergency Ordinance no. 115/2023);
 - clarification of the fact that allowances and any other similar amounts received while on delegation to another location, both within Romania and abroad, are considered as income pertaining to the month for which the settlement is approved (applicable as of the date of publication in the Official Gazette of Emergency Ordinance no. 115/2023).
- **Changes regarding the taxation of other types of income**
 - For income earned from the rental of goods belonging to personal property:
 - the option to determine the amount of net income in the real system is removed
 - the net income is determined by deducting from the gross income the expenses calculated by applying the 20% rate to the gross income
 - New regulations are introduced for the establishment and withholding of tax on income derived from the transfer of the use of goods paid for by legal persons or other entities that keep accounting records

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- Fiscal losses on certain types of income (derived from independent activities, intellectual property or capital gains from the transfer of shares) are carried forward as per the fiscal provisions introduced in the area of profit tax regarding the amount and period.

1.4. Value added tax

The right to deduct VAT on the purchase, rental or leasing of buildings/living spaces (located in residential areas or in the blocks of flats), as well as VAT on expenses relating to these buildings/living spaces will be limited to 50% if they are not used exclusively for the purposes of economic activity. This provision will apply as of the ^{first} day of the month beginning following the date when Romania becomes authorised to apply a special measure of derogation from the provisions of the VAT Directive.

Certain conditions for the importing of goods have been amended such that VAT is not in effect paid to the customs authorities but booked simultaneously in the VAT return as input and output VAT.

2. Changes regarding the national RO e-Invoice system

On 15 December 2023, Emergency Ordinance no. 115/2023 on various fiscal and budgetary measures to ensure long-term financial sustainability introduced **changes** regarding **the electronic invoicing system** that will come into force on **1 January 2024**.

For the period **1 January 2024 - 30 June 2024**, the list of operations exempted from the obligation to issue invoices via the RO e-Invoice system has been extended. In addition to intra-community supplies and exports, invoices issued for the supply of goods/services to taxable persons who are neither established nor registered for VAT purposes in Romania, supplies of goods/provision of services for which simplified invoices are issued and services for which the issuing of invoices is not subject to the invoicing rules applicable in Romania are also excluded from reporting via the RO e-Invoice system.

As of 1 July 2024, **simplified invoices** will no longer be subject to transmission through the RO e-Invoice system.

Starting 1 July 2024, in the case of B2B commercial relationships, all legal entities established in Romania will be obliged to transmit electronic invoices through the RO e-Invoice system within **5 calendar days** of the date of issue of the invoice and no later than 5 calendar days from the deadline established under the provisions of the Fiscal Code.

Failure to comply with these provisions will result in the application of administrative **fin**es, the amount of which being determined by the applicable taxpayer category, as follows:

- for **large taxpayers**, fines will range between **RON 5,000 and RON 10,000**;
- for **medium-sized taxpayers**, fines will range between **RON 2,500 and RON 5,000**;
- for **other legal entities** and individuals, fines will range between **RON 1000 and RON 2,500**.

In addition, again as of **1 July 2024**, a fine equal to **15% of the total value of an invoice** will be applied to both issuer and recipient, both being legal entities established in Romania, in respect of transactions performed as part of B2B relationships, as follows:

- to the **issuer** for non-compliance with the obligation to issue an invoice electronically via the RO e-Invoice system
- to the **recipient** for receiving and recording an invoice not issued electronically and not transmitted via the RO e-Invoice system

If the RO e-Invoice national electronic invoicing system is not functional for a period of 24 hours or longer, the obligation to transmit invoices electronically is suspended until the system is restored.

Periods of non-functionality of the RO e-Invoice national electronic invoicing system will be published on the websites of the National Agency for Fiscal Administration and the Ministry of Finance.

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3. Amendments to Law no. 70/2015 – Strengthening Financial Discipline for Cash Receipts and Payments

The limits for cash transactions set out in **Law no. 70/2015** with subsequent amendments and additions were changed again by **Emergency Ordinance no. 115/ 2023** regarding various fiscal budgetary measures taken in the field of public expenditure for the promotion of fiscal consolidation, the combating of tax evasion, the modification and supplementation of various normative acts, as well as the extension of certain deadlines.

The new changes, effective as of **25 December 2023**, are as follows:

- the daily limit for advances for settlement has been increased to RON 5,000/ person;
- cash receipts and payments carried out between legal entities/entrepreneurs and individuals in the form of loans/credits, irrespective of their nature or purpose, can only be carried out through non-cash payment instruments;
- failure to respect the limits, including for cash receipts and payments carried out between legal entities/entrepreneurs and individuals in the form of loans/credits, made in cash, will result in a fine of 25% of the amount cashed/paid and not less than RON 500.

Source: Emergency Ordinance no. 115 on various fiscal-budgetary measures in the field of public expenditure for the promotion of fiscal consolidation, the combating of tax evasion, the amendment and supplementation of certain normative acts, as well as for the extension of certain deadlines, as published on 15 December 2023

This newsletter is a service provided by TPA.

Kind regards,
Your TPA Team

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