TPA Romania: the RO e-Transport system should be scrapped because it breaches international regulations

Bucharest, 4 July 2024: "The RO e-Transport system should be scrapped entirely or, at the very least, the legislation significantly amended such that the reporting that must be performed to obtain UIT codes ceases to impose a significant administrative burden on companies, who currently find themselves having to allocate significant human and technical resources in order to comply. This is clearly in contradiction with the treaties, directives and regulations of the European Union, as well as the principal of proportionality, given that alternative measures to combat tax fraud in international trade already exist in Romania," explains Alexandru Pop, Tax Manager at TPA Romania, a leading company in Central and Eastern Europe in the fields of accounting, tax consulting, legal consulting and audit services.

TPA Romania has authored and submitted for analysis to the authorities the document entitled "The RO e-Transport System in the Context of EU and International Regulations", which highlights the incompatibility of the RO e-Transport system with the treaties, directives and regulations of the European Union. The document describes the negative effects on companies and the business environment in Romania and makes concrete recommendations to improve the situation.

"The RO e-Transport system is viewed as a mechanism for combatting fraud and reducing the VAT gap. One of the main aims of the system, according to Government Emergency Ordinance no. 41/2022, is to improve the collection of taxes to the budget, in particular VAT. However, it either breaches or is incompatible with the international principles underpinning the EU single market: proportionality, the free circulation of goods in the EU and the elimination of controls and checks at the borders of EU member states in keeping with the Schengen Borders Code. Moreover, we have the example of Hungary, which in 2017 was subject to infringement procedures for a reporting system not dissimilar to that implemented for RO e-Transport in Romania. Even if the Hungarian system was less complex than the Romanian one, the European Commission concluded that its rules breached the principles of neutrality and proportionality and the freedom to conduct business – a freedom guaranteed by the Charter of Fundamental Rights of the European Union," explains Sorana Cernea, Managing Partner at TPA Romania.

Alongside RO e-Factura and SAF-T, the RO e-Transport system is part of efforts, carried out with the support of the Romanian Government, to achieve the rapid digitalisation of the tax authorities in order to combat tax evasion. The initial aim of GEO no. 41/2022 was to focus exclusively on high fiscal risk goods. However, the ordinance extends the reporting obligations for users of the RO e-Transport system to goods not considered to present a high fiscal risk. Failure to report these goods via the system may see companies facing fines of between 20,000 and 100,000 lei and the confiscation of the equivalent value of unreported goods.

The recent experience of companies clearly shows that the compliance procedure is generating a significant administrative burden. It demonstrably requires considerable human and technical resources to monitor the necessary data and to declare it in due time in the system. The process involves high costs and changes to IT infrastructure for larger companies if they are to meet their reporting obligations. Moreover, some situations call for an around-the-clock availability of resources to obtain or amend UIT codes, given the unpredictability of waiting times at borders and changes for objective reasons in the transport vehicle, which may occur outside of normal business hours.

TPA believes the legislation and available guides are unclear and incomplete and that they fail to cover many of the situations frequently encountered in practice. Furthermore, companies are facing specific challenges in terms of intra-Community acquisitions carried out under Incoterms, such as DDP/DAP, where foreign suppliers take care of the transport, leaving Romanian companies dependent on third parties to comply with national compliance procedures.

"In analysing all the data required to generate the UIT code, it can fairly be assumed that foreign suppliers are going to be reticent about cooperating on account of the need to allocate resources to this flow of information. These obstacles are having a significant negative impact on companies acting in compliance with the law, as they frequently encounter situations that cannot be properly reported, or even at all, in the system. This situation leaves companies vulnerable to fines, as set out in the legislation, and these are often excessive and not necessarily directed solely at those committing the illicit acts this legal framework was originally created to combat," explains Alexandru Pop, Tax Manager at TPA Romania.

However, alternative measures to the extensive reporting required under the RO e-Transport system, implemented both at national and EU level, already exist in Romania. For example, the VAT 2020 Quick Fixes package introduced additional conditions for intra-Community transactions and the applicability of VAT exemptions for these supplies, resulting in changes to the national legislation to reflect these rules.

"A company may find itself in the situation of being fully in compliance with the requirements established at EU level, while failing to comply with a national rule, a circumstance which severely affects intra-Community trade, generates uncertainty for businesses and contravenes the EU treaties and regulations on free trade. What's more, in making use of the RO e-Transport system mandatory, the Romanian legislator has created an obstacle for companies who choose to import goods from other member states. Although intended as a formality to be completed prior to transport, in practice the RO e-Transport system generates delays and additional controls at Romania's borders with other EU member states. The creation by a member state of an obstacle to the free trade of goods within the EU constitutes a breach of the Treaty on the Functioning of the European Union," says Dan Iliescu, Legal Partner at TPA Romania.

Last but not least, there is also a lack of predictability in terms of the list of high fiscal risk goods. This list is established by order of the president of the National Agency for Fiscal Administration and is easily amendable. In the short space of time since GEO no. 41/2022 came into force, it has already been proposed that the list of high fiscal risk goods be updated to reflect “the fiscal risk outlined in recent control actions carried out by the fiscal authorities” (a draft order to this end being published in April by the Romanian Tax Authoriteis). TPA believes that for this list to be relevant at a national level, the fiscal risk should be analysed over a longer period of time and, if the e-Transport system remains in force, that the list be approved by Government Decision issued on the basis of a detailed study of the appropriateness and proportionality of including a given type of good on the list, thereby avoiding punishing all the companies in a given field of activity on account of an isolated case identified by the authorities.

“The RO e-Transport system, while designed to combat tax fraud, imposes significant legal and economic burdens on companies. Alignment with the EU principles of proportionality and the free circulation of goods is crucial. Political decision makers need to consider scrapping entirely or at least revising the system in order to reduce the administrative burden, while companies need to be developing strategies to manage their reporting obligations efficiently. As professionals in the area of tax, we understand the necessity of combatting tax evasion and fraud. However, this does not justify the implementation of the RO e-Transport system by emergency ordinance, without respecting the constitutional legislative process and without noting and understanding the practical consequences for businesses,” concludes Sorana Cernea, Managing Partner of TPA Romania.

About TPA Romania:

TPA Romania, a top-10 professional services company in Romania, had a turnover in 2023 of 7.6 million euros, representing an increase on the previous year. The company has two offices in Romania, in Bucharest and Cluj-Napoca, and over 150 employees. TPA Romania is part of the Austrian group TPA, which is present in 12 countries in the region and has a total of over 2,000 employees. At group level, in 2023, TPA saw growth of 12% across its 12 companies in the CEE region, with Austria and Poland coming out top. Romania is the fourth best performing company in the group in terms of turnover, after Austria, Poland and the Czech Republic. TPA is an independent member of the Baker Tilly Europe Alliance international network, which means its clients have access to a worldwide network of accountants, tax advisers, lawyers and auditors. The Baker Till International network is present in 141 countries with 43,000 employees, placing it among the top 10 global consulting networks.