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Fiscal Bulletin



Summary:

1. Law No. 296/21.12.2020 amending and supplementing Law No. 227/2015 regarding the Fiscal Code, as amended by the Emergency Ordinance No. 226/31.12.2020 regarding certain tax-budgetary measures and for amending and completing certain normative acts and for extending some terms
2. Law No. 295/2020 amending and supplementing Law No. 207/2015 regarding the Fiscal Procedure Code, as well as approving certain tax-budgetary measures
3. Government Emergency Ordinance No. 226/31.12.2020 regarding certain tax-budgetary measures and for amending and completing certain normative acts and for extending some terms

Important amendments to the fiscal legislation

Several enactments published at the end of 2020 introduce important amendments to the Fiscal Code and the Fiscal Procedure Code, as well as other fiscal measures.

1. Amendments to the Fiscal Code

The Law No. 296/21.12.2020 amending and supplementing Law No. 227/2015 regarding the Fiscal Code (“**Law No. 296/2020**”) was published in the Official Gazette No. 1269/21.12.2020. It includes amendments extensively discussed and expected by the Romanian business environment.

All the changes entered into force starting with January 1, 2021, unless explicitly stated otherwise.

Below, we present the main changes.

- **General regulations**

The Law No. 296/2020 develops the concept of “**effective place of management**” in order to clarify the situations in which foreign legal entities are considered to have the place of effective management in Romania. This concept is relevant from the perspective of establishing a potential tax residence in Romania of the respective legal entities, which, in

this situation, will be achieved by submitting a questionnaire to the tax authorities in Romania.

It is clarified the definition of **affiliated parties** for cases in which a third person holds directly or indirectly shares in the two persons concerned (amendment applicable as of December 24, 2020).

- **Corporate income tax**

The **fiscal consolidation** system for corporate income tax purposes and the concept of tax group are introduced and regulated. Therefore, the profits or losses of the companies forming the tax group will be accumulated and offset, if applicable, resulting in a net position of the entire Group. In this respect, a significant advantage is obtained by deducting losses from the profits of other members of the group, considerably improving the cash flow position of the group members. The Law No. 296/2020 also mentions the conditions that must be met in order to set up the tax group, the operating rules, the period of time for which the consolidation applies, the rules on carrying forward losses and the anti-abuse provisions.

Starting with January 1, 2022 (as the enter into force term was postponed by one year), it is allowed full deductibility of **provisions for impairment of receivables**, being eliminated the current 30% threshold. Therefore, starting with January 1, 2022, full deductibility is granted for the provisions/adjustments for impairment of receivables following the existing conditions (receivables must not be collected for more than 270 days, must be unsecured and not owed by an affiliate), a beneficial measure from the perspective of supporting the companies' financial flows.

Clarifications are provided on how to apply the **reinvested profit exemption**. Specifically, it is clarified that, in case of taxpayers who apply the quarterly corporate income tax regime, the exemption is granted at the level of the computed corporate income tax cumulated from the beginning of the year until the quarter in which the assets are commissioned. In case of taxpayers applying the annual corporate income tax system, the exemption shall be granted within the limit of the cumulative corporate income tax computed from the beginning of the year in which the assets are commissioned until the end of that year.

The Law No. 296/2020 also regulates the method of **taking over the fiscal losses** within certain reorganization operations involving micro-enterprises; such provisions regulate situations not covered by the legislation that would attract negative fiscal consequences (amendment applicable as of December 24, 2020).

It is specifically provided that the **expenses registered by employers with telework activities** are deductible when calculating the fiscal result (amendment applicable as of December 24, 2020). Given the exponential increase in the number of cases in which employees develop their activities in the telework regime, we welcome such clarification that these types of expenses can be deducted by employers.

Pursuing the objective of discouraging abusive tax practices at the international level, new provisions are introduced stating that any expenses related to **transactions with persons located in states considered to be non-cooperating jurisdictions** are non-deductible expenses when calculating the tax result.

It is also regulated the tax treatment of **expenses recorded by the employers with the benefits granted to employees in equity instruments with settlement in shares**. Such expenses are considered deductible when calculating the tax result when actual granting the benefits, regardless of their tax treatment at the level of the employees (so far, this treatment was conditioned by the taxation regime of such benefits at the level of employees). The amendment is applicable as of December 24, 2020.

It is also regulated from a tax standpoint the **treatment of leasing contracts** for taxpayers who apply IFRS (amendments applicable as of December 24, 2020).

- **Income tax on micro-enterprises**

Dividend income is excluded from the taxable base. Therefore, similar rules are provided regarding the non-taxation of dividend income, regardless of whether they are received by a Romanian legal entity paying profit tax or Romanian legal entities paying income tax on micro-enterprises (amendment applicable as of December 24, 2020).

- **Withholding tax**

The **deadline for submitting the informative declaration** regarding the withholding tax for income obtained by non-residents from Romania and the deadline for submitting the informative declaration regarding the gain/loss from transactions made by non-resident individuals with securities issued by Romanian residents, are modified from January 31 to the last day of February. The amendment entered into force as of December 24, 2020.

- **Income tax and social security contributions**

It is clarified that **gift vouchers** granted for marketing/ market research/ protocol/ advertising/ promotion purposes based on the nominal record of beneficiaries to persons who are not employees are considered income from other sources (thus separating this category of beneficiaries from the persons receiving such rights included in the category of salary income), being thus subject to 10% income tax.

It is provided that the amounts granted to employees developing their activities in **telework** regime for the purpose of covering related expenses are not taxable from a personal income tax point of view and not subject to social security contributions up to the amount of RON 400 per month.

The costs of **epidemiological testing or vaccination** of employees are also non-taxable and not subject to social security contributions.

In case of non-resident individuals who become residents in Romania, it is provided that they are subject to income tax for income obtained from any source, both in Romania and

outside Romania from the first day it is declared that their center of their **vital interests** is located in Romania (compared to the previous provision according to which the taxation in Romania intervened starting with the date from which they become residents in Romania).

Starting with obligations related to 2020, the term for filing the **sole statement** regarding income tax and social security contributions due by individuals, as well as the term for payment, is modified from March 15 in May 25.

- **VAT**

If invoices issued to individuals have not been collected within 12 months from the payment deadline, despite commercial/judicial measures taken, the issuer has **the possibility to settle the VAT collected** to the state budget within 5 years, starting from January 1 of the year following the payment deadline or the issuance of the invoice. The settlement can be also made if the non-collected invoices were issued during a period covered by a tax inspection, but the adjustment may trigger the re-verification of the respective fiscal period by the tax authorities.

The possibility of deducting VAT by the beneficiaries based on a **correction invoice** issued by the supplier is introduced, within one year from the date of receipt of the correction invoice, even if the prescription period has expired for the beneficiary (the amendment applicable as of December 24, 2020).

The conditions for the application of simplification measures for **energy supplies** are rewritten. Thus, also electricity producers (and not only traders) can benefit from reverse charge for the electricity invoices received. In addition, the reverse charge mechanism is introduced in the field of **natural gas supplies**. These amendments are applicable as of December 24, 2020.

No payment of VAT is made in customs for imports made by holders of the **deferred payment certificate**, this being issued if imports valued at least RON 50 million in the last 6 months (previously, the threshold was RON 100 million in the last 12 months). The procedure for obtaining the deferred payment certificate is regulated by a new Order of Ministry of Finance (No. 3225/31.12.2020).

Also, **no payment of VAT** is made in customs for imports subject to reverse charge mechanism when supplied locally (e.g. wood materials, grain, mobile phones, integrated circuit devices, game consoles, PCs, tablets, and laptops). Waste and residues were eliminated from the scope of this facility (by GEO No. 226/2020).

The **VAT cash accounting system** may be applied, optionally, by taxable persons which had in the previous year a turnover of less than EUR 1 million (previously, the threshold was EUR 500,000).

In the case of a **business transfer**, it is clarified that the recipient of the assets is considered the successor of the transferor for all VAT rights and obligations, not only regarding the adjustment of the VAT deduction right (amendment applicable as of December 24, 2020).

The possibility of deducting VAT for **alcoholic beverages and tobacco products** is explicitly regulated, provided that such goods are offered for advertising purposes or to stimulate sales or, more generally, for purposes related to economic activity (amendment applicable as of December 24, 2020).

As of April 1, 2021, taxable persons not established nor registered for VAT purposes in Romania may avoid the VAT registration in Romania by appointing a **fiscal representative** to fulfill its VAT obligations in case of imports of goods in Romania followed by an exempt supply.

As of January 1, 2022 (given a one-year postponement), in what concerns the increase of the threshold for the application of the reduced VAT rate of 5% for the sale of housing to individuals up to the level of EUR 140,000, the exchange rate to be used for the conversion into lei shall be established as the exchange rate communicated by BNR valid on January 1 of each year.

- **Local taxes**

Both the wind turbine support towers and their foundations are considered buildings, for building tax purposes (amendment applicable as of December 24, 2020).

The taxable value of the building owned by legal entities is updated every 5 years based on a building evaluation report prepared by an authorized appraiser (previously the term was 3 years). The amendment is applicable as of December 24, 2020.

- **Excise duties**

To ensure compliance with the provisions of Directive 2011/64/UE and thus to avoid an infringement procedure against Romania, **the total excise duties for cigarettes** mentioned in Annex No. I to the Fiscal Code is increased from 533.97 RON/1,000 cigarettes to 546.21 RON/1,000 cigarettes. In addition, it is mentioned that the specific excise duties for cigarettes during the period 1 January 2021 - 31 March 2021 is of 418.76 RON/1,000 cigarettes.

For **distance sales of excise goods** released for consumption in other member state it is specified that the payment of excise duties shall be performed in the first working day following the day in which the excise goods have been received (amendment applicable as of December 24, 2020).

The **analysis of the guarantees** needed to be submitted by the authorized warehouse keepers, registered consignees or consignors and authorized importers, which has to be performed in order to reflect any changes in the business volume or in the level of the applicable excise duties, shall be performed annually or each time such analysis is necessary. In addition, it is clarified that the said analysis shall be performed by the competent authority (amendment applicable as of December 24, 2020).

2. Amendments brought to the Fiscal Procedure Code

The Law No. 295/21.12.2020 amending and supplementing Law No. 207/2015 regarding the Fiscal Procedure Code (“Law No. 295/2020”) was published in the Official Gazette No. 1266/21.12.2020. The date of entering into force of the amendments below depends on the specifics of each and must be analyzed on a case-by-case basis.

Below, we present the main changes:

- New situations are introduced for the cases where the fiscal administrative acts (e.g., tax assessment decision) are null:
 - the fiscal body does not present the arguments for not taking into consideration the previous opinion issued in writing or the solution adopted by the fiscal body or the court for similar situations concerning the same taxpayer, if the taxpayer has presented the respective opinion/solution to the fiscal body prior to the issuance of the fiscal administrative act.
 - the fiscal body does not comply with the conclusions of the appeal solution when issuing a new fiscal administrative act;
 - the issuance of the tax audit report and the tax assessment decision after the termination of the tax audit due to exceeding its maximum duration, without it being resumed according to law;
 - the fiscal body issues the tax audit report and the tax assessment decision in the situation where findings are made in connection with certain acts provided by the criminal law.
- The statute of limitations for the right to establish tax obligations is suspended for the period between the date of communication of the report of the criminal investigation bodies or of the report drawn up following the request of the criminal investigation bodies addressed to the tax authorities to perform findings on the facts which constitute breaches of the provisions and obligations that fall under their control and the date on which the solution to the criminal case becomes final.
- The tax registration number can also be used by taxpayers for fulfilling tax obligations prior to the date of obtaining the tax registration.
- The suspension of the tax audit can be decided by the head of the tax audit for new additional reasons:
 - to perform checks upon the other members of the tax group/the single tax group;
 - if the tax audit body is notified that a legal proceeding is pending against the taxpayer in relation to evidence regarding the tax base which is the

subject of the tax audit or where the financial-accounting documents of the taxpayer were collected by a criminal investigation body.

- The taxpayer can submit a tax appeal against the decision of suspending the tax audit.
- The head of the tax audit body may decide the recheck of certain types of tax obligations at the proposal of the tax audit body designated to perform the audit or at the request of the taxpayer, if the following cumulative conditions are met:
 - after the end of the tax audit, new information is available that was unknown at the time of the tax audit;
 - the additional data has an influence on the result of the tax audit.
- Late payment interest and penalties are not due for the amount paid on account of the principal tax liability if, prior to the establishment of the tax liabilities, the debtor has made a payment and the amount paid has not extinguished other obligations, established by:
 - tax returns submitted after the payment was made;
 - rectifying tax returns or tax decisions. The same tax treatment is valid if the outstanding tax obligations are closed through other legal means.
- The penalty for non-reporting is reduced with 75% if the amounts due are paid within the legal deadline, without the obligation for the taxpayer to submit a formal request.
- The right of the taxpayer to claim interest related to the amounts to be refunded or reimbursed is subject to a statute of limitation of 5 years, which starts with January 1 of the year following the one when:
 - the amounts to be refunded/reimbursed to the taxpayer have been paid/compensated;
 - the cancellation of the tax decision has become final;
 - the reimbursement has been admitted by the tax appeal body or by the court and the decision is final and binding.
- The competence for solving the tax appeals is moved from ANAF to the Ministry of Public Finance.
- The decision issued by the tax authority to solve the tax appeal may be reviewed by the competent body at the request of the taxpayer, in certain situations including: the failure to apply of legal provisions which would have fundamentally changed the solution, the issuance of a decision by the Central Tax Commission, the issuance of an interpretative decision by the Supreme Court or the issuance of a ECJ ruling relevant for the respective case.

3. Other amendments

The Government Emergency Ordinance No. 226/31.12.2020 regarding certain tax-budgetary measures and for amending and completing certain normative acts and for extending some terms amending (“**GEO No. 226/2020**”) was published in the Official Gazette No. 1332/31.12.2020.

All the changes entered into force starting with December 31, 2020 or January 1, 2021.

Below, we present the main changes in the fiscal field:

- In line with the new EU legislation, the following **VAT exemptions with deduction right** are introduced: COVID-19 testing kits and vaccines, as well as closely related services. Also, the intra-Community acquisitions of Remdesivir are exempted.
- VAT reimbursements in advance, subject to **subsequent tax audit**, introduced last spring, is postponed until March 31, 2021.
- The deadline until which the operators of **commercial vending machines** have the obligation to obtain fiscal electronic cash registers is postponed until December 31, 2021.
- The deadline to apply for **cancellation of the accessories** according to *GEO 69/2020 regarding certain fiscal-budgetary measures and for amendment of certain normative acts and the extension of certain terms* is postponed until March 31, 2021.
- The payers of specific tax in Horeca sector do not owe specific tax in 2021 for a period of 90 days starting with January 1, 2021.

Editors

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Our team comprises tax consultants previously working in management positions with Big Four companies and the Ministry of Finance. The group cooperates closely with the firm's lawyers specialising in administrative law, as well as contentious-administrative disputes.

Țuca Zbârcea & Asociații and Țuca Zbârcea & Asociații Tax S.R.L. are collaborating with **Andersen** in Romania.



Alexandru Cristea
Tax Partner
+4 037 413 61 15
alexandru.cristea@tuca.ro

TZ/A CONSULTANȚĂ
FISCALĂ

TAX ENTITY OF ȚUCA ZBÂRCEA & ASOCIAȚII

Șos. Nicolae Titulescu nr. 4-8
America House, Aripa de Vest, et. 8
Sector 1, 011141, București, România
T + 4 021 204 88 90
F + 4 021 204 88 99
E office@tuca.ro
www.tuca.ro/tax

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