



Tax news: ammendment to the Fiscal Code in force starting with 1 January 2018

Emergency Ordinance no. 79/ 2017

In the Official Gazette no. 885/ 10 November 2017 the Emergency Ordinance no. 79/ 2017 from 8 November 2017 was published for the ammendment of Law 227/2015 regarding the Fiscal Code, which is envisaged to enter into force starting 1 January 2018.

Among the most important changes in the Emergency Ordinance no. 79/ 2017, we mention the following:

A. Profit tax

The provisions of the Directive 2016/1164/EU of the EU Council from 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market have been transposed, regarding the following:

Limitation of the deductibility of the interest expenses, exchange rate differences, as well as other costs economically equivalent to interest and expenses incurred in connection with the raising of finance

- The thin capitalisation rules for limitation of deductibility of interest expenses and currency exchange differences related to loans granted by other institution than credit and financial institutions will be applicable only until 31 December 2017;
- Starting 1 January 2018 the borrowing costs taken into account for the limitation of the deductibility are extended to all expenses representing interest related to all forms of loans and other costs economically equivalent to interest and expenses incurred in connection with the raising of finance.
- Taxpayers can deduct the exceeding borrowing costs up to the deductible threshold of EUR 200,000 computed at the currency exchange rate communicated by the National Bank of Romania valid for the last day of the fiscal period of the

quarter/ fiscal year, as the case may be. All costs that exceed the EUR 200,000 threshold are deductible within the limit of 10% in the period in which are incurred.

- The 10% deductibility percentage is computed by taking into account a base representing the difference between the revenues and expenses recorded according to the accounting rules in force, in the reference fiscal period, from which the non-taxable revenues are substracted and the profit tax expenses, as well as the exceeding borrowing costs, profit tax expenses and tax depreciation expenses are added.
- If the base for the 10% percentage limitation is negative or nil, the exceeding borrowing costs are non-deductible and can be carried forward unlimited in the next fiscal years.
- The losses reported from previous years from interest and currency exchange rate differences according to art. 27 from the current Fiscal Code will be subject to the same deductibility rules as provided in the current Emergency Ordinance no 79/2017.
- By way of exception, the taxpayers that are considered independent enterprises in the sense that they are not part of a consolidated group for accounting purposes and they do not hold any associated enterprise nor a permanent establishment, can deduct in full the exceeding borrowing costs in the fiscal period in which they are incurred.
- The losses from interest and currency exchange differences carried forward as per art. 27 of the current Fiscal Code in force until 31 December 2017 will be considered fully deductible for the independent entities.

Exit taxation

- The transfer of assets, of fiscal residency and/ or of economic activity from Romania to another member state or a third country through which Romania loses its taxation right, will be subject to 16% exit tax.
- The taxable amount for the exit tax represents the difference between the market value of the transferred assets and their fiscal value;
- In case the transfer generates a loss, this loss will be recovered from gains derived from similar operations.

Antiabuse rule

- A new antiabuse rule is introduced which provides that for the purpose of establishing tax liabilities the tax authorities can disregard one or more operations that are not considered honest, being made with the main purpose of obtaining a tax advantage that overrules the object of the purpose of the applicable tax legislation.
- The operations which are not made for valid commercial reasons that reflect the economic reality, as defined by art. 11 of the current Fiscal Code, are not considered honest.

Controlled foreign company rule

- Where an entity or permanent establishment is treated as a foreign company controlled by a Romanian taxpayer, the latter shall include in the tax base the non-distributed income of the foreign entity or the income of the permanent establishment which is derived from the following categories:
 - interest or any other income generated by financial assets;
 - royalties or any other income generated from intellectual property;
 - dividends and income from the disposal of shares;
 - income from financial leasing;
 - income from insurance, banking and other financial activities;
 - income from invoicing companies that earn sales and services income from goods and services purchased from and sold to associated enterprises, and add no or little economic value;
- This shall not apply where the controlled foreign company carries on a substantive economic activity

supported by staff, equipment, assets and premises, as evidenced by relevant facts and circumstances.

- A controlled foreign entity is an entity, or a permanent establishment of which the profits are not subject to tax or are exempt from tax in Romania, where the following conditions are met:
 - (a) the Romanian taxpayer by itself, or together with its associated enterprises holds a direct or indirect participation of more than 50 percent of the voting rights, or owns directly or indirectly more than 50 percent of capital or is entitled to receive more than 50 percent of the profits of that entity; and
 - (b) the actual corporate tax paid on its profits by the entity or permanent establishment is lower than the difference between the corporate tax that would have been charged on the entity or permanent establishment under Romanian profit tax rules and the actual corporate tax paid on its profits by the entity or permanent establishment.
- The following entities are not treated as controlled foreign companies:
 - The entities or permanent establishments, if one third or less of the income accruing to these entities or permanent establishments falls within the categories mentioned above;
 - Financial entities, if one third or less of the entity's income from the categories mentioned above comes from transactions with the taxpayer or its associated enterprises.

B. Microcompany tax

- The annual threshold for microcompany regime applicable for Romanian legal entities was increased from EUR 500,000 to EUR 1,000,000.
- The microcompany regime is mandatory applicable by all taxpayers, legal taxable Romanian entities regardless of the object of activity and of the level of share capital. Therefore, the limitations regarding the exception from the regime by the taxpayers who obtained revenues higher than 20% from management and consultancy were cancelled.
- The tax quotas remained unchanged: 1% (if there are employees) and 3% respectively, (without employees) applied to the level of the revenues derived;

- All companies who opted until 31 december 2017 for the profit taxpayer regime or those who were excepted to apply the microcompany regime (banks, insurance and reinsurance companies, gambling entities, exploitation activities, development and exploitation of the oil and gas).

C. Individual taxation

- The income tax quota is reduced from 16% to 10% for the following type of revenues: independent activities, salary and deemed salary income, assignment of right of use for goods, investments, pensions, agriculture activities, forestry and fish farming, prizes, other sources.
- For the intellectual property rights, the income tax is established at 7% from the gross revenue. The option for final taxation of the intellectual property rights is maintained, the tax being computed as 10% of the gross revenues diminished with the forfetary expenses of 40% from the gross revenues.
- The personal deduction values have been increased for salary revenues. Therefore, for private individuals that have a monthly gross salary up to 1,950 lei inclusive, the personal deductions are:
 - For
 - ✓ For taxpayers that do not hold any persons in care- 510 lei.
 - ✓ For taxpayers that hold one person in care - 670 lei;
 - ✓ For taxpayers that hold two persons in care - 830 lei;
 - ✓ For taxpayers that hold three persons in care - 990 lei;
 - ✓ For taxpayers that hold four or more persons in care - 1.310 lei.
 - ✓ For taxpayers that obtain gross revenues per month between 1,951 lei and 3,600 lei, inclusive, the personal deductions are degressive as set according to the provisions of the Fiscal Code;

Transfer of the social contributions from the employer to the employee

- The social contributions due by the employer will pass to the employee in the case of salary or deemed salary revenues;
- The quotas of the social contributions owned by the employees are ammended as follows:
 - ✓ For the social insurance contribution (CAS) – 25% of the gross revenue gained, but not less than the gross minimum salary established in Romania for the month when the contributions are due (starting

- 1 January 2018 the gross minimum salary is envisaged to increase up to 1,900 lei)
- ✓ For the health social security contribution (CASS) – 10% from the gross revenues gained, but not less than the minimum gross salary established in Romania for the month in which the contribution is due.
- ✓ Thus, for the part time labour contracts for which the gross revenues do not exceed the gross minimum salary for one month (1.900 lei), the social contributions will apply to a taxable base higher than the actual gross salary negotiated between the parties;
- In addition, a new contribution is introduced, namely „the labour insurance contribution” set at 2.25% from the gross salary, due by the employers.
- Therefore, in total, the social contributions will represent a minimum of 37.25% as compared to 39.25% as per the legislation currently applicable.

Social contributions for independent activities

- Social security contribution of 25% for the revenues from independent activities will apply to the revenue chosen by the taxpayer which cannot be less than the minimum gross salary for Romania for the month in which the contribution is due;
- The individuals which are insured in their own social security systems (lawyers, notaries), as well as retirees are exempt from the payment of the social security contribution for those revenues which are derived from activities for which, according to the law, there is the obligation to be insured in those systems;
- For the 10% health insurance contribution, this will apply over the minimum gross salary in Romania in force for the month when the contribution is due;
- The individuals who perform independent activities are not exempt from the payment of the two social contributions even if are remunerated as employees in parallel.

D. VAT

- The tax authorities are entitled to deny the VAT deduction right if, after administering the means of proof provided by the law, they are able to demonstrate beyond any doubt that the taxable person new or ought to have known that the respective transaction for which VAT is deemed as deductible, was part of a VAT fraud performed upstream or downstream in the chain of transactions.

- These VAT deduction limitations were invoked in a series of Cases judged at the Court of Justice of the European Union on the topic of VAT fraud (the so called „Kittel Test”).
- These new provisions will help goodfaith taxpayers in Romania to protect against abusive VAT fraud suspicions.

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