

CMS | Romania implements a large package of tax measures



On 27 October 2023, Law no. 296/2023 regarding tax-budgetary measures to ensure Romania's long-term financial sustainability was published in the Official Gazette and consists of significant amendments to the Tax Code and other normative acts. Law no. 296/2023 was published on 27 October 2023 in the Official Gazette and entered into force on 30 October 2023. Below is a summary of the most important changes.

Corporate income tax

1. Minimum turnover tax

From 1 January 2024, taxpayers which have registered a turnover exceeding EUR 50 million in the previous year are obliged to pay corporate income tax (CIT) at the level of the minimum turnover tax if CIT calculated cumulatively from the beginning of the tax year until the end of the calculation period is lower than the minimum turnover tax.

The minimum turnover tax does not apply to the following: taxpayers mentioned in art. 15 of the Tax Code, economic operators exclusively carrying out activities of distribution/supply/transport of electricity and natural gas and are regulated by the National Energy Regulatory Authority, and credit institutions.

The minimum turnover tax is computed according to the following formula:

$IMCA = 1\% \cdot (VT - V_s - I - A)$, where:

- ◆ IMCA represents the minimum turnover tax;
- ◆ VT represents total revenue, calculated cumulatively from the beginning of the fiscal year/modified fiscal year to the end of the quarter/year of calculation;
- ◆ V_s represents the amounts to be deducted, calculated cumulatively from the beginning of the fiscal year/modified fiscal year to the end of the quarter/year of calculation, and include: (i) non-taxable revenues provided at articles 23 and 24 from the Tax Code; (ii) revenues related to the costs of stock; (iii) revenues related to the cost of services in progress; (iv) revenues from production of tangible and intangible assets; (v) revenues from subsidies; (vi) revenues from compensation from insurance/reinsurance companies, for damages caused to goods representing stocks or own tangible assets; (vii) revenues representing the excise taxes that were reflected simultaneously as expenses.
- ◆ I represents the value of assets in progress in relation to acquisition/production of assets registered in the accounting books starting with 1 January 2024/first day of the modified fiscal year beginning in 2024;
- ◆ A represents the accounting depreciation at the level of historic cost of assets purchased/produced starting with 1 January 2024/ first day of the modified fiscal year beginning in 2024. This item excludes the accounting depreciation of the assets included in item I.

The Ministry of Finance will publish an order within 60 days from the entry of the force of the Law, which will establish the assets considered for the computation of “I” and “A” of the formula.

If the result of the calculation formula for determining IMCA results is a negative value, the minimum tax will be zero.

To compare the CIT and the minimum turnover tax from the CIT, the following will be deducted: the tax credit regarding the sponsorship/patronage, other amounts that are deducted from the CIT according to special laws, and the CIT reduction according to Government Emergency Ordinance 153/2020. The following cannot be deducted from the CIT: foreign tax credits, exempted CIT as per art. 22 of the Tax Code and Law no. 566/2004.

The following items cannot be deducted from the IMCA due: amounts representing exempt or reduced CIT, other amounts that are deducted from the CIT as per specific laws, the reduction of the CIT according to GEO 153/2020. The amount representing the credit related to sponsorships/patronage will be deducted from the IMCA due.

The Law also sets out rules regarding the minimum turnover tax for tax groups, under which each member of the tax group is required to compute the minimum turnover tax according to the formula and provide it to the leader of the tax group. The sum of the minimum turnover tax provided by all group members is then compared with the CIT calculated at the group level.

2. Additional tax for credit institutions

From 1 January 2024, Romanian credit institutions and Romanian branches of foreign credit institutions will pay an additional turnover tax at the rate of 2% in 2024 and 2025 and 1% starting from 1 January 2026. The law mentions the elements of income and expenses that form the turnover on which the additional tax is applied.

The additional turnover tax is declared and paid quarterly:

- For Q1-Q3, by the 25th of the month following the quarter for which the payment is made;
- For Q4, by 25 March of the following year.

The turnover tax is a non-deductible expense in determining the tax result for CIT purposes.

The Romanian tax authority will issue an order within 60 days from the date of entry in force of the Law on the model and content of the tax return for this additional tax.

3. Additional tax for legal entities carrying out activities in the oil and gas sectors

From 1 January 2024, legal entities carrying out activities in the oil and gas sectors and which have registered a turnover exceeding EUR 50 million in the previous year will pay an additional turnover tax at the rate of 0.5% of the turnover. The computation of the tax base for the additional tax applicable to oil and gas sectors is determined as the minimum turnover tax described above.

The additional turnover tax must be declared and paid quarterly, as follows:

- For Q1-Q3 by 25th of the month following the quarter for which the payment is made;
- For Q4 by the date of submission of the annual CIT return.

Taxpayers exclusively carrying out activities involving the distribution/transport/supply of electricity and gas and are regulated/licensed by the National Energy Regulatory Authority are exempt from the payment of this additional tax.

Taxpayers from the oil and gas sectors, which also carry out activities of distribution/transport/supply of electricity and gas

regulated/licensed by the National Energy Regulatory Authority will exclude from the tax base the elements related to the activities of distribution/transport/supply of electricity and gas.

The turnover tax is a non-deductible expense in determining the tax result for CIT purposes. The model and content of the tax return will be published by the Romanian tax authority.

This additional tax applies for the period 1 January 2024 to 31 December 2025. From 1 January 2026, the legal entities subject to this tax will apply the minimum turnover tax.

Microenterprise income tax

From 1 January 2024, two rates are reintroduced as follows:

- ◆ 1% à for microenterprises with revenues up to and including EUR 60,000 that do not perform activities corresponding to the NACE codes relating to the IT, HoReCa, some legal activities and medical/dental activities.
- ◆ 3% à for microenterprises with revenues exceeding EUR 60,000 or those carrying out activities corresponding to the NACE codes relating to the IT, HoReCa, medical/dental activities, and some legal activities.

Microenterprises carrying out both activities in the sectors mentioned above and other activities will apply the 3% rate for all categories of income obtained.

If the income threshold of EUR 60,000 is exceeded during the tax year, or if activities in the aforementioned sectors are carried out, the 3% rate is applied starting with the quarter in which these situations occur. Conversely, if the income threshold falls below EUR 60,000 during the tax year, or if the aforementioned activities stop, the 1% rate is applied beginning the quarter when these situations occur.

Personal income tax (PIT) and social security contributions

From 1 November 2023, the following is applicable:

- ◆ The PIT exemption applicable for salary income obtained by employees in the field of information technology (IT) is limited to a gross monthly salary (including income assimilated to salary) of RON 10,000, conditioned by the fulfilment of the eligibility criteria already in place. The amount exceeding RON 10,000 is taxed at the standard rate of 10%. In addition, this tax incentive will only be available until 31 December 2028.
- ◆ The PIT exemption for employees in IT, construction and agri-food sectors applies at the main workplace of the employee, to the income obtained based on one single full-time/part-time employment contract.
- ◆ The health insurance contribution will be due on the entire gross salary obtained by employees in the construction and agri-food sectors.
- ◆ The social security contribution due by the employees in the IT sector who qualify for PIT exemption is reduced with the percentage points of the social security contribution related to Pillar 2 provided under Law no. 411/2004. Until the end of 2023, the social security contribution to Pillar 2 is 3.75%. Beginning 1 January 2024, the rate is increased to 4.75%. Employees can continue to contribute to Pillar 2 through submitting the option in writing to the employer.
- ◆ The reduction of the work insurance contribution due for employees in the construction and agri-food sectors is eliminated. Thus, the employers must pay the standard rate of 2.25%.

The changes summarised below are applicable from 1 January 2024:

- ◆ The value of meal vouchers and holiday vouchers will be subject to the health insurance contribution. Currently, only income tax is due on the value of these vouchers.
- ◆ The tax base of the health-insurance contribution for income obtained from independent activities is the yearly net/gross

income or the yearly income quota applicable, with a maximum ceiling of 60 gross minimum national salaries. Yearly tax losses are not considered for determining the tax base of the health insurance contribution.

From 1 July 2024, any income ascertained by the Romanian tax authority whose source cannot be identified will be taxed at a 70% rate. The current rate is 16%.

Value added tax (VAT)

Starting 1 January 2024, the VAT rates will be increased for certain categories:

- ◆ From 5% to 9% for:
 - ◆ Supply of high-quality value food authorised by the Ministry of Agriculture and Rural Development;
- Supply and installation of photovoltaic panels, solar thermal panels, heat pumps, and other high-efficiency heating systems;
- Delivery of social housing with a usable area of maximum 120 square metres, excluding household annexes, with a maximum value of RON 600,000, excluding VAT, purchased by individuals. The value includes both the housing and the land on which it was built. However, the 5% rate will still be applicable for housings for which advance payments were documented in 2023 and will be delivered in 2024. The meaning of the expression "houses that at the time of delivery can be inhabited in as such" has been revised to include additional conditions to the degree of completion;
- Access to sport events, amusement, and recreational parks (activities under NACE codes 9321 and 9329), fairs and cinemas, cultural events that are not exempt.

Also, the Law mentions that the "Register of housing acquisitions with reduced VAT rate" will be organised in electronic format and lists the obligations of public notaries. The Romanian tax authority will issue a procedure for organising this register.

- From 5% to the standard rate of 19% for:
 - Right to use gyms (activities under the NACE codes 9311 and 9313);
 - Transport of persons by historic trains;
 - Transport of persons using cable transport facilities;
 - Transport of persons by using animal-drawn vehicles/vessels for leisure purposes.
- From 9% to the standard rate of 19% for:
 - Non-alcoholic beer;
 - Foods with added sugar, more than 10 grams per 100 grams of product. National sweets such as sweet bread (in Romanian cozonac) and biscuits are exempt.

The scope of the transactions exempt from VAT with deduction rights is modified by eliminating the VAT exemption for activities carried out to state hospital units (e.g. construction, repairs, modernisation services, delivery of medical equipment, etc.). The VAT exemption will apply only for activities performed to not-for-profit organisations.

Special tax on high-value immovable and movable assets

From 1 January 2024, a special tax on high-value immovable and movable assets is introduced as follows:

- ◆ Individuals owning residential buildings with a taxable value exceeding RON 2.5 million (approximately EUR 500,000) will owe a 0.3% tax to be applied on the difference between the taxable value and the threshold. This special tax will be declared and paid by 30 April of each year (i.e. 30 April 2024 inclusive being the first deadline).
- ◆ Individuals or companies owning cars registered in Romania with a purchase value exceeding RON 375,000

(approximately EUR 75,000) will owe a 0.3% tax to be applied on the difference between the taxable value and the threshold. This tax is due for a five year-period starting from the year of purchase of the car (i.e. the delivery and receipt of the car) and is payable until 31 December of each year.

Excise duties

From 1 January 2024, the non-harmonised excise duties will apply to the following:

- ◆ non-alcoholic beverages with added sugar for which the total sugar level is between 5-8 grams/ 100 ml (RON 40 per hl);
- ◆ non-alcoholic beverages with added sugar for which the total sugar level is above 8 g / 100 ml (RON 60 per hl);
- ◆ products containing tobacco, intended for inhalation without burning, with tariff classification NC 2404 11 00, including those supplied together with electronic cigarettes and other personal electric vaporising devices with tariff classification NC 8543 40 00;
- ◆ liquid products intended for inhalation without burning, with or without nicotine, with tariff classification NC 2404 12 00, 2404 19 90, including those supplied together with electronic cigarettes and other personal electric vaporising devices with tariff classification NC 8543 40 00;
- ◆ products intended for inhalation without burning, containing tobacco substitutes, with or without nicotine, with tariff classification NC 2404 12 00, 2404 19 10, including those supplied together with electronic cigarettes and other personal electric vaporising devices with tariff classification NC 8543 40 00.

The level of excise duties on alcohol and alcoholic beverages, as well as manufactured tobacco products will be increased from 1 January 2024.

RO e-Invoice system

From 1 January 2024, the following obligations arise:

- ◆ Taxable persons established in Romania must submit issued invoices in RO e-Invoice system, for B2B transactions having the place of supply in Romania, between 1 January 2024 and 30 June 2024.
- ◆ Taxable persons not established but registered for VAT purposes in Romania must submit issued invoices in RO e-Invoice system, for B2B transactions taxable in Romania.
- ◆ The obligation to issue and transmit the invoices according to art. 319 of the Tax Code is maintained, except for cases in which both the supplier (issuer of the invoice) and the client (recipient of the invoice) are registered in the RO e-Invoice register.
- ◆ The following are exempt from the above: (i) exports of goods carried out by the supplier or another person on his behalf; (ii) intra-Community supplies of goods with the place of departure in Romania.

The deadline for submitting invoices in RO e-Invoice system is five working days from the date of issuing the invoice, but not later than five working days from 15th of the month following the month when the chargeable event for VAT arises or from the date of receipt of advances. Failure to comply with this provision results in a fine (i) between RON 5,000 to RON 10,000 for large taxpayers; (ii) between RON 2,500 to RON 5,000 for medium taxpayers; (iii) between RON 1,000 to RON 2,500 for other legal entities as well as for individuals.

No fines will apply for not sending the issued invoices through the RO e-Invoice system between 1 January 2024 and 31 March 2024.

From 1 July 2024, for all B2B transactions carried out between taxable persons established in Romania, only invoices issued and communicated through the RO e-Invoice system will be considered valid.

The receipt and registering of invoices by a recipient (i.e. a taxable person established in Romania) outside the RO e-Invoice system for B2B transactions result in a fine equal to the amount of VAT included in the invoice received.

Other changes introduced by the Law

◆ New measures were introduced against illicit economic activities (i.e. economic activities carried out without the proper registration with the Romanian tax authority and/or with goods whose origin is not documented). The same treatment applies to money or goods acquired through illicit economic activities. These measures are applicable 15 days from the publication of the Law. The sanctions for carrying out illicit economic activities are as follows:

- freezing assets/confiscation of goods whose origin is not proven by justifiable documents;
- suspension of the activity;
- fines between RON 2,000 and RON 15,000 for individuals and between RON 5,000 and RON 35,000 for legal entities without proper registration with the Romanian tax authority;
- fines between RON 2,000 and RON 15,000 for individuals and between RON 5,000 and RON 30,000 for legal entities carrying out activities with goods whose origin is not documented.
- carrying out illicit activities can lead to criminal investigations and penalties.

◆ The RO e-Seal system is introduced for the monitoring of the movement of goods on road routes. For seals applied to vehicles, the driver has the obligation to ensure the integrity of the seal. The fine for failure to comply with this obligation is between RON 20,000 and RON 50,000.

Fines imposed under several pieces of legislation, such as the Accounting Law, the Tax Code, and the Fiscal Procedural Code will no longer be payable with 50% reduction within the first 15 days.

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.