

CMS România | Romania amends the tax law in 2023



At the end of last year, Romania introduced numerous tax amendments that entered into force on 1 January 2023. The following is a summary of the most important amendments.

Government Ordinance 16/2022 approved through Law 370/2022

Government Ordinance 16/2022, published on 15 July 2022, has brought significant changes to the Tax Code. The majority of these changes entered into force on 1 January 2023. On 20 December 2022, Law 370/2022 approving Government Ordinance 16/2022 was published in the Official Gazette. This Ordinance and the approving Law introduce the following key tax amendments:

- The dividend tax has been increased from 5% to 8% beginning 1 January 2023 for distributions made to legal entities and individuals, both resident and non-resident.
- The provisions regarding the taxation of dividends distributed to another Romanian legal entity also apply to dividends distributed or paid to privately managed pension funds and/or voluntary pension funds.
- Regarding the corporate income tax exemption for reinvested profit, a new category of assets is added (i.e. the assets used in the production, processing and refurbishment activities). These assets are detailed in the Order of the Minister of Finance no. 4636/2022 published on 30 December 2022.
- The microenterprise tax regime is optional from 1 January 2023. The following are relevant for a legal entity to apply the microenterprise tax regime: (i) total yearly income of EUR 500,000; (ii) income from management and consulting services (excluding tax consultancy services) needs to be capped at 20% of the overall income; and (iii) the entity needs to have at least one full-time employee. Starting 2023, the tax rate is 1%. The company's shareholders should not hold more than 25% of the participation titles in more than three Romanian legal entities that are micro-enterprise taxpayers.
- Starting 1 January 2023, Law no. 170/2016 on the specific tax for certain activities is repealed. The taxpayers applying this specific tax (i.e. the Horeca tax) can opt for the application of the microenterprise tax regime or the corporate income tax regime.
- Starting 1 January 2023, the rules regarding the tax treatment for the vast majority of benefits granted to employees and the system of personal deductions have been significantly modified.

The 40% expenses flat rate used for the calculation of the taxable base for rental income is eliminated. The taxable base for this income is the gross income.

→ The yearly base for computing the social insurance contribution for income from independent activities and intellectual property rights is amended. The computation base is chosen by the taxpayer but cannot be lower than: the level of 12 national minimum gross salaries for a ceiling between 12 and 24 national minimum gross salaries, or the level of 24 national minimum gross salaries for income obtained above the threshold of 24 national minimum gross salaries.

→ For income other than salary income (e.g. rental income, independent activities, income from investments, etc.), the health insurance contribution is due if the yearly income exceeds the value of six national minimum gross salaries. Also, the yearly base for computing the health insurance contribution due for these incomes is amended: six national minimum gross salaries for a total income of between six and 12 national minimum gross salaries, or 12 national minimum gross salaries for a total income between 12 and 24 national minimum gross salaries, or 24 national minimum gross salaries for a total income obtained above the threshold of 24 national minimum gross salaries.

→ The calculation of the income tax in relation to the transfer of immovable property from the personal patrimony and the tax rates are amended. The non-taxable threshold is repealed, and the income tax is calculated at the value of the transaction. The tax rate depends on the holding period, respectively 3% for holding up to three years, 1% for holding over three years.

→ Starting 1 January 2023, restaurant and catering services and hotel accommodation are subject to the VAT rate of 9%. Up until 31 December 2022, the VAT rate of 5% applied to these services.

→ Non-alcoholic beverages containing sugar or other sweeteners or those that are flavoured (CN code 2202 10 00) and beverages falling under CN code 2202 99 are subject to the general VAT rate of 19%. Up until 31 December 2022, the reduced VAT rate of 9% applied to these beverages.

Law 142/2022

Law 142/2022 amending the Tax Code was published on 23 May 2022 and entered into force on 1 January 2023. This Law introduced changes reducing the taxation level on income obtained from capital markets, which were previously subject to an income tax rate of 10%.

Starting 1 January 2023, the income tax rate for gains realised by individuals from the transfer of securities and from transactions with financial derivatives carried out through intermediaries, Romanian tax residents or non-residents who have a permanent establishment in Romania with the status of intermediary, is reduced to 1% for securities and instruments held for more than one year, and 3% for securities and instruments held for less than one year. Losses incurred through these intermediaries, from the transfer of securities or derivatives, cannot be offset against gains or carried forward.

The intermediaries are required to calculate, withhold, declare and pay the income tax for every transaction, on income obtained both from Romania and from abroad.

Government Emergency Ordinance 168/2022

Government Emergency Ordinance 168/2022 regarding certain fiscal-budgetary measures, prorogation of certain deadlines, and amendment and completion of certain legislative acts was published in the Official Gazette on 9 December 2022 and introduced the following main changes:

→ The minimum gross salary for the construction sector has been increased from RON 3,000 to RON 4,000 for the period from 1 January 2023 to 31 December 2028.

→ Between January and December 2023, RON 200 from the monthly salary income will be exempt, under certain conditions, from income tax and social contributions for employees with a full-time employment contract and monthly income below RON 4,000.

Government Decision 1447/2022

Government Decision 1447/2022 published on 9 December 2022 established that the minimum gross salary is RON 3,000 starting from 1 January 2023. In 2022, the minimum gross salary was RON 2,550.

Law 376/2022

Law 376/2022 amending and supplementing Government Emergency Ordinance 28/1999 on the obligation for economic operators to use electronic fiscal cash registers was published on 27 December 2022 and entered into force on 1 January 2023. This Law provides the procedural and taxation rules for "tips".

The tip is defined as any amount of money voluntarily offered by the customer in addition to the remuneration for goods or services provided in restaurants and bars. The customers can set the tip level as a percentage of up to 15% of the value of the bill or as an amount, in absolute value. The tip must be shown on the fiscal receipt.

From a tax perspective, the tip is qualified as "other income" and is subject to income tax at the rate of 10%. No social insurance and health insurance contributions apply to the amounts representing tips. Income tax is withheld when the tip is distributed to the employees and paid to the state budget. The amounts derived from the collection of tips from customers by restaurants and bars cannot be assimilated to an income and their distribution to employees cannot be assimilated to an expense.

The restaurant or bar must implement an internal regulation, which will contain the procedure and method for distributing tips to employees.

Government Emergency Ordinance 186/2022

Government Emergency Ordinance 186/2022 regarding measures to implement Council Regulation (EU) 2022/1854 of 6 October 2022 regarding an emergency intervention to address the problem of high energy prices was published on 29 December 2022. This Ordinance introduced a solidarity contribution for companies that carry out activities in the oil, natural gas, coal and refinery sectors.

The solidarity contribution is calculated based on a rate of 60% applied to the yearly profit, which exceeds by more than 20% the average profits for the financial years 2018-2021. For entities paying corporate income tax, the reference to profit means taxable profit, while for entities paying microenterprise tax, the profit represents the accounting profit. This solidarity contribution will apply for the financial years 2022 and 2023.

The contribution is calculated, declared and paid annually until 25 June of the following year (respectively the 25th of the sixth month following the end of the modified fiscal year/financial year). The solidarity contribution is a non-deductible expense for entities paying corporate income tax.

For more information on how the above tax changes will affect your Romania-based business, contact your CMS

client partner or local CMS experts: Roxana Popel and Andrei Tercu.