



In this number:

The Parliament of Romania adopted two draft laws for the amendment of the Fiscal Code and the Fiscal Procedure Code

On November 24th, 2020, the Chamber of Deputies adopted the [Draft Law PL-x 478/2019](#) for the amendment and completion of Law no. 227/2015 regarding the Fiscal Code and the [Draft Law PL-x 477/2019](#) for the amendment and completion of Law no. 207/2015 on the Fiscal Procedure Code and Law no. 227/2015 on the Fiscal Code, as well as for the approval of some fiscal and budgetary measures.

These draft laws mainly concern aspects related to the definition of certain terms, the corporate income tax, the value added tax, excise duties, the microenterprise tax, the tax on the income obtained in Romania by non-residents or local taxes and duties, as well as tax procedure aspects, out of which the most important aspect were in legislative procedure for more than 3 years.

The Government regulates the residence and entry rights in Romania applicable in case of a Brexit with Agreement

On November 25, 2020, the Emergency Ordinance no. 204/2020 on the establishment measures for the implementation of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, regarding the regulations of the entrance right and stay in Romania was published in the Official Gazette no. 1132/25.11.2020.

Amendments to Law no. 227/2015 regarding the Fiscal Code and Law no. 207/2015 regarding the Fiscal Procedure Code

[Draft Law PL-x 478/2019 for the amendment and completion of Law no. 227/2015 regarding the Fiscal Code](#)

General provisions

- The amendment of the definition of fiscal residence, of the place of effective management and the introduction of a detailed procedure regarding the establishment of the fiscal residence in Romania of foreign legal entities with the place of effective management in Romania.
- Introduces an update to one of the conditions on the basis of which the affiliation relationship is established. This amendment clarifies the previous definition regarding the existence of the affiliation relationship between two legal entities that are owned / controlled by the same legal entity.
- The amendment of the definitions for *participation titles* and *affiliated persons*.
- In the case of incomes obtained from Romania by non-residents, the phrase *Romanian legal entity* is replaced by the term **resident**.

Individual taxation

Tax residency

- Romanian non-resident individuals whose presence in Romania exceeds 183 days in any twelve month period commencing or ending in the fiscal year concerned is liable to pay income tax in Romania on the worldwide income **starting with the first day he declares his the center of vital interests is in Romania**. The individual is subject to income tax **starting with the first day of arrival in Romania**;
- It is clarified that the **electronic or online** tax residency certificate issued by a foreign tax authority represents the original tax residency certificate for application of the Convention for the avoidance of double taxation, respectively for implementing of the EU legislation.

Salary income and salary assimilated income

- Considering that the individual assigned to Romania has the obligation to declare the income tax due, the obligation to declare the benefits paid by the Romanian host company (e.g., children school fees) will remain the responsibility of the individual;
- The obligation to declare and pay is clearly delimited in case of benefits in cash and/or in kind received from third parties. Thus, the liability to compute, withhold and pay the social security contributions due according to the Romanian legislation stays with **the Romanian resident taxpayers**, if the following condition is met:
 - benefits in kind and in cash are granted by other entities than employer, except for the situation of individuals who obtain salary income and salary assimilated income in Romania as a result of employment contracts concluded with employers who do not have headquarters, permanent establishment or representation in Romania.

The following shall be added to the list of income which is not taxable from an income tax perspective and is not included in the monthly basis for computation of the social security contributions:

- Aid for adoption;
- The equivalent value of the tourist and/ or treatment services is established at a non-taxable level equal to the average salary gross income used to substantiate the Romanian social insurance budget for the year in which those were granted;
- Benefits in kind granted, **during the state of alert**, to the individuals who are occupying positions considered by the employer/ payer essential for carrying out the activity and which are in preventive isolation at work or in specially dedicated areas to which other persons do not have access, for a period set by the employer/ payer;

- Amounts granted to the employees engaged in telework activities to support utility expenses at the place where employees work, such as electricity, heating, water and internet data subscription, and the purchase of office furniture and equipment, within the limits set by the employer under the employment contract or the internal regulation, within the limit of a **monthly basis of RON 400** corresponding to the number of days in the month in which the employees carried out the activity in telework regime;
- Costs with epidemiological testing and/ or vaccination of the employees to prevent the spread of diseases threatening the health of employees and the public;
- Amounts paid by the employer for the early education of employees' children (i.e., these are subject to income tax and are exempted only for social security contributions).

Special provisions for construction sector

- Incentives granted for the income obtained from construction field and for the mandatory social contributions are extended. Thus, all individuals who obtain income from salaries and assimilated to salaries for the period up to December 31, 2028, including, from employers working in the construction field, **regardless of the legal relationship that are generating their income**, the following tax incentives are granted:
 - reducing the social security contribution rates by 3.75 percentage points;
 - exemption from paying the health insurance contribution.

Income arising from transfer of securities

- Clarifications are provided regarding the definition of the income from Romania from the transfer of securities. Respectively, these are considered to be obtained from Romania, regardless of whether the income from operations with derivative financial instruments, realized through an **intermediary, Romanian tax resident** to which the individual has opened an account and are received in Romania or abroad;
- The deadline by which the intermediaries, investment management companies or self-managed investment companies (including non-resident individuals who obtain income from the transfer of securities issued by Romanian tax residents) are liable to:
 - submit annually to the competent tax authority a statement on the total gains / losses, for each taxpayer and at the same time
 - to submit in writing to each taxpayer, the information on the total gains / losses for the transactions carried out during the previous fiscal yearis amended.

The deadline of January 31 changes in **the last day of February**, inclusive.
- The same deadline is amended and is applied by the income taxpayers with withholding tax (with certain exceptions) who are liable to submit a tax return regarding the calculation and the income tax withholding for each beneficiary of income to the competent tax authority.

Rental income

- The method of determining the annual net income when the rent is equivalent in RON of a currency is simplified. Thus, the **actual** annual gross income is determined on the basis of the monthly rent assessed at the **average annual exchange rate** of the foreign exchange market communicated by the National Bank of Romania, from the year of income was obtained;
- For contracts in which the rent represents the equivalent in RON of an amount in foreign currency, the determination of the **estimated** annual net income is made on the basis of **the exchange rate of the foreign exchange market**, communicated by the National Bank of Romania, **during the day before the annual tax return is submitted**;
- It is considered rental income the income obtained from tourism which was obtained by the owner from renting purposes of rooms located in private housing, regardless of the number of homes in which they are situated;

- For taxpayers who derive income from rental for tourism purposes of more than 5 rooms there is no liability to notify the competent tax authority event or exceeding the number of five rooms for rent. The individuals are liable to submit an annual tax return and pay income tax and social security contributions until May 25 of the following year the income is obtained.

Other tax provisions that bring clarifications / amendments regarding the following aspects:

- The deadline for submitting the annual tax return and paying the income tax and social security contributions due changes to **25th of May of the following year**, inclusive, the initial deadline was established on 15th of March
- Non-taxable income from awards also includes commercial **price reductions** granted to individuals;
- For the purpose of computing the health insurance contribution base, clarifications are provided regarding the inclusion of investment income in the annual threshold of 12 minimum gross salaries, in force at the date of the annual tax return submission: the **net** income from investments (not the gross one) will be considered.

Corporate income tax

- Clarifications regarding the applicability of the corporate income tax exemption related to the investments made by a taxpayer will be granted within the limit of the corporate income tax computed **cumulatively** from the beginning of the year until the quarter when the assets are put into function or until the end of the respective year in the case of taxpayers who apply the annual tax declaration and payment system.
- Specific mentions regarding the correlation of the provisions regarding reinvested profit facility and tax credit for the acquisition of cash registers: the tax facility regarding the reinvested profit cannot be applied for the cash registers for which the provisions of Law 153/2020 apply.
- For the taxpayers who already applied the reinvested profit facility in the past, the exempt profit will be added back to the taxable profit of year 2020.
- The amount of the profit for which the taxpayer benefited from tax exemption as per the reinvested profit facility, less the part related to the legal reserve, could be distributed at reserves also during the following year, not only until the end of the financial year.
- Also in relation to cash registers, depreciation expenses for the cash registers for which the provisions of art. 25, para. 4, letter t) introduced through Law 153/2020, are non-deductible expenses for the computation of the corporate tax result.
- New deductible expenses are introduced. Specifically, expenses incurred by the employer in relation to the teleworking activity of the employees who carry out the activity in this regime, according to the law will be considered as **deductible** expenses when determining the taxable result.
- New non-deductible expenses are introduced as well. Expenses incurred as a result of transactions with an individual situated in a state which, at the date of registration of the expenses, is included in the EU List of non-cooperating jurisdictions for tax purposes, published in the Official Journal of the European Union will be considered as **non-deductible** expenses.
- The treatment of expenses with benefits granted to employees in equity instruments with settlement in shares is clarified: these are non-deductible expenses and they represent elements similar to expenses at the time of the actual granting of the benefits, **without requiring that they should be taxed according to the income tax provisions**.
- The **30%** deductibility limit is eliminated in the case of adjustments for the depreciation of receivables, whereas the other conditions for deducting provisions stay in place. Please note that this provision does not refer to assignments of receivables, for which the same limitation stays in place regarding the non-deductibility of 70% of the difference between the sale price and nominal value.

- Special provisions are introduced in connection with the tax treatment for leasing contracts for taxpayers who apply accounting regulations in accordance with *International Financial Reporting Standards (IFRS 16)*. These provisions will be applicable only for contracts concluded starting with the date of entry into force of this law, which means that for on-going contracts the current provisions will be applicable (differences between tax and accounting treatments).
- New categories of taxpayers who can benefit from the provisions regarding the recovery of *tax losses* as a result of a spin-off, merger or separation operation are introduced.
- New rules are introduced regarding the **fiscal consolidation** in the field of the corporate income tax, regulating the taxation of the fiscal group. The fiscal consolidation does not exempt each member from the periodical computation of the corporate tax result. Once the option to enter in a tax group is exercised, it should be maintained for 5 years. Introduces an update to one of the conditions on the basis of which the affiliation relationship is established. Also, provisions related to the transfer pricing regime of the intra-group transactions carried out within the fiscal group are introduced, maintaining the obligation to prepare the transfer pricing file by each of its members also for the transactions carried out between members of the fiscal group.
- The amendments also mention that the provisions regarding the reporting, withholding and payment of the dividend tax will not be applied in the case of dividends paid by a Romanian legal entity towards an undertaking for collective investment in transferable securities (UCITS) without legal personality.

Value added tax

- It is rewriting the express mention of the fact that the transfer of ownership of immovable property by a taxable person to a public institution for the purpose of extinguishing a tax obligation **does not represent a supply of goods**.
- It is proposed an **increase of the turnover threshold** in which the companies that want to apply the **VAT accounting system** must fit. If it is currently 2,25 million RON, as a result of the change, it is to be set at **4,5 million RON**.

Moreover, it is proposed to consult the VAT Committee in order to request an increase in the threshold for the application of the VAT accounting system to 1,000,000 euros, since the current threshold in Romania is at the minimum threshold of 500,000 euros.

- In order to align with the case-law of the European Union Court of Justice, it is proposed to introduce the **adjustment of the VAT base** for the **bad debts from individuals** within 12 months from the payment deadline set by the parties. Adjustment would be permitted if it is provided the proof that the commercial measures have been taken to recover claims up to 1,000 RON or legal proceedings have been taken to recover claims in a higher amount than 1,000 RON.
- In addition to the recent amendment on the **application of the 5% VAT rate on the tax base for the supply of homes with a useful area of 120 m²**, the amount of which does not exceed EUR 140,000 (VAT exclusive), it is introduced the specification of the **currency exchange rate** to be used for determining the equivalent amount in RON, respectively the one communicated by the National Bank of Romania, **valid on 1 January of each year**.
- It is proposed to grant the **VAT deduction right** for purchases of **alcoholic beverages and tobacco products** which are **offered free of charge for advertising purposes or to stimulate sales**.
- It is proposed the clarification of the fact that **VAT deduction is allowed** within the limitation period for purchase invoices received with delay, even if the period covered by those invoices has already been subject to a tax audit. Moreover, if the supplier issues correction invoices on its own initiative (and not only as a result of a tax inspection), the right to deduct may be exercised by the beneficiary, even if the limitation period has expired.
- It is proposed to amend the rules for determining the VAT position by VAT return, whereby those VAT payment decisions communicated by tax authorities which are suspended and no longer fall as constituting outstanding tax obligations, **to not be included in the VAT return anymore**.

- One measure that will result in encouraging non-EU companies to import goods into the EU through Romania, with the potential to increase the customs activity in the port of Constanța, is the introduction of the possibility **to appoint a tax representative for the importers not established in Romania**, if they perform an import, followed by an intra-Community supply (e.g. application of the Custom Procedure 42).
- Will be allowed the **application of the reverse charge mechanism** directly on the basis of the certificate of Authorized Economic Operator (AEO) and the local clearance certificate, without the need to obtain the certificate of deferment of VAT payment due for imported goods anymore.

Thus, the certificate of deferment of VAT payment due for imported goods will remain necessary to be obtained for situations where the payment of VAT is requested as a result of exceeding a certain threshold of imports, which is proposed to be reduced to 50 million RON for the last 6 months preceding the month in which the certificate is requested.

- In order to ensure a free competitive environment, it will be introduced the measure of VAT payment through the **reverse charge mechanism** in the case of **imports of goods** carried out by persons importing certain goods subject to national simplification measures (waste, wood, cereals, as well as mobile phones, consoles, integrated circuit devices).
- It is proposed the **extension of the application of national reverse charge mechanism** for all energy purchases made by taxable persons who have licenses permitting the sale of electricity. Moreover, the declaration of liability concerning negligible own energy consumption may also be filed for periods prior to the year of submission.
- It is proposed the **extension of the national reverse charge simplification measure** for the **supplies of gas** made to a taxable person who has a negligible own consumption of maximum 1 %. This measure is approved to be applied until 30 June 2022.

Microenterprise tax

- Dividends received from a Romanian legal entity are deducted from the taxable base of the microenterprise tax.

Taxation of the income obtained in Romania by non-residents

- The transfers of ownership over the securities at the time of the transfer as an effect of the loan of securities and the transfers of ownership over the securities at the time of the establishment of the guarantees *do not generate taxable income in Romania*.
- The informative withholding tax statement shall be submitted by the Romanian income payers by the last working day of February of the current year for the previous year.

Local taxes and duties

- The deadline for updating the valuation report for determining the taxable value of buildings owned by legal entities is extended up to **5 years** (currently, the Fiscal Code provides for its updating every 3 years). Moreover, if the valuation report is submitted after the first tax payment deadline, it will only be taken into account from the year following the submission.
- For the advance payment of the tax / duty on land / buildings, due for the whole year by the taxpayers, until March 31st of the respective year, a **bonification of up to 10% inclusive** is granted, established by a decision of the local council.

Excise duties:

- Between January 1, 2021 - March 31, 2021, **the specific excise duty for cigarettes** is increased to 418.76 RON / 1,000 cigarettes.
- It is clarified the obligation of the economic operators authorized in the field of carrying out activities with **natural gas, coal, lignite, coke and electricity** to register within the competent authority for excise duties purposes, before carrying out these activities.

[Draft Law PL-x 477/2019 for the amendment and completion of Law no. 207/2015 on the Fiscal Procedure Code and Law no. 227/2015 on the Fiscal Code, as well as for the approval of some fiscal and budgetary measures](#)

Several changes were made to the tax procedure, including: the establishment of new situations that generate the annulment of administrative acts, changes of general or limitation periods, issues regarding the tax audit activity, as well as the establishment of a specialized structure within the Ministry of Public Finance mandated to solve tax appeals.

- The taxpayer/payer without fiscal domicile in Romania who communicates with the fiscal bodies by electronic means of remote transmission will **no longer have the obligation to appoint a representative, having a fiscal domicile in Romania** in order to submit the declarations to the fiscal body.
- The fiscal administrative act becomes null in the following situations:
 - 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/payer, if the taxpayer/payer 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 considerations of the appeal solution in case of issuing a new fiscal administrative act;
 - the issuance of the tax audit report and the taxation decision or the decision not to modify the tax base by the tax audit body after the termination of the tax audit by fulfilling its maximum duration, without it being resumed, according to law;
 - the fiscal body issues a tax appeal report/verification of the personal fiscal situation and taxation decision/decision to modify the tax bases/decision not to modify the tax bases/decision to regularize the situation or decision to terminate the verification procedure personal tax, in the situation where findings are made in connection with certain acts provided by the criminal law.
- **The competence to conduct on site analysis** by the central fiscal body **may be delegated to another central fiscal body within the N.A.F.T.A.**, with the obligation that the central fiscal body to which the competence has been delegated notifies the taxpayer/payer in writing.
- **The terms** provided by the fiscal law aiming at the fulfillment by the taxpayers/payers of certain obligations, may be **extended/modified, for justified reasons related to the activity of administration of tax receivables**, by order of the Minister of Public Finance.
- **The tax registration code** can also be used by taxpayers to **fulfill tax obligations prior to the tax registration date**.
- **The statute of limitations for the right to establish tax receivables** 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 make 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**.
- If the tax audit is not completed within a period representing twice the period provided by law, the **tax audit shall cease**, without issuing a tax audit report and a tax decision or a decision not to change the tax base. **The tax audit body may resume the audit only once** for the same period and the same fiscal obligations, with the approval of the hierarchical body superior to the one that approved the initial fiscal audit.
- If the legal entity ceases to exist after the start of the tax audit, **it will continue with the successors of that entity**. Thus, the tax claim is established in the name of the successors. If there are no successors, the tax audit ceases.
- The leader of the tax audit may order its suspension:
 - to perform **checks upon the other members of the tax group**/the single tax group;
 - in the event that the tax audit body is notified that a **legal proceeding is pending against the taxpayer / payer** 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 the criminal investigation body.

- The taxpayer/payer may submit an appeal against the decision on suspending the tax audit.
- The leader of the tax audit body may decide to re-verify certain types of tax obligations at the proposal of the tax audit body designated to carry out the audit or at the request of the taxpayer, if the following cumulative conditions are met
 - after the end of the tax audit, **additional data appear that was unknown at the time of the tax audit;**
 - the additional data has an **influence on the results of the tax audit.**
- The owners that sell means of transport do not have to present the fiscal clearance certificate **in case they use the alienation-acquisition contract form for sale.**
- No auxiliary tax liabilities are 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 payment;
 - amending tax returns or tax decisions.

This treatment is also applicable in the event of extinguishing the principal tax liability by other means provided by the law.

- The penalty for non-reporting shall be reduced by 75% in the event of the default being extinguished within the legal deadline, without the need for the taxpayer to submit a request.
- The right of the taxpayer / payer to claim the interest related to the amounts to be refunded or reimbursed is subject to **statute of limitation of 5 years**, which starts from the date of 1 January of the year following to the moment when:
 - the amounts to be refunded/reimbursed to the taxpayer have been extinguished;
 - the cancellation of the tax decision has become final;
 - the reimbursement has been admitted by the appeal body or by the court and the decision is final and binding.
- A new paragraph is introduced regarding the procedure for the avoidance of the double taxation between Romanian affiliated entities, members of the same fiscal group, applicable when adjusting / estimating the income or expenses of a member of the corporate income tax fiscal group, during a fiscal inspection.
- **MPF becomes the competent authority for resolving the tax appeal. A specialized structure will function for solving the appeals on fiscal administrative acts** issued by the central fiscal body, within 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/payer, in certain restrictive situations, including the non-application of the 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 EUCJ ruling contrary to the tax authority decision.

The Government regulates the residence and entry rights in Romania applicable in case of a Brexit with Agreement

The new ordinance introduces the concept of Beneficiaries of art. 50 of the Treaty on European Union (TEU), respectively British citizens registered on the territory of Romania until 31 December 2020 who continue to reside on the Romanian territory after this date.

Important aspects:

- The documents issued for the beneficiaries of art. 50 TEU shall remain valid until 31 December 2021.
- In order to continue their stay in Romania after 31.12.2021, British citizens and their family members have the obligation to obtain a new residence document by submitting an application together with specific documents to the General Inspectorate for Immigration.

- The competent authorities shall solve the requests for the extension of the right of temporary and permanent residence within 30 days from the date of submission of the application and the documents will be valid for 5 years, respectively 10 years.
- Frontier workers can apply for a permit from 1 January 2021. The document has the same validity as the one of the employment contract, but not longer than 5 years.
- Unregistered British citizens entering Romania between 1-31 December 2020 may request, within 90 days of entering the country, the extension of the right of residence as Beneficiaries of art. 50 TEU.

The ordinance will enter into force on 1 December 2020, and its effects will be applicable depending on the outcome of the negotiations for a post-Brexit agreement.

For further questions regarding the aspects mentioned in this alert, please contact us.



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