



In this issue:

Fiscal changes related to certain fiscal-budgetary measures in the field of public expenditures, for fiscal consolidation, combating tax evasion, amending and supplementing certain normative acts, as well as extending certain deadlines.

The Emergency Ordinance No. 115/2023 was published in the Official Gazette No. 1139 on December 15, 2023, and provides for a series of amendments to the Fiscal Code with an impact on various taxes.

The main amendments brought by the Emergency Ordinance no. 115/2023

Corporate income tax

- ✓ Inclusion in the category of social expenses, that have limited deductibility at the level of 5% of the salary fund, of: (i) expenses for the operation of nurseries and kindergartens managed by taxpayers, (ii) amounts paid by taxpayers for placing employees' children in early education units, up to a limit of RON 1,500/month for each child, and (iii) expenses for private scholarships, up to a limit of RON 1,500 for each scholarship granted.
- ✓ Simultaneously, the possibility to deduct from the corporate income tax the tax credit for private scholarships is eliminated.
- ✓ Inclusion in the category of expenses with limited deductibility of the expenses for the operation, maintenance, and repair of service housing, deductible up to the corresponding built-up areas provided by the Housing Law, without the possibility of increasing their fiscal value by 10%.
- ✓ Limitation to 50% of the deductibility of operating, maintenance and repair expenses related to an office located in the personal property of a natural person, also used for personal purposes, corresponding to the areas made available to the taxpayer under contracts concluded between the parties, for this purpose.
- ✓ Inclusion in the list of expenses with limited deductibility of 50% of the amount for operating, maintenance and repair expenses related to a registered office purchased by the taxpayer in residential buildings or individual residential buildings, from residential complexes defined according to the legal provisions, which is not used exclusively for the purpose of economic activity. If the registered office, which is owned by the taxpayer, is used for personal purposes by shareholders or members, those expenses shall be deemed to have been incurred in their favour and shall be non-deductible for the purposes of calculating the tax result. Tax depreciation will have the same tax treatment.
- ✓ As of January 1, 2024, the purchase cost of fiscal electronic cash registers will no longer be deducted from corporate tax as a tax credit. The amounts representing fiscal electronic cash registers, remaining to be carried forward after deducting from the corporate income tax related to the fiscal year 2023 / amended fiscal year ending in 2024, represent items similar to expenses as of 2024, and the expenses representing the tax depreciation of fiscal electronic cash registers are non-deductible expenses.
- ✓ Bad debts provisions registered starting with January 1, 2024 will be deductible up to 30% of the value of these adjustments. Clarifications are also provided on the type of receivables, i.e. amounts owed by internal and external customers for products, semi-finished products, materials, goods sold, works performed and services rendered.
- ✓ The tax regulation granting deductibility for adjustments for expected losses recorded by non-banking financial institutions is updated, taking into account their application of accounting regulations in accordance with International Financial Reporting Standards (IFRS).
- ✓ The annual tax losses established by the corporate income tax return, starting with 2024 / amended fiscal year starting in 2024 will be recovered at a rate of 70% of taxable profits obtained in the next 5 consecutive years. Recovery of losses will be made in the order of their registration, at each deadline for payment of corporate income tax. This rule also applies to the negative consolidated tax result recorded by the tax group.
- ✓ Tax losses remaining to be recovered on December 31, 2023 will be recovered from taxable profits made from 2024 onwards, up to a limit of 70%, for the remaining recovery period of the 7 consecutive years following the recording of those losses.
- ✓ Exceeding borrowing costs for transactions with related parties, which do not finance the acquisition/production of assets under construction/certain types of assets, are deductible up to a threshold of EUR 500,000 per year. Special provisions are also introduced on the deduction of exceeding borrowing costs carried forward from previous years.
- ✓ The possibility of redirecting the corporate income tax for sponsorships and/or acts of patronage can be made until the deadlines for submitting the annual corporate income tax return.

- ✓ Regarding the minimum turnover tax, taxpayers who deduct the value of assets under construction / assets from the calculation base have the obligation to keep these assets for at least a period equal to half of the economic useful life, but not more than 5 years (exceptions: restructurings, liquidations, etc.).
- ✓ Regarding the fiscal result of a permanent establishment or a designated permanent establishment, the provisions of the 2010 Report on the allocation of profits to permanent establishments, issued by the Organization for Economic Cooperation and Development, will be taken into account.
- ✓

Microenterprise income tax

- ✓ A shareholder/associate holding more than 25% can have only one micro-enterprise, compared to the current limit of 3.
- ✓ Additionally, the threshold of EUR 500,000 will be calculated cumulatively, for all affiliated enterprises, part of a group, according to the definition of Law 364/2004 (holding over 25%)
- ✓ For the application of this system in 2024, financial statements must be submitted by March, 31 2024.
- ✓ Certain tax incentives are eliminated, such as the cost of fiscal electronic cash registers and sponsorships
- ✓ Important changes are made for entities operating in the HoReCa field, respectively, the abrogation of the provision by which these entities were exempted from the general rules for exiting the microenterprise system (e.g. the threshold of EUR 500,000 becomes applicable to HoReCa entities as well). These entities may also apply microenterprise income tax if they have not applied this system as of 1 January 2024 (and not after 1 January 2023, as required by the general rule).

Income tax and social security contributions

Starting from January 1st 2024, with certain exceptions

Tax incentives applicable to employees and employers in the field of information technology (IT), construction, agriculture and food industry

- ✓ In case of salary or salary assimilated income earned by individuals for a fraction of a month, at the main place of work, at one or several successive employers, the employers will operate the tax incentives, but considering the RON 10,000 threshold fractionally in correlation with the period worked at each employer;
- ✓ A written request must be sent to the employer if the employee chooses to no longer continue paying the pension contribution to Pillar II.

Other provisions on salary and salary assimilated income

- ✓ Amendments related to the non-taxable income/benefits included under the 33% threshold from the gross salary:
 - The allowance granted to employees for telework will no longer benefit from the preferential tax treatment;
 - The value of wellness subscriptions granted for each employee by the employer has been reduced from EUR 400 to EUR 100 (both for non-taxable income and for applying deductions for income tax purposes in the case of subscriptions borne by the employee);
 - Amounts granted to employees and borne by the employer for the early education of the employees' children have been included. within a limit of RON 1,500/month for each child, in certain conditions;
 - The favorable difference between the preferential interest rate established by negotiation and the market rate for loans and deposits has been included;

- Certain amendments/clarifications are introduced with respect to the taxation and reporting moment for several benefits, such as: amounts received as contribution to a voluntary pension fund, voluntary health insurance premiums and medical services provided in the form of subscription, amounts representing early education allowance for the employees' children, touristic services, the favorable difference between the preferential interest rate established by negotiation and the market rate for loans and deposits etc.
- ✓ The ordinance introduces certain clarifications the method of computation for determining the non-taxable threshold in the case of delegation/detachment allowances (applicable from 15 December 2023);
- ✓ Medical leave allowances, with the exception of the medical leave for temporary incapacity for work due to accidents at work or occupational diseases granted under Law No 346/2002, will be subject to health insurance contribution;
- ✓ For the period January to December 2024, income tax and mandatory social charges are not due for the amount of RON 200/month granted to employees with national minimum salary, in certain conditions.

Income derived from independent activities

Regarding the income obtained starting with the year 2024

- ✓ Sponsorship and patronage expenses are included in the category of non-deductible expenses;
- ✓ Costs generated by the purchase of electronic fiscal cash registers are eliminated from the category of deductible expenses;

Rental income

Regarding the income obtained starting with the year 2024

- ✓ For rental income, the option to determine the net income based on real system is eliminated.
- ✓ A quota of 20% for the deductible expenses is established for the calculation of the taxable base for both rental income and income from agricultural land lease;
- ✓ The qualification as income from independent activities in case of individuals who receive income from more than 5 rental contracts at the end of the tax year is eliminated;
- ✓ A new obligation to calculate, withhold, declare and pay tax on rental income is introduced for income payers, legal persons or other entities with accounting requirements.

Other income tax & social security contributions aspects

Regarding the income obtained starting with the year 2024

- ✓ Tax loss is amended so that it can be recognized at a rate limited to 70% of net income/revenue over a period of 5 consecutive years for specific types of income – e.g., income derived from independent activities, income derived from agriculture, capital gains;
- ✓ Allocating 3.5% from the tax for the support of non-profit entities that are established and operate under the law and of religious establishments, as well as for the granting private scholarships, is applicable for the income tax related to salary or salary assimilated income;
- ✓ The ordinance brings clarifications regarding the gross minimum salary that will be utilized in determining the annual thresholds corresponding to mandatory social charges.

Value added tax

Limitation of the input VAT deduction

Starting with the 1st day of the month following the one in which Romania will be authorized by the Council of the European Union to apply a measure derogating from the provisions of the VAT Directive, the input VAT deduction right related to acquisitions, rentals or leasing of buildings/living spaces,

regardless of their destination, located in residential areas or buildings, as well as the input VAT deduction right related to expenses related to these buildings / living spaces, will be limited to 50%, to the extent that those buildings / spaces will not be used exclusively for the purpose of economic activity.

Deferral of customs VAT payment

As of January 1st, 2024, import VAT will no longer be directly paid in customs in the case of imports performed by persons registered for VAT purposes using the **centralized clearance procedure** or in the case of **imports made by submitting a customs declaration in the form of an entry in the declarant's records**.

Thus, starting with 2024, the authorized economic operator (AEO) authorization can no longer be used to defer customs VAT payment. Also, the mere possession of authorization to lodge a customs declaration in the form of an entry in the declarant's records will no longer be sufficient, since it is necessary to lodge a customs declaration in this form to defer payment of customs duty.

Further on, the taxable persons registered for VAT purposes in Romania holding a customs VAT deferral certificate may continue to benefit of the deferral of customs VAT payment. However, in order to obtain the certificate, the conditions will become more rigorous, meaning that applicants will have to not have any outstanding tax liabilities to ANAF or any other receivables to exist in the records of the central tax body.

Hence, if taxable persons appear with amounts staggered and/or rescheduled for payment, as well as with suspended debts under the law, they will no longer be eligible for obtaining the certificate.

In addition, in order to demonstrate that they have no other outstanding obligations to the consolidated budget, taxable persons will have to submit to the customs authorities an affidavit in this respect.

Suspension from the submission of certain VAT declarations

The obligation to submit informative statements D392A, D392B and D393 shall be suspended until and including 31 December 2026 (the already existing suspension decision will be extended until the end of 2023).

VAT rate applicable to products containing sugar

As a general rule, products with an added sugar content of at least 10g / 100g will not benefit from the reduced VAT rate. However, regardless of the sugar content added to the product, in addition to cake and biscuits, the reduced VAT rate of 9% will apply also for the supplies of milk powder for newborns, infants and young children.

Clarifications are also made on the definition of "added sugar", and thus sugars in unsweetened fruit juices, fruit juice concentrate and sugars in fruit purees are no longer considered added sugar for the purposes of applying the reduced VAT rate

Excise duties and other special charges

Energy products

- ✓ In 2024, the level of excise duties for fuels, respectively for gasoline (with and without lead) and diesel, will be indexed with the consumer price index in two stages, as follows:
 - as of 1st of January, 2024, with 50% of the increase in consumer prices;
 - as of 1st of July, 2024, with 50% of the increase in consumer prices.

- ✓ Starting with 18 January 2024, the marker and marking level for fuel oil and products assimilated thereto and for diesel shall change.
- ✓ Thus, the new marker will be: ACCUTRACE™ PLUS, scientifically named Butoxybenzene (CAS registration number 1126-79-0) according to Commission Implementing Decision (EU) 2022/197 of 17 January 2022 establishing a common fiscal marking for gas oils and kerosene. The marking level is 14 mg +/- 10% of marker per liter of energy product. This corresponds to a marking level of 10,64 mg +/- 10% butoxybenzene per litre of energy product.

Both markers (both the current Solvent Yellow 124 marker and the new ACCUTRACE™ PLUS marker) can be used until 18 January 2024.

Amendments regarding the supplies of sparkling wine, sparkling fermented beverages and ethyl alcohol

Starting 1st of January, 2024, in addition to the delivery of petrol, diesel, kerosene and LPG, the delivery of sparkling wines, sparkling fermented beverages, intermediate products and ethyl alcohol from tax warehouses or from the location where they were received by the registered consignee will be made only when the supplier holds the payment document attesting the transfer to the state budget of the amount of excise duties related to the quantity to be invoiced.

Certifications

As of 1st of January, certified consignee and certified consignor certifications will be valid from the date of their issue. Currently, they are valid from the 1st day of the month following the one in which the application was approved.

Measures to combat tax evasion

Amendments regarding Ro e-Invoice

In addition to exports and intra-Community supplies of goods, supplies to companies that are not established and registered for VAT purposes in Romania, supplies of goods or services for which simplified invoices have been issued, services for which invoices are issued in accordance with the regulations of other jurisdictions are exempted from the RO e-invoicing system.

As of July 2024, in the case of transactions carried out in B2B regime between taxable persons established in Romania, if the supplier does not send the invoice in electronic format to the beneficiary, or the beneficiary receives and registers an invoice that is not an electronic invoice within the meaning of Law 120/2021, those acts constitute contraventions, the fine being in the amount of 15% of the total value of the invoice applicable at the level of the supplier or, if the case at the level of the beneficiary the beneficiary.

Clarifications are also made regarding the situation in which the RO e-Invoice system does not work. Thus, when the RO e-Invoice system does not work for at least 24 hours, the electronic invoicing obligation is suspended until the system is restored, during this period invoices can be issued by traditional means.

However, electronic invoices will then have to be sent through the system as soon as the system is restored. In order to be able to track these situations, the Romanian tax authorities will publish on their website the periods in which the RO e-Invoice system did not work.

Amendments regarding Ro e-Transport

The reporting obligation in the RO e-Transport system for international road transport of goods (import / export / intra-Community acquisitions / intra-community deliveries) is extended. The new measures apply from 15 December 2023 for all categories of goods transported **(not just for goods with high tax risk)**.

The reporting obligation applies to the following users:

- The consignee mentioned in the customs import declaration or the consignor mentioned in the customs export declaration;
- The beneficiary in Romania, in case of intra-Community acquisitions of goods;
- The supplier in Romania, for intra-Community supplies of goods;
- The depositary of goods subject to intra-Community transactions in transit and handled on the territory of Romania (loading/unloading in order to form new shipments of goods).

Transport operators have the obligation to equip vehicles with telecommunications terminals using satellite positioning technologies and to ensure the transfer of current vehicle positioning data to the National Financial Information Center (CNIF) throughout the transport (national/international).

Starting 1st of July, 2024, failure to declare international goods shipments in the RO e-Transport system will result in a fine between RON 20,000 and RON 100,000 and seizure of the value of undeclared goods.

For further questions regarding the aspects mentioned in this alert, please contact us.



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