

19 December 2023

Fiscal Bulletin



Content:

1. **Governmental Emergency Ordinance no. 115/2023 on some fiscal-budgetary measures in the field of public expenditure, for tax consolidation, for combating tax evasion, for amending and supplementing some normative acts and for extending some deadlines**

Minimum turnover tax ("IMCA") and additional tax for the oil and gas sector - in force starting with 1 January 2024

- The GEO brings clarifications regarding the method of computing the Vs indicator in the IMCA and the additional tax for the oil and gas sector formula. More specifically, in the reference to the income from the production of tangible and intangible fixed assets included in the calculation of the Vs indicator, the phrase "*not included in indicator I*" is deleted;
- The GEO clarifies how to determine the turnover for the tax group. Thus, the turnover of more than 50 million Euros is computed by the responsible legal person by aggregating the turnover of the members of the tax group;
- A rule is introduced for the disposal of constructions in progress/assets taken into account in the computation of IMCA and the additional tax for the oil and gas sector by introducing an obligation to keep such constructions in progress/assets in the patrimony for at least half of the duration of economic use, as determined according to the applicable accounting regulations, but not more than 5 years. If this condition is not met, the IMCA/additional tax for the oil and gas sector is recalculated. There are certain exceptions to this rule (e.g. if assets are transferred under a reorganisation process; disposed of in liquidation or bankruptcy proceedings; destroyed, lost, stolen; removed from the patrimony as a result of the fulfilment of legal obligations).

Relevant changes for corporate tax payers - in force starting with 1 January 2024

Deductibility of certain expenses

- The following expenses will be included in the category of social expenses deductible up to a limit of 5% applied to the amount of salary expenses:
 - Expenditure on the functioning of nurseries and kindergartens;
 - Amounts paid by the employer for the placement of children of employees in early education units, but not more than 1,500 lei/month/child;
- Taxpayers may spend up to 1,500 lei per scholarship on private scholarships (these are no longer deducted from the corporate income tax as sponsorships or acts of patronage). Expenses with private scholarships are added to social expenses and the resulting amount is deducted up to a limit of 5% applied to the amount of salary expenses;
- The GEO limits the deductibility of the following expenses:
 - Expenses on the functioning/maintenance of work housing - for the purposes of computing the deductibility limit, the built-up area provided for in the Law on housing no. 114/1996 is no longer increased for tax purposes by 10%;
 - Expenses on the functioning/maintenance of an office located in a dwelling private property owned by an individual and used for personal purposes as well, will be deductible at the rate of 50%;
 - Expenses on the functioning/maintenance of the registered office acquired in residential complexes, which is not used exclusively for business purposes, and the related depreciation, will be deductible at the rate of 50%. If the registered office is used for the personal use of the shareholders, the functioning/maintenance expenses and related depreciation are not deductible for computing the taxable income;
 - Adjustments for depreciation of receivables incurred from January 2024 onwards will be deductible up to 30% (currently, the limit is 50%);
 - Excess borrowing costs resulting from transactions/operations (other than those financing the acquisition/production of constructions in progress/assets taken into account for the computation of IMCA) carried out with related parties are deductible, in a taxable period, up to the limit of 500,000 Euros. The total excess borrowing costs resulting

from transactions/operations carried out with both the respective related parties and with non-affiliated parties, which can be deducted in a taxable period, may not exceed the deductible limit of 1 million Euros. Transitional rules are provided for excess borrowing costs carried forward to 31 December 2023, i.e. they are allocated to the deductible limit of 1 million Euros for subsequent tax years.

Recovery of tax losses

- Annual tax losses set out in the corporate income tax return, starting with 2024/amended tax year beginning in 2024, as applicable, shall be recovered from the taxable profits, up to the limit of 70% inclusive, over the next 5 consecutive years. Recovery of losses will be made in the order in which they are incurred, at each corporate income tax payment date.

Other relevant changes

- The redirection of corporate income tax for sponsorship activities is limited until the deadlines for filing the annual corporate income tax return (currently, the deferral can be made within a maximum of 6 months from the date of filing the annual corporate income tax return);
- Costs incurred with the purchase of cash registers will no longer be deducted from the corporate income tax due;
- The tax exemption for reinvested profits will also apply to purchases of cash registers.

Micro-enterprise income tax - in force starting with 1 January 2024

- The condition for ownership of micro-enterprises is amended. Thus, shareholders will now be able to have direct or indirect holdings of more than 25% in a single micro-enterprise. If shareholders have direct or indirect holdings of more than 25% in more than one company, by 31 March 2024, they must choose the legal entity that will apply the micro-enterprise regime;
- A new condition for the application of the micro-enterprise regime is introduced, namely the timely submission of annual financial statements. If the micro-enterprise does not submit the financial statements on time for the previous financial year, it owes corporate income tax from the quarter in which this condition is no longer met. Transitional provisions are provided for 2024 and the financial statements must be filed by 31 March 2024;

- The annual revenues limit of 500,000 Euros applicable to the micro-enterprise regime is verified by taking into account the revenues earned by the micro-enterprise, cumulated with the income of "connected" enterprises under Law no. 346/2004 on the stimulation of the establishment and development of small and medium-sized enterprises;
- HoReCa companies will apply the general rules of the tax system for micro-enterprises;
- Redirecting the micro-enterprise tax for sponsorship activities and scholarships will no longer be possible;
- The last year in which sponsorships/scholarships and the purchase of cash registers remaining to be carried forward can be deducted is tax year 2023.

Main amendments related to income tax - in force with 1 January 2024

Salary income

- Amounts paid to teleworking employees to support utility expenses/purchase of office furniture and office equipment at the place where they conduct the activities will become taxable for income tax and mandatory contributions;
- The value of the subscriptions for the use of sports facilities included in non-taxable income up to a monthly ceiling of 33% of the basic salary will be limited to the equivalent in lei of 100 Euros/year per person (currently, the limit is 400 Euros);
- The category of non-taxable income up to a monthly ceiling of 33% of the basic salary will include (i) amounts paid to employees for the placement of children in early education units up to a limit of 1,500 lei/child and (ii) the favourable difference between the preferential interest rate established by negotiation and the market interest rate for loans and deposits;
- For the income related to the period January-December 2024, no income tax and mandatory contributions are due on the amount of 200 lei/month representing income from salaries, if (i) the level of the gross monthly basic salary established according to the employment contract, without bonuses and other allowances, is equal to the level of the gross minimum salary per country guaranteed in payment, in force in the month to which the income relates; and (ii) the gross income from salaries and assimilated to salaries, under the same employment contract, for the same month, does not exceed the level of 4,000 lei inclusive;

- Clarification is provided on the application of the tax exemption in IT/agriculture/constructions sectors for individuals who obtain income from salaries for a fraction of a month, in their base job, with one or, as the case may be, several employers successively.

Self-employment income

- Sponsorships and acts of patronage are removed from the category of limited deductible expenses, representing non-deductible expenses;
- Expenses representing cost of subscriptions for the use of sports facilities will be deductible up to the equivalent in lei of 100 Euros per year.

Rental income

- Rental income obtained from more than 5 rental agreements will no longer be included in the category of self-employment income. This eliminates the determination of the annual net rental income under the income and revenues system;
- Legal persons or other entities required to conduct accounting activities, paying rental income, will be required to compute, withhold, declare and pay the tax corresponding to the amounts paid.

Other changes

- The annual tax loss for certain types of income (i.e. securities operations, self-employment activities, intellectual property rights, agricultural activities, forestry, fish farming) is carried forward and offset by the taxpayer up to 70% of the annual net income from the same source of income in the following 5 consecutive tax years;
- When determining the annual tax due, the acquisition cost of the cash registers will no longer be deducted. The amounts representing the acquisition of cash registers put into operation in 2023 shall be deducted from the annual income tax due for 2023;
- The possibility for taxpayers to redirect an amount of up to 3.5% of their income tax to support non-profit entities or to grant private scholarships remains valid only for income from wages and salaries (starting with income from 2024).

Value-added tax

- A 50% limitation is introduced on the right to deduct VAT for the acquisitions, rental or leasing of buildings/living spaces, located in residential areas or in housing blocks, as well as the VAT related to expenses related to these

buildings/living spaces, if they are not used exclusively for the purpose of economic activity (mixed business and private use). This provision enters into force starting from the 1st of the month following the date from which Romania is authorized to apply a special measure derogating from the provisions of the VAT Directive;

- As far as imports are concerned, beginning 1 January 2024, the facility to postpone the payment of VAT to customs for taxable persons holding an authorized economic operator (AEO) certificate is eliminated;
- Separately, in order to obtain the VAT deferral certificate at customs, the taxpayer must not register outstanding fiscal obligations administered by ANAF or any other individualized budget claims in enforceable titles issued according to the law and existing in the records of the central fiscal body for recovery. Also in this sense, it is stipulated that for certain outstanding budgetary obligations, the applicants must make available to the customs authority a declaration on their own responsibility according to which they do not register such obligations.

E-Invoice

- In addition to intra-Community supplies and exports, new exceptions from the obligation to submit in the RO e-Invoice system are introduced, as follows:
 - simplified invoices;
 - invoices issued for operations carried out to taxable persons not established and not registered for VAT purposes in Romania.
 - invoices that are not subject to Romanian invoicing rules;
- The maximum deadline for sending invoices in the e-Invoice system is changed: from 5 working days to 5 calendar days. If the maximum submission deadline is exceeded, the new ordinance provides for the period starting from 1 July 2024, contraventions similar to those applicable from 1 April to 30 June, as follows:
 - fine from 5,000 lei to 10,000 lei for legal entities classified as large taxpayers;
 - fine from 2,500 lei to 5,000 lei, for legal entities classified as medium taxpayers;
 - fine from 1,000 lei to 2,500 lei, for other legal entities, as well as for natural persons;

- Contraventions are also introduced for both the supplier and the beneficiary if they issue/receive and register invoices for transactions subject to the obligation to use the e-Invoice system, but which were not created through this system. The contravention consists in the application of a fine equal to 15% of the total value of the invoice and is applicable from 1 July 2024.

E-Transport system

- Through the new ordinance, several terms related to the operation of the e-Transport system are redefined. Thus, the road transport on the national territory of goods with a high fiscal risk will mean the road transport at the national level on public roads, having the point of departure and the point of arrival on the territory of Romania, of the goods established as belonging to the category of those with a high fiscal risk, regardless of the way of organizing the transport;
- Similarly, the international road transport of goods shall mean the road transport of goods from the territory of a Member State or from the territory of a third country to the national territory and the transport of goods initiated on the national territory to the territory of a Member State or to the territory of a third country;
- Art. 4 of GEO 41/2022 regarding the introduction of the components that are part of the RO e-Transport System is completed as follows:
 - Art. 4 paragraph (1) letter a¹) computer modules provided free of charge to the transport organizer by the National Center for Financial Information within the Ministry of Finance, to provide information on the positioning of the means of transport through the use of telecommunications terminal devices;
 - Art. 4 paragraph (1) letter b¹) devices that transmit geo-location data of the means of transport, telecommunication terminal type devices that use positioning technologies and satellite data transmission, on which the software provided by the National Center for Financial Information is installed, used for monitoring the transport route of the goods;
- In order to ensure the transmission of vehicle positioning data, additional responsibilities have been established, as follows:
 - The road transport operator is obliged to equip the transport vehicle with telecommunication terminal devices that use positioning

- technologies and satellite data transmission, in the situation where the transport vehicle is not equipped with its own positioning equipment;
- The driver of the means of transport has the obligation to turn on the positioning device before the start of the transport on the national territory and to keep it in operation until the place of delivery declared on the national territory or after leaving the national territory;
 - Additional obligations are established for the transport operator to make available to the driver the UIT code received according to the provisions of art. 8 paragraph (2) of GEO no. 41/2022 and the driver of the transport vehicle to present this code at the request of the competent bodies;
 - Failure to comply with the above provisions constitutes a misdemeanour and will be sanctioned with a fine from 10,000 lei to 50,000 lei in the case of natural persons or with a fine from 20,000 lei to 100,000 lei in the case of legal persons, as well as confiscation of the value of the undeclared goods in certain situations;
 - Although the obligations stipulated in this amendment of GEO 41/2022 enter into force on the date of publication in the Official Gazette, sanctions will be applicable starting from 1 July 2024.

Excise duties

- In article 439 para. (4) of the Fiscal Code, sugars from unsweetened fruit juices, fruit juice concentrate and fruit purees are removed from the definition of added sugar beginning 1 January 2024;
- In 2024, the level of excise duties for diesel and gasoline is updated with the increase in consumer prices from the last 12 months, calculated in September 2023, compared to the period October 2014 - September 2015, as follows:
 - starting from 1 January 2024, with 50% of the increase in consumer prices;
 - starting from 1 July 2024, with 50% of the increase in consumer prices;
- Regarding the certificate of certified consignee/certified sender, it is stipulated that it will be valid from the date of issue, after the application for registration as certified consignee/certified consignor has been approved;
- Economic operators who produce and sell in Romania the products provided for in art. 439 Fiscal Code (products containing tobacco, liquids with or without nicotine intended for inhalation without burning, products intended for

inhalation without burning, containing tobacco substitutes, non-alcoholic beverages with added sugar for which the total sugar level is over 5 g/100 ml) will have the obligation to clearly highlight the excise duties in the invoice in the situation where they have the obligation to issue the invoice according to art. 319.

Accounting Law (Law no. 82/1991) - in force with 15 December 2023

- Non-profit legal entities that have received amounts representing grants, sponsorships, amounts redirected from corporate income tax, microenterprise tax, respectively from income tax due by individuals, as well as other similar forms of financing, regardless of their cumulative amount, must draft a statement accompanying the annual financial statements and highlighting the amounts thus received, starting with the annual financial statements for the financial year 2023. Failure to do so constitutes an offence and is punishable by a fine of between 20,000 lei and 30,000 lei;
- Fines are increased for contraventions provided for by the Accounting Law (e.g. for holding assets/debts and carrying out economic-financial operations without being recorded in the accounts, the fine is increased from the range of 1,000 lei - 10,000 lei to 2,000 lei - 20,000 lei; for failure to comply with the regulations on carrying out an inventory, the fine is increased from the range of 400 lei - 5,000 lei to 3,000 lei - 20,000 lei, etc.).

Strengthening financial discipline on cash receipts and payments (Law no. 70/2015)

- Two new concepts are introduced in Law no. 70/2015, namely “supermarkets” and “hypermarkets”, which are defined as provided for in Government Ordinance no. 99/2000;
- The limit for advances for settlement is increased from 1,000 lei to 5,000 lei;
- The daily limit for cash amounts in the cashier of cash&carry stores, supermarkets and hypermarkets is increased from 50,000 lei to 500,000 lei;
- It is clarified that branches and other secondary offices of legal entities that have their own cashier and/or an account with a credit institution shall apply the cash transaction limits set out in Law no. 70/2015 for each cashier;
- The above provisions shall enter into force on 15 December 2023;

- It is clarified that receipts and payments between professionals (legal entities/PFA/II, etc.) and natural persons for the receipt or repayment of loans or other financing, irrespective of their nature and purpose, shall be made only by non-cash payment instruments. As of 25 December 2023, failure to comply with these provisions constitutes a contravention (if the act has not been committed under such conditions as to constitute a criminal offence under the criminal law) and is punishable by a fine of 25% of the amount received/paid, but not less than 500 lei.

Editors

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



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



Ramona Chițu (Moisa)
Tax Partner
+4 021 204 88 90
ramona.moisa@tuca.ro



Cristian Velcu
Tax Partner
+4 0730 077 939
cristian.velcu@tuca.ro

TZA CONSULTANȚĂ
FISCALĂ

TAX ENTITY OF ȚUCA ZBÂRCEA & ASOCIAȚII

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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