

Law-Now: Romania amends Tax Code for 2021

On 24 November 2020, the Romanian parliament approved Law no. 296/2020 for the amendment and completion of the Tax Code, which was promulgated by the Romanian President on 18 December 2020. Published in the Official Gazette on 21 December 2020, the amendments to the Romanian Tax code apply to corporate taxes, individual taxes, VAT and other categories, and will enter into force on 1 January 2021.

On 21 December 2020, Law no. 296/2020 for the amendment and completion of the Tax Code was published in the Official Gazette, which includes the following main measures:

Definitions and general provisions

The definitions of “effective place of management”, “resident”, “related party” and “shares” have been amended. Also, the Law introduces a procedure for establishing the tax residency of foreign legal entities having the place of effective management in Romania.

Corporate income tax

Fiscal consolidation

The Law introduces the concept and rules for corporate income tax fiscal consolidation. The new provisions detail the conditions to be fulfilled by companies opting for fiscal consolidation, and the obligations that fiscal group members must comply with. The threshold of shareholding or voting rights is set at 75%. Once they opt in, the fiscal group must be maintained for a minimum of five years.

The newly introduced provisions establish the rules of entrance or exit from the fiscal group, the regime of fiscal losses, and the rules regarding the declaration and payment of corporate income tax by the fiscal group representative. Fiscal consolidation does not relieve group members from the regular calculations of corporate income tax.

Clarifications on corporate income tax exemption for reinvested profit

The provisions clarify how the corporate income tax exemption granted for reinvested profit will apply. The exemption for new investments is granted up to the amount of corporate income tax calculated cumulatively from the beginning of the year until the quarter of the commissioning of the assets or until the end of that year, depending on the declaration and payment system applied by the taxpayers.

New non-deductible expenses

Expenses are treated as non-deductible for corporate income tax purposes if they are incurred from transactions carried out with entities or individuals established in countries included in Annex I and Annex II of the EU List of non-cooperative jurisdictions for tax purposes, as published in the Official Journal of the EU.

New deductible expenses

Expenses incurred by the employer for teleworking activities performed by employees are deductible for corporate income tax.

Full tax deduction of the provisions for doubtful debts

The provisions recorded for doubtful debts will be fully tax deductible. The existing deductibility threshold of 30% is eliminated, but the limitations on the deductibility of losses in case of sales of receivables remain unchanged.

New provisions on transfer of tax losses for legal reorganisations

The Law introduces new categories of taxpayers, which can benefit from the provisions on transfer of tax losses as a result of legal reorganisations.

Individual income tax

Fiscal residency of individuals

Non-resident individuals having their centre of vital interest in Romania are subject to Romanian income tax on their global income starting the first day declaring that their centre of vital interest is in Romania. The non-resident individuals present in Romania for more than 183 days in any 12 consecutive months ending in the relevant calendar year are subject to Romanian income tax on their global income starting with the first day of arriving in Romania.

New categories of tax-exempt income

The amounts granted by the employer to its employees carrying out their activities under teleworking are income tax exempt up to RON 400 per month. The tax-exempt amount is based on the number of days per month the employee is teleworking.

The expenses incurred by employers for epidemiological testing and vaccination of employees are not subject to personal income tax.

Commercial price reductions or discounts granted to individuals are included in the category of non-taxable income from prizes.

Benefits in cash or in kind received from third parties

The declaration and payment obligations for benefits in cash or in kind received from third parties are clearly established. If the benefits are paid or granted to the employee through his Romanian employer, the latter must calculate, withheld, declare and pay the related income tax and social contributions. If the benefits are paid or granted to the individual by a third-party Romanian tax resident, the third party must calculate, withheld, declare and pay the related income tax and social contributions.

Rental of abodes for tourism purposes

The income from rental for tourism purposes of rooms located in personal abodes (regardless of the number) represents rental income and is subject to personal income tax and social contributions.

Deadline for submission of the yearly tax return has been extended

The deadline for submission of the yearly tax return was changed from the existing 15 March of the following year to 25 May of the following year.

VAT

Adjustment of the output VAT for bad debts from individuals

The output VAT related to bad debts from individuals can be adjusted after a 12-months period passed from the due date of the receivables, subject to certain conditions. The VAT adjustment can be performed during a five-year period starting on 1 January of the year following the due date. Other conditions require the supplier to prove that it had undertaken commercial measures to recover the respective amounts for receivables with values below RON 1,000 (EUR 210) or had undertaken the necessary legal proceedings for receivables exceeding RON 1,000.

VAT cash accounting system

The turnover threshold for the VAT cash accounting system was increased from RON 2.25 million (EUR 460,000) to RON 4.5 million (EUR 920,000).

Clarification of the VAT deduction right for acquisition invoices received with delay

For acquisition invoices received with delay, the beneficiary may deduct the input VAT within the statute of limitation, even though a tax inspection took place for the period the invoices relate to. Also, if the supplier issues correction invoices, the beneficiary may deduct the input VAT even if the statute-of-limitation had elapsed. In this case, the beneficiary can deduct the input VAT within one year from receipt of the correction invoice.

Fiscal representative for importers not VAT established in Romania

Importers not VAT established in Romania may appoint a fiscal representative for fulfilling VAT-related obligations for import of goods followed by intra-community delivery.

Extension of the VAT reverse charge for all acquisitions of electrical energy

The application of the VAT reverse charge regime has been extended for all types of licences granted by the Romanian Energy Regulatory Authority allowing the sale of electrical energy.

Extension of the VAT reverse charge for sales of natural gas

The law introduces the application of the VAT reverse charge regime for sales of natural gas to Romanian taxable entities subject to certain conditions.

Withholding tax

The deadline for the submission of the informative return regarding withholding tax held at source by Romanian payers of income was changed from the existing 31 January to the last working day of February.

Local taxes

Foundations of wind turbine pillars included in the building definition

The Law amends the definition of buildings by including the foundations of wind turbine pillars. Currently, the Tax Code defines wind turbine pillars as buildings.

Extension of the preparation term for the valuation report

The term for updating the valuation report for determining the taxable value of buildings owned by legal entities

was extended to five years from the existing three years.

For more information on how these changes to the Romanian Tax Code could affect your business, contact local CMS experts Roxana Popel, Andrei Tercu and Ramona Tudor or your regular CMS advisor.