

LEGAL & TAX ALERT, 14 November 2017

New fiscal regulations applicable as of 1 January 2018

Starting 1 January 2018, the new fiscal measures package, as approved by Government Emergency Ordinance No. 79/2017 for amending and supplementing Law No. 227/2015 regarding the Fiscal Code¹, shall enter into force.

The main amendments and novelties introduced through this fiscal measures package may be summarised as follows:

Micro-companies income tax

- (i) the scope of application of micro-companies income tax is extended:
 - Romanian legal entities carrying out activities in the banking sector, insurance and reinsurance sectors, capital markets, gambling sector, as well as oil and gas exploration, development and production activities, are no longer exempt from the payment of this type of income tax;
 - the micro-companies income tax regime applies irrespective of the share of incomes from consultancy and management activities, from the total incomes obtained by the Romanian legal entity;
 - the value of incomes in relation to which a Romanian legal entity may qualify as micro-company increases from EUR 500,000 to EUR 1,000,000;
 - the value of the share capital is no longer relevant for the purpose of qualifying a Romanian legal entity as micro-company;

- (ii) Romanian legal entities which opted for paying corporate profit tax in consideration of holding a share capital of at least RON 45,000 until 31 December 2017, as well as Romanian legal entities which carried out activities that were not subject to the micro-companies income tax regime by 31 December 2017, become micro-companies starting 1 January 2018 if the new conditions introduced through the fiscal measures package are met on 31 December 2017;

¹ The legal act was published in the Official Gazette of Romania No. 885 of 10 November 2017.

Income tax

- (i) the standard income tax rate is reduced from 16% to 10%; the income tax rate for dividends is maintained at 5%;
- (ii) for the incomes from intellectual property rights, the income tax to be withheld at source by the income payers is determined by applying a 7% rate over the gross income; when taxpayers obtaining such incomes opt for the withholding income tax to be final, the taxation rate is of 10% over the gross income, less the flat rate of 40% of deductible expenses;
- (iii) the income thresholds for which personal deduction is granted from the computation of the income tax is increased and so is the value of personal deductions granted, depending on the number of dependents and the value of the income, if such value exceeds RON 1,950;

Social contributions

- (i) the number of mandatory social contributions is reduced, from six to three, namely: social insurance contribution, health insurance contribution and employment insurance contribution;
- (ii) the social insurance contribution's quotas are amended, as follows:
 - a 25% quota, owed exclusively by individuals, is established;
 - a 4% quota and, respectively, a 8% quota, owed exclusively by employers, is established for difficult working conditions and special working conditions, respectively;
- (iii) individuals who obtain incomes from independent activities may choose the level of income in relation to which they wish to pay the social insurance contribution, which cannot be less than the level of the national minimum wage; below this level, individuals obtaining incomes from independent activities do not owe the social insurance contribution; employees continue to owe this contribution over the gross earnings from salaries and salary-assimilated incomes;
- (iv) the health insurance contribution quota becomes 10% and is owed exclusively by individuals;

- (v) new categories of individuals are exempt from the payment of the health insurance contribution, amongst which retired individuals for their retirement incomes and individuals receiving unemployment benefits for such benefits;
- (vi) for incomes from independent activities, deriving from the association with a legal entity, from rental of goods, from investments, agricultural activities and other sources, the health insurance contribution is owed only if the value of the aggregate annual incomes obtained by the taxpayer is equal to at least the value of 12 national minimum wages; the monthly computation base for the health insurance contribution for these incomes is capped at the value of the national minimum wage; employees continue to owe this contribution over the gross earnings from salaries and salary-assimilated incomes;
- (vii) an employment insurance contribution of 2,25% is introduced, being owed by employers and persons assimilated to employers, as well as by individuals who are Romanian citizens, citizens of other states or stateless individuals, while they are having their domicile or residence in Romania and who obtain in Romania incomes from salaries or assimilated to salaries from employers from states not subject to the European legislation, respectively to the agreements concluded by Romania, in the field of social security; the monthly base for the computation of the employment insurance contribution is represented by the gross earnings from salaries and salary-assimilated incomes;

Other amendments

- (i) the transposition into the Romanian legislation of the provisions of Directive 2016/1164/EU laying down rules against tax avoidance practices that directly affect the functioning of the internal market (ATAD) is ensured, and in this respect:
 - the rules regarding the deductibility of interest and exchange rate differences, for the purpose of determining the tax result, are amended;
 - transfers of assets, transfers of tax residence and transfers of business carried out through a permanent establishment, are subject to corporate profit tax in Romania;
 - a general anti-abuse rule is introduced, according to which, for the purpose of computing tax liabilities, the tax authorities shall not take into consideration an arrangement or a series of arrangements which, having regard all relevant facts and circumstances, are not genuine, being implemented for the main purpose or one of the main purposes of obtaining a tax advantage which defeats the object or scope of the applicable tax provisions;

- special rules are introduced in what regards the taxation of taxpayers which are subject to corporate profit tax and which control an entity or a permanent establishment which is deemed as foreign controlled company;
- (ii) in the value added tax (VAT) domain, it is explicitly regulated that tax authorities may refuse the right to deduct VAT only if they can prove, beyond any doubt, that the taxpayer knew or ought to have known that the transaction relied on as a basis for the deductibility right was connected with VAT fraud committed upstream or downstream in the supply chain.

Should you require any further information, please feel free to contact us:

Anca Grigorescu, LL.M.Eur

Partener

anca.grigorescu@bpv-grigorescu.com

Iulia Dragomir

Avocat senior

iulia.dragomir@bpv-grigorescu.com

bpv GRIGORESCU ȘTEFĂNICĂ

Str. Dionisie Lupu nr. 33

RO - 020021 București

Tel. +40 21 264 16 50

Fax +40 21 264 16 60

Web www.bpv-grigorescu.com

Disclaimer

This is an information service provided by **bpv GRIGORESCU ȘTEFĂNICĂ**. This material is for information purposes only and does not constitute legal advice. We recommend that you seek legal advice before taking or implementing any decision on the basis of the information contained in this material. We welcome your feedback and suggestions for improving this publication at any of the contact details listed above.