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NEWSLETTER ROMANIA

EXPERT ADVICE

Issue:
September
2020

A summary of the latest fiscal news and legislative changes in Romania

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Approval of the procedure for cancellation of ancillary tax obligation

The procedure clarifies the ways in which debtors can benefit from the tax facilities provided by GEO 69/2020. Also, the forms used in the application of the procedure were published.

The following categories of ancillary payment obligations are subject to fiscal facilities:

- a. interest/delay increases;
- b. delay penalties/non-declaration penalties/penalties;
- c. any other ancillary payment obligations.

The payment related to some main budgetary obligations representing state aid to be recovered or funds due to the budget of the European Union is not postponed and cancelled if the institution or public authority that sent the executory title to the fiscal body for recovery must transfer to the budget European Union, according to the law, the respective ancillary obligations.

The procedure involves completing the following steps:

1. Submit a notification to the tax authority by 15 December 2020 at the latest. This notification is not mandatory, but has the effect of obtaining the deferral of payment of the accessories.
2. Issuance by the fiscal authority of the decision regarding the ancillary fiscal obligations/tax registration certificate (within 5 working days from the submission of the notification). The procedure also establishes the way of solving the eventual discrepancies between the taxpayer's records and the fiscal body's records (within 3 working days from the issuance of the certificate).
3. Issuing the decision to postpone the payment of ancillary fiscal obligations. From the date of issuance of the decision to defer payment of ancillary payment obligations, for ancillary

payment obligations that are subject to deferred payment:

- a. the enforcement procedure does not start or is suspended, as the case may be;
- b. the payment is not carried out until the date of solving the request for cancellation of the ancillary payments or until 15 December 2020 inclusive, as the case may be.



4. Submission of the request for cancellation of the ancillary payment obligations until 15 December 2020 inclusive. As an exception, in the case of tax obligations provided for in tax decisions, the application for cancellation of accessories must be filed after the extinction of the main tax obligations individualized in the tax decision issued as a result of tax inspection or verification of personal tax situation, but not later than 90 days upon the communication of the taxation decision.
5. The issuance of the decision to cancel the ancillary payment obligations or, as the case may be, the decision to reject the application (within 5 working days from the submission of the application).

(Order no. 2100/2020, published in the Official Gazette no.635/20.07.2020)

→ Fiscal novelties

Establishment of support measures for employees and employers



As of 24 July 2020, employees of companies whose activity has been suspended as a result of the epidemiological survey conducted by the territorial directorates of public health, shall receive benefits (technical unemployment) equal to 75 per cent of the basic salary corresponding to the job held, but not more than 75 per cent of the average gross earnings provided by law for 2020.

The allowance is borne by the unemployment insurance budget and is calculated for the number of days in which the activity was suspended.

This measure shall apply for the entire period during which the activity is suspended, but not later than 31 December 2020.

The tax treatment provided by the O.U.G. 30/2020 applied to such benefits, namely, these benefits are subject to social contributions (CAS 25 per cent, CASS 10 per cent) except for the employer's work insurance contribution (2.25 per cent). Also, the allowances are subject to the tax on income from salaries (10 per cent) with the application of the tax rule for income from salaries realized outside the basic function (without personal deductions).

Employees on sick leave cannot benefit from this allowance.

(Emergency Ordinance no. 120/2020, published in the Official Gazette no. 658/24.07.2020)

→ Fiscal novelties

Extending the scope of tax-exempt incomes made by individuals with disabilities

Starting with 9 July 2020, individuals with severe or accentuated disabilities will be exempted from paying income tax from the transfer of property

rights and its dismemberments by inheritance, regardless of the moment of debate of the succession.

(Law no. 104/2020, published in the Official Gazette no. 588/06.07.2020)

→ Fiscal novelties

News in the field of money laundering and terrorist financing

A. Exemption from the obligation to submit the declaration regarding the beneficial owner



In addition to the autonomous administrations, the national companies and majority or completely state owned companies are exempted from the obligation to submit the declaration regarding the real beneficiary and the legal persons constituted only by natural persons shareholders, when they are the only real beneficiaries. In the case of the latter, in the absence of filing the declaration regarding the beneficial owner, the National Office of the Trade Register is obliged to fill in ex officio the Register of real beneficiaries of companies based on documents accompanying the registration application or based on records held in case of already registered companies.

(Law no. 108/2020, published in the Official Gazette no. 588/06.07.2020)

B. Transposition into national law of Directive (EU) 2018/843



The new regulations bring a series of amendments/completions to Law 129/ 2019, regarding: the attributions of the authorities in applying this law, completing some definitions and defining new terms (financial institutions, virtual currencies, digital wallet provider, etc.), the real beneficiary, reporting entities (widening the scope), reporting obligations, customer awareness measures, designated person and internal procedures.

The most important changes/completions are the following:

Regarding the real beneficiary:

- The criteria for identifying the real beneficiaries also apply to **foreign corporate entities**;
- The first criterion for identifying the beneficial owner: holding, in the case of natural persons, 25 per cent plus one share or participating in the

capital of a company with more than 25 per cent no longer directly leads to the fulfilment of the first criterion of identification of the beneficial owner, **being an indication of the direct exercise of the property right**;

- Holding 25 per cent plus one share or participating in the capital of a company with more than 25 per cent by a foreign corporate entity, which is under the control of a natural person, or by several foreign corporate entities, which are is under the control of the same natural person, **is an indication of the indirect exercise of the property right**;
- If the real beneficiary cannot be identified based on the first criterion, the second criterion applies, namely: the real beneficiary may be the natural person holding a senior management position, namely: the administrator(s), the members of the board of directors/supervision, directors with powers delegated to the director/board of directors, members of the board of directors;

Regarding reporting obligations:

- Transactions with amounts in cash, in lei or in foreign currency, the minimum limit of which represents the equivalent in lei of 10,000 Euro, **including the connected operations**, are the subject of reporting to the Office. According to the new regulations, these are operations related to operations with fragmented value in instalments smaller than those indicated by law and that have common elements, such as the parties to the transaction, the actual beneficiaries, the nature of the transaction or the amounts involved.;
- The limit value for external transfers to and from accounts, in lei or foreign currency, including related transactions reported by credit institutions and financial institutions has decreased from 15,000 to 10,000 Euro.

(Emergency Ordinance no. 111/2020, published in the Official Gazette no. 620/15.07.20)

→ Fiscal novelties

News in the field of VAT

A. New provisions on VAT-registered economic operators from food waste control programs

It has been established that the transfer of goods by donation under the program to combat food waste is not a delivery of goods.

(Law no. 131/2020, published in the Official Gazette no. 623/15.07.2020)

B. New provisions on intra-Community deliveries and international and intra-Community transport

The normative act brings some clarifications and aligns the provisions of the MFP Order no. 103/2016, with the relevant European regulations and directives in the field of VAT, as well as with the Jurisprudence of the Court of Justice of the European Union. Among the main changes we mention:

- The exporter in the sense of VAT is defined as the supplier (provided in art. 1 letter d of the Instructions) who makes the deliveries (stipulated in art. 1 letter e of the Instructions), as well as the person transporting goods outside the European Union, in the absence of a commercial transaction (for example: transport of a stock of goods from Romania to a third country for economic activities; deliveries of goods with installation made by the supplier or another person on his account, on the territory of a foreign state European Union).
- The new deadline for submitting the documents to justify the tax exemption is a maximum of 150 calendar days from the date on which the tax-generating event occurred for the operation in question (old deadline: 90 calendar days).
- It is added, as a document based on which the VAT exemption is justified for the deliveries of goods shipped or transported outside the European Union by the supplier or by another person on his account (provided in art. 294 paragraph (1) let. a) of the Fiscal Code), in the case of excisable products moved under excise duty suspension using EMCS, the export report submitted to the consignor certifying that the excisable products have left the territory of the EU.

With regard to the justification for the VAT exemption applicable to suppliers who do not have or cannot have the status of exporter from a customs point of view, it is established that they must have the export customs declaration, in which their identification data and series and/or the number of the invoice issued by them for the delivery of the goods transported outside the European Union to be mentioned in box 44.

If the exit of the goods from the territory of the European Union cannot be justified with the documents provided in this law, the exporter can prove the actual exit of the goods from the territory of the European Union by other means of proof, as ruled by the Court of Justice of the European Union. In Case C-275/18 Milan Vins.

- Art. 45a of the Implementing Regulation (EU) no. 282/2011 of the Council from 15 March 2011, stipulates that, in the situation where the conditions from par. (1) letter a) [the invoice in which the registration code for VAT purposes assigned to the buyer in another Member State must be mentioned] and b) [documents certifying that the goods have been transported from Romania to another Member State, which may be different from the Member State who assigned the VAT registration code provided by the purchaser] of this Article, the goods are presumed to have been dispatched or transported from a Member State to a destination outside its territory but within the Community. In this case, the documents attesting that the goods were transported from Romania to another Member State are those provided in par. (1) and (3) of art. 45a of Regulation 282/2011

Important! It is expressly stated that in situations that do not fall within the presumption provided in art. 45a of Regulation 282/2011, the transport of goods from Romania to another Member State is justified according to the provisions of Order 2148/2020.

Clarifications are provided regarding the treatment of services performed in Romania on movable goods purchased or imported for processing in Romania and which are subsequently transported outside the European Union, as well as the essential conditions for exemption from these tax operations.

(Order no. 2148/2020, published in the Official Gazette no. 628/17.07.2020)

C. Electronic services – novelties regarding the registration procedure and VAT declaration

The normative act brings novelties regarding the registration procedure for the use of the special regime for electronic telecommunication, broadcasting or television services, as well as for the VAT declaration, the most important being:

- The taxable person not established in the European Union who opts for the use of the non-EU regime must also submit a declaration confirming that the person has not established their place of business in the European Union and do not have a permanent establishment in their territory. Before the amendment, the declaration confirms that the taxable person is not registered for VAT purposes in the European Union.
- A new situation has been established in which the taxable person no longer meets the necessary conditions for the use of the special regime, namely the taxable person, who uses the EU regime and who meets the conditions provided in art. 278 paragraph (8) of the Fiscal Code but does not opt for the place of performance to be established at the beneficiary (according to art. 278 paragraph (5) letter h) of the Fiscal Code).

For this purpose, the competent fiscal body identifies, with the help of the computer application, the taxable persons who use the Mini One Stop Shop regime and who, in the special VAT declarations, submitted in Romania, declared services whose total value, without VAT, does not exceed, in the current calendar year, 10,000 Euro (46,337 lei) and did not exceed this amount during

the previous calendar year. The persons thus selected are registered in the List of taxable persons who use the special regime of Mini One Stop Shop and who meet the conditions provided in art. 278 paragraph (8) of the Fiscal Code.

The selection is made between April 20 and 1 May of each year, based on the special VAT returns submitted for the previous year and for the first quarter of the year in which the selection is made.

The competent fiscal body notifies, by means of electronic messages, the taxable persons who are included in the list, regarding their right to choose that the place of provision of services be established to the beneficiary (according to art. 278 paragraph (5) letter h) of Tax code).

The option is exercised by submitting the form (085) "Option regarding the application/termination of the application of the provisions of art. 278 paragraph (5) letter h) of Law no. 227/2015 on the Fiscal Code", within 15 days from the receipt of the notification.

Taxable persons who, following notification, choose to provide telecommunications, broadcasting, television and electronically supplied services, for which the place of supply is to the beneficiary, are eligible for the continued use of the special regime.

Taxable persons who do not submit the form 085, no longer meet the conditions for the application of the special regime, the place of supply being considered to be at the provider. In such a situation, the information on the value and VAT related to the operations is entered in the form (300) "Value added tax return".

(Order no. 3039/2020, published in the Official Gazette no. 684/31.07.2020)

→ Fiscal novelties

Extension of the deadline for submitting accounting reports to June 30, 2020



The accounting reports as of June 30, 2020 shall be submitted to the fiscal authorities until 30 September 2020 at the latest. Failure to comply with this term constitutes a contravention, sanctioned according to the provisions of art. 42 of the Accounting Law no. 82/1991 (depending on the delay period, the fine is between 300-4,500 lei).

The accounting reporting system as of June 30, 2020 applies both to the entities affected by the Accounting Regulations regarding the individual annual financial statements and the consolidated annual financial statements,

approved by Order no. 1.802/2014, and to the persons affected by the Accounting Regulations in accordance with International Financial Reporting Standards, approved by Order no. 2.844/2016 and which in the previous financial year registered a turnover higher than 220,000 lei.

The new regulations also apply to economic operators whose financial year is different from the calendar year.

(Order no. 2206/2020, published in the Official Gazette no. 675/30.07.2020)

→ Fiscal novelties

Amendments to the State aid scheme for supporting the activity of SMEs

Amendments to the term “beneficiary of the program” which will be a small and medium enterprise carrying out economic activity, authorized according to the legal provisions to carry out production, trade or service activities, in order to obtain income, under the conditions of fair competition, respectively regulated companies of Company Law, cooperatives, authorized natural persons, sole proprietors of an individual enterprise and family enterprises, authorized according to the legal provisions in force, carrying out economic activities, as well as non-governmental organizations, associations and foundations, agricultural cooperatives and agricultural companies carrying out economic activities.

It is repealed from the list of definitions related to the Convention the “Application form for

agreement in principle for financing” and “Transit account”.

The applicant shall provide collateral to the credit institution, and, in the case of investment loans, together with the state guarantee and the legal real estate and/or movable mortgage on the assets financed from the loan, covering 100 per cent of the financing amount, in proportion to the percentage of Guarantee.

In the case of loans/lines of credit intended for financing for working capital, a legal mortgage is established on the credit balances of all accounts opened by the beneficiary of the program at the financing credit institution, in proportion to the guarantee percentage.

At the same time, in the case of investment loans, the state guarantee is guaranteed with the legal real estate and/or

movable mortgage on the assets financed from the loan, proportionally to the guarantee per centage.

The applicant shall be informed of the decision to grant the investment loan and/or one or more working capital loans/lines of credit as State aid in the form of loan guarantees or in the form of a grant, within 14 calendar days of the submission of the application for support facilities for small and medium-sized enterprises.

Within a maximum of 4 working days from the transmission of the Notice of Approval, the F.N.G.C.I.M.M. send to the credit institution the Financing Agreement and the Guarantee

Agreement, for the purpose of signing, in at least 4 (four) original copies depending on the number of signatories.

New model documents are provided for the annexes to the Guarantee Convention:

- Warranty request / Warranty extension;
- Declaration of liability;
- Financing agreement.

(Order no. 2068/2020, published in the Official Gazette no. 586/03.07.2020)

→ Labour Law

Approval of the Electronic Register of day labourers



As of 25 July 2020, the beneficiaries of the activities carried out by day labourers have the obligation to keep records of day labourers in the **"Electronic Register of Day labourers"** (Register of day labourers).

The normative act establishes the methodology for drawing up and transmitting the Register, as well as the registrations that are made in it.

For the establishment of the Register, the Beneficiary obtains the username and password from the territorial labour inspectorate (ITM) in whose territorial area it has its headquarters. For this purpose, submit to the competent ITM headquarters or send by e-mail a written request (Annex no. 1 to the Order) accompanied by a series of documents.

The register shall be filled out by the Beneficiary or by one or more authorized persons using the computer application for mobile devices "Labour Inspection", in accordance with the instructions for use obtained from the website of the Labour Inspectorate.

The register can be filled out and submitted by users through the web application in the Labour Inspection portal.

The mobile computer application is available, free of charge, depending on the operating system of the mobile device, by

accessing the PlayStore or AppStore applications and the web application is accessible from the browser at <https://www.inspectiamuncii.ro/>.

In order to complete and transmit the Register through the "Labour Inspection" application, the authorized person must electronically request and obtain the access authorization from the Beneficiary.

The authorization of the access of the authorized person who filled out and sent the electronic authorization request is made by the Beneficiary from the Labour Inspection portal (<https://www.inspectiamuncii.ro/>), where he authenticates with the username and password obtained from the competent ITM.

The electronic authorization is obtained after downloading and installing the application "Labour Inspection", by sending the application for authorization, called "Access Authorization", filled out in advance.

The deadlines for completing and submitting the Register are set as follows:

- a. daily, before the start of the activity of each person to be in an employment relationship with the Beneficiary;
- b. monthly, for day labourers performing activities in the fields of agriculture, forestry, viticulture, orchards, vegetables, floriculture, fishing, animal husbandry in an extensive system through the seasonal grazing of cattle, horses, seasonal activities in botanical gardens, etc.

The beneficiary and/or the proxy have the obligation to keep the electronic Register of day labourers by archiving the previously filled out and sent extracts from the Register.

(Order no. 1140/2020, published in the Official Gazette no. 651/23.07.2020)

→ Labour law

Approval of the unique model of the medical leave certificate

Compared to the old medical leave certificate, we point out the following, more important changes:

- The "registered family physician" box has been removed. Thus, the approval of the family physician is no longer necessary;
- The stamp of the issuing health unit is no longer mandatory;
- The indemnity code 9.1 "care for a sick child with serious illnesses up to 16 years old" has been included
- The CNP of the sick child was included

The new model of the medical leave **applies from 2 July 2020** with the specification that the old forms are still used until the exhaustion of the existing stock, but **not later than 30 September 2020**.

The old forms are issued without the application of the stamp of the issuing health unit, and in situations where they are granted for the care of a sick child, the attending physician will enter the personal numerical code of the child for whom the certificate is granted.

(Order no. 1092/745/2020, published in the Official Gazette no. 583/02.07.2020)

→ Labour law

How to apply measures to prevent and limit the spread of infectious diseases in Romania

One of the most important measures is that of quarantining and isolating people in accordance with the law. During these measures, the persons concerned are entitled to sick leave.

The leave and the indemnity for quarantine are granted to the insured persons who are forbidden to continue the activity, which cannot be performed from home, due to a suspicion of a contagious disease, for the duration established by the certificate issued by the public health directorate. The certificate issued by the specialized bodies of the public health directorates means the decision to confirm the quarantine and the decisions to confirm or extend the isolation.

The medical leave certificate for quarantine is issued by the attending physician, based on the certificate issued by the specialized bodies of the public health directorates.

In case of quarantine or isolation, medical leave certificates may be issued at a later date, but only for the current month or the previous month.

If the duration of the quarantine or isolation period exceeds 90 days, the opinion of the social security expert is not required.

The gross monthly amount of the quarantine or isolation allowance **represents 100 per cent of the calculation base established according to the law and is fully supported from the budget of the Single National Health Insurance Fund.**

(Law no. 136/2020, published in the Official Gazette no. 634/18.07.2020)

(Order no. 1309/2020, published in the Official Gazette no. 642/22.07.2020)

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Imprint

Newsletter Romania | September 2020

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