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Contents:

- BREXIT Info
- Minimum gross salary for 2021
- Amendments to Fiscal Code
- Multiple changes effective 1 January 2021
- Amendments to Fiscal Procedure Code
- Restructuring tax obligations
- Digitization and the new form 700
- Update of profit tax return 101
- Measures to stimulate employment
- Extension of some social protection measures in 2021
- Subsidy for telework and reduction in working hours
- Granting days off for parents
- Suspension of the employment contract
- Completion of provisions regarding clearance sales
- Other tax news
- Implementation of SAF-T
- The advance profit tax payment system
- Closing exchange rates for 2020
- Monthly agenda
- Social indicators

Info BREXIT - UK leaves EU and becomes third state starting 1 January 2021

As of 1 January 2021, the United Kingdom (UK) is no longer part of the European Union. Non-EU country rules are now applicable to the UK for all trading relationships. The implications are complex, depending on the field and topic.

From a VAT perspective, it should be emphasized that all trade in goods with the United Kingdom involves import/export customs operations. Exports will be exempt from VAT if the export conditions are met, and purchases will be considered imports, for which, as a general rule, VAT is paid at the time of import. By default, these transactions, as well as the procurement or provision of services, will no longer be considered intra-Community transactions, trading partners will no longer be verified in the VIES system and transactions will not be reported in intra-Community declarations (D390) or Intrastat.

VAT paid in the UK by 31 December 2020 by taxable entities established in Romania may be claimed using application form 318, the special deadline for submission of such applications being 31 March 2021. In the case of Northern Ireland there is an extended term where submission of form 318 may occur by 30 September 2021 for VAT related to purchases of goods in 2020.

In case of UK companies registered directly for VAT purposes in Romania and which have not appointed a tax representative registered for VAT purposes in Romania by 31 December 2020, the Tax Administration for Non-Resident Taxpayers will cancel VAT registration in Romania starting on 1 January 2021.

After 1 January 2021, companies established in the UK will be able to register for VAT purposes in Romania only by appointing a tax representative.

From the perspective of non-resident income tax, during the period when the UK was part of the EU and during the transition period through 31 December 2020, dividend, interest and royalty payments made by UK/EU residents to non-residents of EU states/the UK have been exempt from withholding tax under certain holding conditions, based on provisions of Directive 2011/96/EU on the common tax regime for parent companies and their subsidiaries in Member States, but also Directive 2003/49/EC on the common system of taxation applicable to interest and royalty payments made between associated companies of different EU Member States.

In the absence of an agreement to continue application of the above-mentioned directives, as is currently the case with Switzerland or the Member States of the European Economic Area (EEA), provisions of the Double Taxation Conventions concluded by the United Kingdom with other states will become a priority, particularly, in our case, with Romania.

The Convention on the Avoidance of Double Taxation between Romania and the UK dates from 1976 and provides for the following tax rates:

- Dividends - 10%, if the beneficial owner is a company that directly or indirectly controls at least 25% of voting shares of the dividend paying company. In all other cases, the tax withheld shall be 15% of the gross amount of dividends.
- Interest - 10%
- Royalties - 15%

The Convention between Romania and UK may be accessed here (Romanian version): https://static.anaf.ro/static/10/Anaf/AsistentaContribuabili_r/Conventii/MareaBritanie.htm

Other tax information on Brexit may be found accessing the links below:
[https://www.anaf.ro/anaf/internet/ANAF/info ue/notif_brexit/](https://www.anaf.ro/anaf/internet/ANAF/info_ue/notif_brexit/)
https://static.anaf.ro/static/10/Anaf/legislatie/acord_retragere_brexit.htm

INFO - MINIMUM NATIONAL GROSS WAGE FOR 2021

In the last Government meetings of 2020, the level of the national minimum gross wage for 2021 was also discussed. A draft normative act was issued, but its adoption was postponed until the beginning of January.

According to the latest information, the national minimum gross basic salary in the country will increase to RON 2,300 per month (from RON 2,230 in 2020).

The project provides for freezing, for the second year, the differentiated minimum gross salary for higher education positions, at the value of RON 2,350.

LAW 296 dated 18 December 2020 for the amendment and completion of Law no. 227/2015 on the Fiscal Code (Official Gazette 1269/2020)

The law brings a series of amendments and completions to the Fiscal Code. We further present the main changes, noting that they entered into force on 24 December 2020, except where another enforcement date is mentioned.

CORPORATE INCOME TAX

Place of effective management (PEM)

A PEM is the location where, unless otherwise proved, the foreign legal entity carries out operations corresponding to economic, real and substantial purposes and where at least one of the following conditions is met:

- economic-strategic decisions necessary for management of activity of the foreign legal entity as a whole are taken in Romania by the executive directors/members of the board of directors; or
- at least 50% of executive directors/members of the board of directors of the foreign legal entity are residents.

Provisions regarding the establishment of PEM in Romania are introduced. They detail the method of establishing residence in Romania, obligations of the legal entity for which the PEM was established in Romania, the avoidance of double taxation, etc.

Establishment of residence in Romania by a foreign legal entity must not be based on artificial arrangements in order to reduce taxes that should have been paid in the foreign state and should not create opportunities for non-taxation or lower taxation in Romania, including through arrangements for the use of tax conventions concluded by Romania, only for the purpose of avoiding the payment of taxes for the direct or indirect benefit of residents of third jurisdictions.

A foreign legal entity with PEM in Romania, as of 31 December 2020, has the obligation to submit to the competent central tax authority the form, "Questionnaire for establishing the tax residence of the foreign legal entity according to the place of effective management in Romania", by 30 June 2021.

It shall enter into force on 1 January 2021.

Consolidation of corporate income tax (profit tax)

Starting with 1 January 2022 (or a later date for taxpayers with a different fiscal year), the option of fiscal consolidation of profit tax and the possibility of setting up a fiscal group from the perspective of profit tax is introduced.

Members of the group can only be Romanian legal entities and/or persons with a registered office in Romania established according to European legislation. In certain situations, a permanent establishment in Romania of a non-resident entity may be included in the tax group.

Members must be profit tax payers, with the same payment system (quarterly calculation or advance payments), have the same fiscal year and not be in dissolution/liquidation. Microenterprises or companies carrying out activities such as bars/nightclubs, discos, casinos and those that are simultaneously payers of profit tax and specific tax cannot be members of the tax group.

An essential condition is that the minimum holding, direct or indirect, be 75% of the value/number of participation titles or voting rights, for an uninterrupted period of one year prior to the start of consolidation. A company cannot be a member of several tax groups.



A clearer definition of the place of effective management of a company from 2021



During the consolidation period, the members of the group who, during the period of existence of the tax group, would meet the conditions to become payers of microenterprise income tax or specific tax, will only apply, by derogation, profit tax.

The option to set up a tax group shall be communicated to the tax authority at least 60 days before the beginning of the consolidated fiscal year. The system is optional, valid for 5 fiscal years, after which the option must be expressly extended.

One of the members is appointed as group's representative: it has the role of calculating, declaring and paying the consolidated profit tax by adding together individual calculations of each member. Thus, at the level of the tax group, tax profits and losses of the members may be settled.

Tax losses incurred by a member of the group before the system is applied cannot be offset at the group level.

If the group is disbanded after five years, the losses recorded and not recovered during the consolidation period shall be recovered by the group's representative.

An express obligation to draw up a transfer pricing file is introduced, both for transactions with members of the tax group and with affiliates outside it. Transfer pricing files prepared by members will be submitted by the designated person.

If one of the members no longer meets the conditions, that member and the responsible legal person shall recalculate income tax due individually/for the group, with the collection of interest and late payment penalties, as the case may be.

The tax is not recalculated in the following situations: sale/assignment of participation titles held to one of the group members if the holding falls below 25%; dissolution of a member; departure of a member of the group as a result of reorganization operations (merger, division, transfer of assets, exchange of shares).

APEX comment: implementation of the profit tax consolidation system is a step towards modernization of the fiscal system and to stimulate investments in Romania. This long-promoted business proposal is becoming reality. However, we must emphasize that the consolidation mechanism is relatively simplistic and refers to an algebraic consolidation of individual results, with obvious limitations in the application of deductions or facilities. The system should have allowed for a real consolidation of profit and loss accounts of all members and the application of limitations and deductions to the consolidated results and not to individual results. The simplest example would be the tax credit for sponsorship or various tax facilities that a taxpayer which records a tax loss cannot benefit from at the individual level and implicitly at the group level, since the individual calculations are added together. However, in the remaining year until effective implementation, it is possible to adjust some rules on fiscal consolidation.

Expenses

Adjustments for impairment of receivables that are uncollected within a period exceeding 270 days from the due date, are not guaranteed and are due by a non-affiliated person **are fully deductible**. Previously, the deductibility was limited to 30% of the adjustments made under the above conditions. The provision enters into force on 1 January 2022, being postponed by GEO 226/2020.

Expenses related to **telework activity are deductible**.

Expenditure of employee benefits granted to employees in equity instruments with settlement in shares (**stock option plans**) represent elements similar to expenses at the time benefits were actually granted, without requiring that they should be taxed according to income tax provisions.

Classification in the category of social expenditures of expenses for the proper functioning of some early education units is corrected, already being deducted through the mechanism of the fiscal credit and implicitly they did not have their place in the social expenditures. They are considered non-deductible expenses that are deducted, in order, from profit tax, salary tax, VAT or excise duties, within the limit of RON 1,500/month for each child.

Expenses for transactions with a person located in a State which, as of the date the expenditure is recorded, included in Annex I and/or Annex II of the EU List of non-cooperating jurisdictions for tax purposes, published in the Official Journal of the EU, are non-deductible. This condition shall enter into force on 1 January 2021.



Fiscal consolidation from the perspective of corporate tax will become possible from 2022



The annexes may be accessed here:

https://eur-lex.europa.eu/legal-content/en/TXT/PDF/?uri=uriserv:OJ.C_.2020.331.01.0003.01.ENG

Some examples worth mentioning are: Turkey, Australia, Morocco, Jordan (Annex II), and Panama or the US Virgin Islands (Annex I).

Expenses representing depreciation of electronic fiscal cash registers (AMEF) that are deducted from profit tax are non-deductible. This provision was necessary to supplement the facility introduced in 2020 for deducting AMEF acquisition costs, if they were recognized as property, plant and equipment.

New provisions are introduced related to the tax credit granted to taxpayers for sponsorships performed, in case the beneficiary returns the sponsorship. Thus, the taxpayers will owe as additional tax the amount that is reimbursed (in case the fiscal credit was used) in the quarter/year in which the sponsorship is reimbursed, regardless of the fiscal year in which the fiscal credit was granted.

Provisions are introduced regarding determination of the tax result related to lease operations for taxpayers who apply IFRS 16.

Additions are made regarding the assumption of tax losses in merger/division operations in which microenterprises are involved.

Exemption from reinvested profit tax

The tax exemption on reinvested profit will be granted within the limit of the cumulatively calculated profit tax:

- from the beginning of the year until the quarter when the assets are put in service, for taxpayers who apply the **quarterly system** of declaration/payment of the profit tax;
- from the beginning of the year when the assets are put in service until the end of that year for taxpayers applying the **annual system** of declaration/payment of the profit tax (advance payment system).

Previously, the exemption was only granted within the limit of the profit tax due during that period.

The exemption of reinvested profit tax will not be able to be applied for the purchase of electronic fiscal cash registers by taxpayers who also apply specific tax and which fall under the fiscal facilities of Law 153/2020 (facility related to deducting the value of cash registers purchased from the amount of the specific tax due).

The profit for which the profit tax exemption applied, except the portion related to legal reserve, may also be distributed to reserves during the following year.

This rule shall enter into force on 1 January 2021.

Tax credit

Clarifications are provided regarding the necessary documentation attesting the payment of taxes abroad in order to grant of tax credit in Romania for taxes paid to a foreign state.

DIVIDEND TAX

A new exception is introduced on the obligation of a Romanian legal entity to withhold, declare and pay the dividend tax, in the case of dividends paid to the undertaking for collective investment in transferable securities (UCITS) without legal personality.

MICROENTERPRISE INCOME TAX

Dividend income received by a microenterprise from a Romanian legal entity becomes non-taxable when calculating the microenterprise income tax.

The ceiling for application of the microenterprise income tax contains the same elements that constitute the taxable base.

The treatment of favourable exchange rate differences that are usually included in the calculation of microenterprise income tax in the fourth quarter is clarified for taxpayers who changed the tax regime to profit tax during the year and were left with this untaxed difference. Thus, this difference should be treated as similar to income in the first quarter for which the taxpayer owes profit tax (except in cases where the change to profit tax is made during the first quarter of the year and the change to profit tax is consequently applied in that quarter).



Dividend income received by a microenterprise from a Romanian legal entity becomes non-taxable



INCOME TAX AND MANDATORY SOCIAL CONTRIBUTIONS

Income and salary benefits

Provisions regarding the applicable tax treatment in case of equivalent value of tourist and/or treatment services, including transport, which are granted by the employer according to the employment contract, during a holiday, for their own employees and their family members, are supplemented. They are non-taxable and are not included in the calculation basis of social security contributions to the extent that their total value does not exceed in a fiscal year the level of average gross salary used to substantiate the state social insurance budget for the year in which they were granted (RON 5,429 in 2020).

New income types are defined for which no income tax and no social contributions are due, among them we mention:

- ☑ the value of personal usage of company's car where the employer applies the micro-enterprise tax regime or the activity-specific tax. Previously, this provision was provided only for profit tax;
- ☑ epidemiological testing and/or vaccination of employees to prevent the spread of diseases that endanger the health of employees and the public;
- ☑ amounts granted to telework employees for utilities expenses within the limit of RON 400/month (corresponding to the number of days worked in telework). No supporting documents are required, but the policy must be mentioned in the employment contract or internal regulations.

New regulations are introduced in case of cash and in-kind benefits received from third parties or as a result of provisions of the individual employment contract or a contractual relationship between the parties, in the sense that the obligation to calculate, withhold, pay and declare income tax and social contributions fall to:

- ☑ the Romanian fiscal resident employer, when the advantages are granted by other entities through it;
- ☑ the Romanian tax resident income payer, when the entity granting the benefits grants them directly, not through the employer;
- ☑ the employee, when the benefits are granted by non-resident entities. However, there is a possibility for his/her employer to opt for the calculation, withholding and payment of income tax and social security contributions.

Non-taxation of the grants for nursery/kindergarten of the employees' children is also clarified for social contributions, not only for income tax.

The situation where several values of the minimum gross salary are used, differentiated according to studies, seniority or other criteria provided by law, the lowest value of the minimum gross salary is taken into account, if the law does not provide otherwise.

Income from self-employment

Tax rules are defined in the situation of transformation/change in the form of exercising an activity and transferring goods/rights from one activity to another. These provisions do not apply to operations in progress on 1 January 2021, but only for operations in effect from that date onwards.

Rental income

Rental for tourist purposes by the owners of the rooms located in personal property dwellings is defined as: activity which consists of offering the possibility to stay for a minimum period of 24 hours and maximum 30 days in a calendar year to any person traveling for tourist purposes outside his usual living environment.

Thus, revenue generated from the rental of between 1 to 5 rooms inclusive for tourist purposes, during a fiscal year, are determined on the basis of the annual income quota. If the number of 5 rooms for rent is exceeded during the same fiscal year, income is determined based on the annual income quota for the entire fiscal year, and, starting with the following fiscal year, net income is determined using the real system (tax is calculated by applying 10% tax rate on annual net income, the tax being final, and in the situation where there is an annual fiscal loss, this represents a final loss). These new rules apply to revenue incurred starting with 1 January 2021. For revenue previously incurred, the tax obligations are those in force during that period.

Investment income

Several completions and clarifications are brought regarding the transfer of securities



**New types of
non-taxable
income for
employees
introduced in the
Fiscal Code**



and income from operations with derivative financial instruments, carried out through an intermediary Romanian fiscal resident. They apply to revenue realized starting with 1 January 2021. In the case of operations with derivative financial instruments, the losses obtained from operations performed until 1 January 2021 are not carried forward and are not compensated, these representing final losses of the taxpayer.

The period imposed on intermediaries, investment management companies or self-managed investment companies to inform taxpayers and for submitting informative statements on total gains/losses for transactions carried out during the fiscal year is extended from 31 January to the last day of February of the current year for the previous year.

Earnings from prizes and gambling

The category of non-taxable income includes commercial price reductions granted to individuals, other than those granted to employees.

Income from other sources

Gift vouchers granted to other categories of beneficiaries for marketing campaigns, market research, promotion on existing or new markets, protocol, advertising and publicity are expressly included in the category of income from other sources. Their nominal record is required, which must include, at a minimum, information on the name, surname, personal numerical code/tax identification number of the beneficiary and the value of the vouchers granted to each beneficiary, monthly.

Avoidance of double taxation by the tax credit method or the exemption method

In order to obtain the tax credit/exemption, payment of a tax abroad can also be proved with:

- a supporting document issued by the income payer/tax withholding agent, if the competent authority of the foreign state does not issue such a document;
- a supporting document issued by the competent authority of the foreign state or by a copy of the tax return or similar document submitted to the foreign competent authority accompanied by the documentation attesting its payment, if the tax has not been withheld at source.

Deadlines for submitting declarations

The deadline for submitting the Sole Tax Return (regardless of the income type declared), as well as for submitting declaration 230, "Application for the destination of the amount representing up to 3.5% of the annual tax due," will be 25 May, inclusive (previously 15 March).

The period until which income payers have the obligation to submit declaration D205, "Informative declaration regarding withholding tax and realized gains/losses, on income beneficiaries," is extended from 31 January to the last day of February, inclusive, of the current year for the expired year.

The deadline for submitting declaration D204, "Annual income tax return for associations without legal personality and entities subject to the tax transparency regime," is extended from 15 February to the last day of February.

Tax residence of individuals

The non-resident natural person who fulfills the residence condition regarding the center of vital interest is subject to income tax for income obtained from any source, both in Romania and outside Romania, starting with the first day he/she declares that the center of vital interest is in Romania.

The non-resident natural person who is present in Romania for a period or more periods exceeding a total of 183 days, during any interval of 12 consecutive months, which ends in the calendar year concerned, is subject to income tax for income obtained from any source, both in Romania and outside Romania, starting with the first day of arrival in Romania.

Income tax due in Romania by non-residents

The tax rate is reduced from 16% to 10% for the following types of income obtained in Romania by natural persons resident in a Member State of the European Union or in a state with which Romania has concluded a double taxation agreement:

- interest;
- royalties;
- commissions;



Gift vouchers granted to other categories of beneficiaries represent income from other sources



- ☑ sports and entertainment activities carried out in Romania, regardless of whether the income is received by the persons who actually participate in such activities or by other persons;
- ☑ management or consulting services in any field;
- ☑ services performed in Romania;
- ☑ independent professions developed in Romania;
- ☑ prizes awarded at competitions organized in Romania;
- ☑ income earned by non-residents from liquidation of a Romanian legal entity
- ☑ income from the transfer of a fiduciary patrimony holding from the fiduciary to the non-resident beneficiary within the fiduciary operation.

The period by which income taxpayers are required to file declaration D207, "Informative return on withholding tax/exempt income on non-resident income recipients," is extended from 31 January to the last day of February, including the current year for the expired year.

The reporting deadline for intermediaries, through which non-resident individuals obtain income from the transfer of securities issued by Romanian residents, to transmit information on total earnings/losses to each non-resident individual and to ANAF (by submitting form D205), is extended from 31 January to the last day of February inclusive of the current year for the previous year.

It is expressly mentioned that the tax residence certificate is presented in original or in legalized copy. A tax residence certificate issued by a foreign competent authority in electronic or online format is also considered the original document.

The Questionnaire for establishing the fiscal residence of the foreign legal entity with the location of effective management in Romania is introduced.

The phrase "Romanian legal entity" has been replaced by "resident" in order to harmonize fiscal regulations regarding foreign legal entities that have a place of effective management in Romania.

VALUE ADDED TAX

Right to deduct VAT after prescription period

The possibility of deducting VAT after the expiration of the prescription period if the supplier issues corrected invoices on its own initiative, is introduced. Until now, the beneficiary had the right to deduct the tax written on a corrected invoice related to an operation whose prescription period expired only if the corrective invoice was issued following a tax inspection in which the tax authority established VAT collected from the supplier. In these cases, the right to deduct can be exercised within one year from the date of receipt of the corrected invoice, under the sanction of forfeiture.

Ceiling of VAT Cash Accounting Scheme

The ceiling for application of the VAT Cash Accounting Scheme is increased from RON 2,250,000 to RON 4,500,000.

Adjusting the VAT tax base

The possibility of adjusting the taxable base of VAT in the case of uncollected receivables from debtors-individuals is introduced. Thus, if the total or partial value of goods delivered or services provided has not been collected from the beneficiaries-individuals within 12 months from the payment term established by the parties, or, in its absence, from the issuance date of the invoice, the taxable VAT base can be adjusted. The adjustment is allowed only if it is proved that commercial measures have been taken for the recovery of claims up to RON 1,000 inclusive, or that legal proceedings have been undertaken for the recovery of claims higher than RON 1,000.

Possibility to appoint an authorized tax representative for VAT obligations

Persons not registered for VAT purposes in Romania who import goods that have been transported to Romania from a third territory or a third country may designate an authorized tax representative to fulfill obligations from a VAT perspective.

Simplified measures - reverse charge for a new operation

A new operation is introduced for which the reverse charge mechanism can be applied for domestic operations, more precisely the delivery of natural gas to a taxable commercial trader, established in Romania.



**Informative
statements D205
and D207 should
be submitted until
the last day of
February**



LOCAL TAXES AND TAXES

The definition of buildings includes the foundation of wind turbine support towers.

Change in revaluation term of buildings

The term at which the taxable value of the buildings must be updated by submitting an evaluation report to the fiscal body changes from 3 to 5 years. At the same time, in case the evaluation report is submitted after the first payment term of the reference year, it will take effect starting with 1 January of the following fiscal year.



EMERGENCY ORDINANCE 226 dated 30 December 2020 on some fiscal-budgetary measures and on amending and supplementing normative acts and extending certain deadlines (Official Gazette 1332/2020)

The ordinance was published in the last Official Gazette of 2020 and it brought multiple changes to several regulations, some of them even very recently published in December 2020, including laws that have substantially amended the Fiscal Code and the Fiscal Procedure Code.

We present the main changes and novelties introduced by the ordinance below.

Corporate income tax

The full deductibility of adjustments for impairment of receivables that are not collected within a period exceeding 270 days from the due date, are not guaranteed and are owed by an unaffiliated person is postponed. Initially, this amendment introduced by Law 296/2020 was supposed to apply starting 1 January 2021, but it is postponed by one year, to 1 January 2022.

Specific tax

Taxpayers obliged to pay the specific tax for certain activities, for the year 2021, do not owe a specific tax for a period of 90 days starting with 1 January 2021. Thus, taxpayers properly calculate the specific tax for the year 2021, then allocate the annual specific tax to 365 calendar days and then multiplying the resulting value by 275 (365-90 days).

VAT refund

The refund of VAT with subsequent tax audit is maintained until 31 March 2021 (previously 25 January).

Reduced VAT rate of 5% on home sales

Law 248/2020 has increased the maximum ceiling up to which the 5% VAT rate can be applied in the case of housing sales to individuals to EUR 140,000 from RON 450,000. The new ceiling was to apply effective 1 January 2021. The current ordinance postpones the increase in the ceiling to 1 January 2022.

VAT exemptions

Deliveries of medical devices for in vitro diagnosis of COVID-19, vaccines against COVID-19, as well as related vaccination and testing services, other than those exempt from VAT according to the Fiscal Code, are exempt from VAT with the right of deduction through 31 December 2022.

Intra-Community acquisitions of Remdesivir made until 31 December 2022, are also exempt from VAT.

Holiday vouchers

The entry into force of new regulations on holiday vouchers brought by art. 24-27 of Law 165/2018 on granting vouchers is postponed until 1 January 2022 (after they were postponed by GEO 107/2018). This law was presented in the APEX Team Newsletter no. 7 2018.

At the same time, it is mentioned that holiday vouchers for the year 2021 are issued only in electronic format. The validity period of holiday vouchers, issued between March 2019 - December 2019 and January 2020 - November 2020, regardless of the support, is extended until 31 December 2021.

Cash registers

The fine for not connecting the new cash registers to the ANAF system is suspended for another 3 months, until 31 March 2021.

The term for connecting commercial vending machines with fiscal cash registers is postponed by another year, until 31 December 2021. This term was 31 December 2019, subse-

The full deductibility of adjustments for impairment of receivables will apply from 1 January 2022



quently extended to 31 December 2020 and here we have a new extension.

Extension of tax facilities introduced in 2020

Tax amnesty

The possibility of benefiting from the cancellation of the accessory charges related to outstanding main tax liabilities on 31 March 2020 is reopened. This facility was initially available until 15 December 2020, but the Government is extending the facility until 31 March 2021.

Details about tax amnesty can be found in APEX Team Newsletter no. 5 2020.

Simplified rescheduling of tax liabilities

The simplified payment rescheduling mechanism can be accessed by any natural or legal person who has accumulated debts to the state budget and becomes accessible again between January and March 2021. It had expired on 15 December 2020. Details on simplified rescheduling can be found in APEX Team Newsletter no. 10 2020.

Financial restructuring

The ordinance extends the scope of the financial restructuring mechanism to cover main outstanding budget liabilities at 31 December 2020 (previously 31 July 2020).

LAW 295 dated 18 December 2020 for amendment and completion of Law no. 207/2015 on the Fiscal Procedure Code, as well as approval of some fiscal-budgetary measures (Official Gazette 1266/2020)

The law amends many aspects of the Fiscal Procedure Code and is applicable from 24 December 2020. We present the significant items below.

The form of the power of attorney

If a taxpayer empowers a lawyer, tax consultant or chartered accountant in relation to the tax authority, then the form and content of the power of attorney are those provided by legal provisions regarding the organization and exercise of the respective profession.

Definition of secondary establishment

The following are not secondary establishments:

- location where employees work from home or under telework;
- locations of the beneficiaries where the taxpayer carries out its activity, if at these locations it carries out activities other than a construction site, a construction project, assembly project or related supervision activities, only if the site, project or activities last more than 6 months.

Assignment of a tax registration code or number (CIF/NIF) to non-residents by credit institutions

Credit institutions have the obligation to ask ANAF to issue NIFs for non-residents who have open accounts and do not have tax registration numbers (CIF or NIF), within 3 months from the date the law enters into force (24 December 2020). Credit institutions have the obligation to communicate the information needed to assign a NIF code for each account/safe deposit box opened by non-residents, to ANAF.

Modification of terms by order of the Minister of Finance

The Minister of Finance may extend or modify a term for fulfilling a fiscal obligation, for justified reasons related to the activity of managing tax receivables.

Use of the tax identification code (CIF) for tax obligations prior to registration

The tax identification code can also be used for tax obligations of periods prior to the tax registration date.

Refund of dividend tax in case of regularization of interim dividends

In the event of the interim dividend refund, as a result of the annual adjustment, the taxpayer may request the refund of the dividend tax.

The obligation to remove the prescribed amounts from the tax records

The obligation of the fiscal body to remove from the taxpayer's records the prescribed amounts is expressly introduced.

Adjustment of transactions of members of a tax group for profit tax

If a transaction in a tax audit is adjusted to a member of the tax group, the tax authority



Various fiscal facilities introduced in 2020 are extended in the first part of 2021



is obliged to make the adjustment in the mirror to the other member of the tax group.

Duration of tax audits

When establishing the maximum duration of a tax audit, the periods of legal suspension of the tax audit are no longer taken into account. Basically, the rule returns to pre-2016 conditions, and the tax audit may be extended again for years.

As a reminder, a tax audit can last for:

- 180 days** for large taxpayers and for taxpayers with secondary offices, regardless of size;
- 90 days** for medium taxpayers;
- 45 days** for other taxpayers.

In cases where the tax audit is not completed within a period of twice the above durations (i.e. 360, 180 and 90 days), it shall automatically terminate. However, due to the effect of the suspension, the above deadlines may be extended for a long time.

Death of the natural person or cessation of legal entity

When the death of the natural person occurs or the legal entity ceases to exist during a tax audit, it will continue with the heirs of that person, if any, and the tax claim will be established in their name.

Appeals and their settlement

The settlement of appeals is transferred from ANAF to the Ministry of Finance (MFP), within 6 months from the publication date of the law (24 December 2020).

In the absence of a fiscal administrative act, the taxpayer can address the administrative contentious court, according to the procedure provided by Law 554/2004 administrative contentious.

The measures not taken and amounts not established by the fiscal body, but which should have been taken/ established, such as a correction in favour of the taxpayer in case of an error in its application, can also be challenged.

At the request of the appellant, the settlement body is obliged to ensure access to all evidence related to settlement of the tax appeal.

The taxpayer may request a re-examination of the decision to resolve the appeal, in the following situations:

- the application of certain legal provisions which would have fundamentally changed the adopted solution was not taken into account in the present case;
- after the issuance of the decision by the structure for resolving the appeal, a decision is issued by the Central Fiscal Commission which offers a different interpretation to the legal provisions incident to the case;
- before or after the issuance of the decision by the structure for resolving the appeal, a court decision of the High Court of Cassation and Justice of Romania is adopted, either for the resolution in principle of legal issues, or an appeal in the interest of law that dictates a certain judicial practice different from the one in the decision to settle the appeal;
- before or after the decision is issued by the appeal settlement structure, a decision of the Court of Justice of the European Union is adopted, which is contrary to the decision to settle the administrative appeal.

The re-examination may be requested within a **maximum of 1 year from the date of communication** of the decision to resolve the appeal, if the decision has not been challenged in court. Otherwise, the re-examination may be requested during the trial of the case, until the date of concluding the substantive phase on the first instance.

Re-verification

Re-verification may also be ordered when new information unknown to the taxpayer appears. Until now, it was expected to be re-verified only when new information unknown to the tax authority appeared.

The taxpayer may request re-verification if he/she is unable to correct the tax return in those situations where it would be necessary to correct the return after the cancellation of the reservation of the subsequent verification.

New situations for nullification of a fiscal administrative act

New situations are defined in which the fiscal administrative act will be considered null (with application for those issued after 24 December 2020):



The settlement of appeals is transferred from ANAF to the Ministry of Finance



- ☑ 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 taxation decision or the decision not to modify the tax base by the tax audit body after 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 personal tax verification procedure, in the situation where findings are made in connection with certain acts provided by criminal law.



Minimum time for final discussion

The term given by the fiscal body to have the final discussion must be at least 3 working days from the date of communication of the draft fiscal audit report, and for large taxpayers, at least 5 working days. In the past there was no specific term mentioned in the law.

Anti-fraud control

Taxpayers may express its point of view regarding the findings mentioned in the minutes/control act within 5 working days from the communication.

Checking the personal tax situation

The maximum duration of an inspection is modified in case of personal tax verification from 365 days to 270 days.

Non-declaration penalty

The obligation of the taxpayer to request a reduction of 75% of the non-declaration penalty, from 0.08% to 0.02%, when the amounts established by the decision are paid within the payment term, is eliminated. Thus, the reduction is to be applied ex officio by the fiscal body, and the decision to calculate the non-declaration penalty should be issued directly with the reduced percentage, i.e. 0.02%.

When the non-declaration penalty is not mentioned in the content of the fiscal audit report, the right of the fiscal body to apply the penalty to other subsequent or accessory administrative acts is revoked. The provision will only apply to tax inspection reports issued after 24 December 2020.

Limitation period for requesting interest from ANAF

The limitation period for claiming interest from the tax authority is 5 years calculated from 1 January of the year following that in which:

- ☑ the amounts to be refunded or reimbursed from the budget of the taxpayer/payer were extinguished by any of the modalities provided by law;
- ☑ the annulment of the fiscal administrative act became final;
- ☑ the refund was finally accepted.

ORDER 2998 dated 19 November 2020 on amending and supplementing the Order of the Minister of Public Finance no. 2810/2019 on approval of the procedure for applying the measures to restructure outstanding budgetary obligations on 31 December 2018 in the case of debtors who have main debts in an amount greater than or equal to RON 1 million (Official Gazette 1211/2020)

The Order updates the procedure for applying facilities in the context of successive amendments to GO 6/2019, which regulated tax obligation restructuring. Thus, the amendments addresses the following issues:

- ☑ elimination of the RON 1 million ceiling;
- ☑ clarification of provisions regarding application of the percentage of 5%, 10% or 15% to be calculated by reference to the amount of the main budgetary obligations

Reduction of non-declaration penalty should be applied ex-officio by the tax authorities when the conditions are fulfilled



- that are subject to restructured payments;
- extension of the scope of obligations for which restructured budgetary obligations can be granted, from 31 December 2018 to 31 July 2020, inclusive;
- the extension of the deadline for submitting the notification regarding the intention to restructure budgetary obligations until 31 March 2021, inclusive;
- extension of deadline for submitting the request to restructure budget obligations until 30 June 2021, inclusive.



ORDER 4136 dated 17 December 2020 on amending the Order of the President of ANAF 3725/2017 for the approval of tax registration forms of taxpayers and types of fiscal obligations that form the fiscal vector (Official Gazette 1311/2020)

The Order brings new proposals in the field of digitalization of ANAF, the functionalities being extended to form 700, "Declaration for the registration/modification in electronic environment of the categories of declarative fiscal obligations registered in the fiscal vector." The new changes aim to expand the possibilities to make various changes by electronic means and not by submitting forms in person.

The new provisions come into force on 30 March 2021 and the new D700 form will only be submitted online and will cover a wide range of changes and requests from the taxpayer, such as:

VAT

- Application to register for VAT purposes;
- Making entries on the fiscal vector regarding VAT, following registration for VAT purposes;
- Change in VAT tax period from quarterly to monthly, in the case of making an intra-community acquisition of taxable goods in Romania - current form O92;
- Reporting annual turnover in the case of taxable entities with a quarterly fiscal period - current form O94;
- Application/termination of the VAT Cash Accounting Scheme - current form O97;
- Application/termination of the VAT option on the one-stop shop (mini-one-stop-shop) - current form O85.

PROFIT TAX

- Modification of the annual/quarterly profit tax system - opting for the advance payment system - current form O12;
- Modification of the fiscal year - current form O14.

OTHERS

- Modification of the fiscal vector - replacing the current options from forms O10, O13, O15, O16, O20, O30 and O70;
- Registration/modification of the fiscal domicile - current form O50;
- Modification of the registered office/headquarters, in case of taxpayers who are subject to registration with tax authorities;
- Declaration of secondary offices that are not registered for tax purposes - current form O61.

ORDER 4072 dated 9 December 2020 on amending the Order of the President of ANAF 3386/2016 for the approval of model and content of forms 101, "Declaration of income tax," and 120, "Statement of excise duties" (Official Gazette 1246/2020)

The Order amends the income tax return 101, introducing a separate line for reporting bonuses for the timely payment of profit tax due for quarters I-III (according to GEO 33/2020).

EMERGENCY ORDINANCE 220 dated 30 December 2020 on the application of social protection measures after 1 January 2021 in the context of the spread of SARS-CoV-2 coronavirus, as well as for the amendment of some normative acts (Official Gazette 1326/2020)

The ordinance implements new measures to stimulate employment or extends the application of existing ones.

The new 700 form will include many more options to communicate online to ANAF



New measures to stimulate employment

Employers who hire on a full time basis, for an indefinite period, between 1 January and 1 September 2021:

- ☑ persons over 50 years of age whose employment has ceased for reasons not attributable to them, during the state of emergency or alert;
- ☑ persons aged between 16 and 29 registered as unemployed in the records of the county employment agencies or of the Bucharest municipality, as the case may be;
- ☑ Romanian citizens, included in the same age categories above, whose employment relations with foreign employers in the territory of other states ceased in 2020, for reasons not attributable to them, by dismissal,

receive monthly, for a period of 12 months, for each person employed in this category, 50% of the employee's salary, but no more than RON 2,500.

Employers have the obligation to maintain employment for a period of at least 12 months from the fulfillment of the 12-month period provided in the first paragraph.

The amounts are granted for the payment of salary proportional to the actual time worked by the employee and are not cumulative, for the same employee, with the subsidies granted to the employers who concluded with the county employment agencies, or Bucharest municipality, contracts or conventions under art 80, 85 and 93⁴ of Law no. 76/2002 on the unemployment insurance system and stimulating employment growth, with subsequent amendments and completions.

The amounts are reimbursed from the unemployment insurance budget, upon employer request, submitted by electronic means to county employment agencies or the municipality of Bucharest, within which they have their registered office, after the employer pays salary.

The award procedure is established by Order of the President of the National Agency for Employment (ANOFM).

Employers who process early termination of individual employment contracts for the persons provided above are obliged to fully reimburse employment agencies with amounts collected for each person for whom the employment relationship ended before the mentioned term, plus the NBR's reference interest rate in force at the date of termination of individual employment contracts, if their termination took place pursuant to art. 55 lit. b), art. 56 para. (1) lit. d) and e) and art. 65 of Law no. 53/2003 - Labour Code.

The following employers do not benefit from the amounts provided:

- ☑ public institutions and authorities;
- ☑ employers who at the date the grant of these amounts were requested are in bankruptcy, dissolution, liquidation or who have their activities suspended or on whom restrictions are imposed for reasons other than those generated by the spread of SARS-CoV-2 coronavirus.

Day labourers

Day labourers working in one of the areas affected by the interruption or restriction of activity due to the pandemic are granted an amount representing 35% of remuneration due for the working day from the state budget for a period of 3 months, at the choice of the beneficiary of work, but not later than 30 June 2021.

Temporary (seasonal) employees

The facility introduced by GEO 132/2020 is extended until 30 June 2021, but no more than a period of 3 months, at the choice of the employer, for employees who conclude individual employment contracts for a determined period of up to 3 months. The facility ensures the settlement of a part of the salary granted to these employees, supported from the unemployment insurance budget and representing 41.5% of salary related to the days worked in these jobs, for a working period of 8 hours/day, but no more than 41.5 % of average gross earnings provided by the Law 6/2020 in the state social insurance budget for 2020.

The employer will pay the value of the work performed in full, and subsequently settle the amount representing 41.5% with the National Agency for Employment (ANOFM).

The settlement of the amount of 41.5% is made at the request of employers based on the declaration on their own responsibility which results in the fulfillment of conditions



**New measures to
stimulate
employment in
2021**



provided by the ordinance, accompanied by the list of persons for whom the settlement is requested, within ten days from the application date.

Granting days off for parents

The measures provided by GEO 147/2020 regarding the grant of days off for parents in order to supervise children, in case of limitation or suspension of teaching activities that involve the actual presence of children in educational and early preschool units are extended until 30 June 2021, following the spread of the SARS-CoV-2 coronavirus.

Details on the provisions of GEO 147/2020 can be found in APEX Team Newsletter no. 9 2020.

EMERGENCY ORDINANCE 211 dated 4 December 2020 on the extension of application of some social protection measures adopted in the context of the spread of the SARS-CoV-2 coronavirus, as well as for the amendment of GEO 132/2020 on support measures for employees and employers in the context of the epidemiological situation caused by the spread of SARS-CoV-2 coronavirus, as well as for stimulating employment growth (Official Gazette 1189/2020)

The ordinance extends the deadline for granting social protection measures in the context of the epidemiological situation until 30 June 2021, which were previously valid until 31 December 2020. Within the scope of this extension is the subsidy for technical unemployment and compensation for professionals with work stoppages.

We remind that the technical unemployment benefit is 75% of the gross salary, but the state covers at most 75% of national average gross salary. Professional allowances (granted monthly) are also in the amount of 75% of national average gross earnings.

Prior to the issuance of the emergency ordinance, the aid was only valid until the end of 2020.

The ordinance also extended the possibility of reducing the working time of employees by no more than 80% (from 50%) of the monthly schedule, but this change was canceled very soon by the publication of Law 282/2020 (presented below).

The ordinance clarifies the fact that the prohibition of accumulating the allowance for the reduction of working time with other measures listed in art. 7 para. (2) of GEO no. 132/2020 shall apply only if the grant periods overlap.

LAW 282 dated 8 December 2020 for approval of GEO 132/2020 on support measures for employees and employers in the context of the epidemiological situation caused by the spread of SARS-CoV-2 coronavirus, as well as for stimulating employment growth (Official Gazette 1201/2020)

The law approves amendments to GEO 132/2020 which implemented several measures and facilities in combating the effects of the pandemic.

The subsidy for telework amounting to RON 2,500 granted to employers for each teleworker is extended to employers whose employees worked at least 15 days in telework during the alert period. Previously, the grant was only available for the entire period of emergency. The eligibility period for this grant ended on 31 December 2020.

Subsidies for the reduction of working hours

The period in which employers can apply the measure to reduce working hours is extended, by derogation from the Labour Code. The measure is to be applied both during the state of emergency/alert/siege, but also for a period of up to 3 months from the date of cessation of the last period in which the state of emergency/alert/siege was established. The minimum monthly period for which it can be applied remains 5 days, but the provision according to which the days had to be consecutive is eliminated.

Employers have the possibility to reduce the working time of employees by no more than 50% of the monthly schedule, the employees receiving an indemnity of 75% of the difference between gross monthly basic salary provided in their contract and gross monthly basic salary as a result of the reduction in working time.

The obligation to report the measure to reduce working time in the Revisal system is removed.

The list of documents that employers must submit together with the application for settlement of allowances related to the reduction in the work schedule is redefined. Thus,



Many of the social protection measures introduced in 2020 are extended to the first part of 2021



employers will submit an application accompanied by the following documents:

- ☑ **copy of decision on reduction in working time**, signed by the employee that he/she took note of;
- ☑ **monthly trial balance** (for the month preceding the application of the measure or, at most, for the month preceding the prior month);
- ☑ an **agreement concluded with the representatives of the trade union** or, in the absence of a trade union, with the **representatives of employees**, regarding the percentage of the number of employees for whom the reduction of working time was decided;
- ☑ the **list of beneficiaries** of the reduced working time allowance;
- ☑ copy of the **salary payment documents**, highlighting the payment of the allowance.

The settlement of the allowance for the reduction of working time will be made within 5 days at the most from the issuance of the decision of the Employment Agency.

The prohibition of the employer to hire staff for the performance of activities identical or similar to those performed by employees whose working time has been reduced, as well as subcontracting activities carried out by employees whose working time has been reduced will only apply at the level of branch, subsidiary or other secondary office of the employer. Previously, the ban was generally for the employer.

The phrase “and other additions” that was included in the prohibition on granting bonuses to the management team during the reduction of the work schedule is eliminated. Thus, the ban is only maintained for bonuses of the management team.

The periods in which employees benefit from the reduction in working time and the indemnity related to this measure constitute time assimilated in the unemployment insurance system and they are taken into account when establishing the contribution period of at least 12 months in the last 24 months prior to the date of registration of the unemployment benefit granted according to Law 76/2002.

DECISION 1046 dated 4 December 2020 on supplementing GD 719/2020 for approving the procedure for settlement and payment of amounts granted under GEO 132/2020 on support measures for employees and employers in the context of the epidemiological situation caused by the spread of coronavirus SARS-CoV-2, as well as to stimulate employment growth (Official Gazette 1199/2020)

The decision extends the applicability of the measure to subsidize the reduction in working time until 30 June 2021, a measure regulated by GEO 132/2020.

LAW 278 dated 27 November 2020 for approval of GEO 147/2020 on granting days off for parents to supervise children, in case of limitation or suspension of teaching activities that require the actual presence of children in schools and early childhood education units, as a result of the spread of SARS-CoV-2 coronavirus (Official Gazette 1166/2020)

The law approves and completes GEO 147/2020 on granting days off for parents in order to supervise children, in case of limitation or suspension of teaching activities that involve the actual presence of children in schools and early childhood education units, as a result of the spread of coronavirus SARS-CoV-2.

An additional condition for granting days off is introduced, namely that the occupied workplace does not allow work at home or telework.

Additions are made to the case of children with chronic diseases, a series of activity areas are defined in which employers are not obliged to grant days off.

The situation of increasing salary rights is redefined in the case of employees of the national system of defense, public order and national security, penitentiaries and staff of public health units. They cannot benefit from days off and are entitled to, under certain conditions, an increase of 75% of salary related to the days off to which they would be entitled in other areas, but were not able to take them, being restricted by law.

LAW 298 dated 24 December 2020 for the completion of Law no. 53/2003 - Labour Code (Official Gazette 1293/2020)

The law introduces a new situation in which employers can suspend the individual em-



The subsidy for reducing the work schedule is extended in 2021





Changes to clearance sales regulations

ployment contract, on their own initiative, in case of temporary suspension of activity and/or its reduction as a result of the decree of a state of siege or state of emergency. Thus, employees will benefit from an indemnity paid from the unemployment insurance budget in the amount of 75% of basic salary, but no more than 75% of average gross earnings. The allowance will be subject to taxation and payment of social contributions, according to provisions of the Fiscal Code. No work insurance contribution (CAM) is due.

ORDER 3179 dated 21 December 2020 on completion of art. 2 of the Procedure for cancellation of ancillary payment obligations, approved by Order of the Minister of Public Finance no. 2100/2020 (Official Gazette 1279/2020)

The order complements the Procedure for cancellation of ancillary payment obligations, approved by OMFP 2100/2020. Thus, the main budgetary obligations due by the insolvent debtor for which the maturity date has passed as of 31 March 2020 inclusive, regardless of the existence of a table of receivables or a receivables payment of programme, are also considered main outstanding budgetary obligations.

EMERGENCY ORDINANCE 210 dated 27 November 2020 amending Government Ordinance 99/2000 on clearance sales for market products and services (Official Gazette 1193/2020)

The ordinance amends GO 99/2000 which regulates the sales of market products and services.

Essentially the changes relate to clearance sales. Thus, art. 23 of OG 99/2000 was modified in the sense that the condition that products proposed for clearance be paid to the supplier by the trader at least 30 days before the start date of the clearance sale period, has been eliminated.

The new wording of art. 23 is that "clearance sales may be made only during two periods of the year, with a maximum duration of 45 days each, provided that the products proposed for clearance are usually offered for sale before that date."

Also, the following articles in OG 99/2000 were repealed:

- ☑ Art. 24 - "The stock of products proposed for clearance must be established in advance in the sales structure concerned, on the sales premises and warehouses of the sales structure, as well as, where appropriate, in one or more warehouses of the trader, at least 15 days before the start date of the clearance sale, and shall not be renewed after or during during the clearance sale."
- ☑ Art. 26 - "The legal supporting documents certifying that the stock of products proposed for clearance was constituted at least 15 days before the start date of the clearance sale and paid at least 30 days before this date will be kept in order to be presented, whenever necessary, to the competent control bodies. Proof of payment of the products subject to the clearance sale results from the examination of the accounting documents."
- ☑ Paragraph (2) of art. 27 - "(2) Traders have the obligation to notify the mayor's office in whose territorial area they carry out their activity of the period in which they carry out clearance sales at least 15 days before the start of operations."

ORDER 1129 dated 12 November 2020 on approval of Norms for completing the Intrastat Statistical Declaration (Official Gazette 1237/2020)

The Order approves the Rules for completing the Intrastat Statistical Declaration.

ORDER 3037 dated 26 November 2020 for amendment and completion of Order of the Minister of Public Finance no. 1665/2020 on the establishment of electronic means for remote transmission of implementing acts and their communication procedure (Official Gazette 1210/2020)

The Order completes OMFP 1665/2020 regarding the procedure to communicate enforcement acts to credit institutions by uploading them to the virtual private space on the ANAF portal.

The Order establishes that the decisions to clear the enforcement measures on cash availability related to the seizures established until the date of entry into force of Order 1665/2020 will be uploaded to the virtual private space on the ANAF portal, through the e-Popriri platform, to be communicated to the credit institutions.



Credit institutions will no longer exchange messages with ANAF in case of suspension, continuation, update of the remaining amounts to be recovered and clearance of enforcement measures. The exchange will be updated automatically, on weekly basis, by the e-Popriri computer system.

Credit institutions will be able to apply the provisions regarding the notification of establishment/non-establishment of seizure until the date the Framework Convention for the accession of credit institutions to the communication mechanism by electronic means of remote transmission of enforcement acts is signed.

DECISION 1133 dated 30 December 2020 on establishing the quota of newly admitted foreign workers on the labour market in 2021 (Official Gazette 1326/2020)

For the year 2021, a contingent of 25,000 newly admitted foreign workers on the Romanian labour market is established.

ORDER 4077 dated 9 December 2020 on approval of the Procedure for drawing up, endorsing and approving the fiscal inspection report (Official Gazette 1210/2020)

The order adopts the procedure for drawing up, endorsing and approving the tax inspection report and the "Notice for final discussion" form.

The procedure aims at standardizing the actions to be performed during the fiscal inspection stages.

The procedure is carried out in four stages: analysis of tax findings, preparation, notification and approval of the tax inspection report.

ORDER 3192 dated 22 December 2020 for modification of the Communication Procedure by electronic means of remote transmission between the Ministry of Public Finance/central fiscal body and individuals, legal entities and other entities without legal personality, approved by Order of the Minister of Public Finance no. 660/2017 (Official Gazette 1291/2020)

The Order extends the category of documents that can be communicated by taxpayers through ANAF virtual private space (SPV), introducing registration declarations as well as other declarations.

The profile files provided by Order of the President of ANAF 146/2018 (regarding online connection of cash registers) were included in the list of documents issued by Ministry of Finance/ANAF and communicated to taxpayers (at their request) through SPV.

LAW 276 dated 27 November 2020 for the amendment and completion of GO 26/2000 on associations and foundations (Official Gazette 1166/2020)

ORDER 4156 dated 21 December 2020 to amend Instructions to prepare administrative document in digital form (e-DA) using EMCS-RO application – Control of movements performed under regime of suspension/exemption of excise taxes, approved by ANAF Presidential Order 2901/2016 (Official Gazette 1309/2020)

INFO - PRESS RELEASE: "ANAF will complete the development of the SAF-T information system in July 2021"

In a press release at the end of 2020, ANAF announces that it will complete implementation of the SAF-T system in July 2021. Thus, in January-February, consultations will take place between the Ministry of Finance and ANAF with representatives of the business environment, the developers of accounting software and CECCAR, to ensure a common understanding of how to implement the system. The consultations will also focus on the analysis of critical elements of the system: SAF-T capabilities, the impact of changes to company internal systems, the flow of the fiscal control process, the SAF-T standard, the type of data, etc.

The term for reporting the SAF-T file by companies will be defined based on the analyses performed during the consultations, the experience of other European tax administrations, but also the real possibility of the need for companies to adjust their IT sys-



**SAF-T
will be finalised in
July 2021**



tems.
SAF-T (Standard Audit File for Tax) is an international standard for electronic exchange of reliable accounting data from organizations to a national tax authority or external auditors. The standard is defined by the Organisation for Economic Co-operation and Development (OECD).

The full press release can be accessed here (in Romanian):

https://static.anaf.ro/static/3/Anaf/20201231160024_comunicatsaft1515.pdf

REMINDER - The advance payment system for profit tax

For those who apply the profit tax regime, remember that at the beginning of the year it is useful to consider the opportunity to opt for the system of advance payments or to return to the quarterly calculation system.

The year 2020 was a special one that allowed, by derogation, those who opted for advance payments to apply the quarterly calculation throughout 2020. Unfortunately, until the end of 2020, the Government did not have time to approve the project through which what must be declared by those with advance payments for the fourth quarter of 2020 was regulated, which had a reporting deadline on 21 December 2020. The situation remained unregulated until the deadline for this newsletter, and in the last days of 2020, no one seemed interested in clarifying this situation.

For 2021, we do not know what plans the Government has in terms of advance payments. It is possible to extend the derogation given in 2020. However, you can opt for voluntary application of the quarterly system and have the possibility to return later to the system of advance payments.

Remember that the option to change the system must be communicated to ANAF by 31 January 2021.

Details regarding the system of advance payments on profit tax have been presented at the end of previous years. We invite you to read more information in APEX Team Newsletter no. 12 2018.

REMINDER - Don't forget to ask your foreign business partners for their tax residency certificate issued in 2021

The tax residence certificates issued in 2020 are also valid in the first 60 calendar days of 2021.

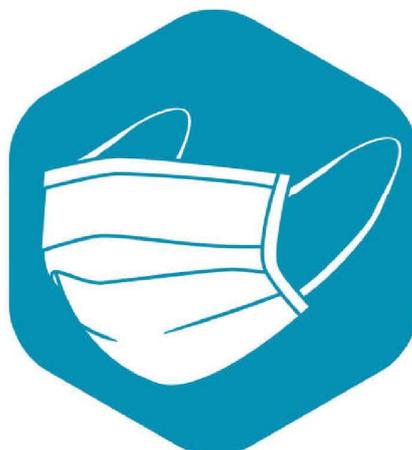
INFO - Closing exchange rates of 2020

The 2020 closing NBR exchange rates to use for valuation of monetary items (cash on hand, receivables, payables) denominated in foreign currency, as well as receivables and payables denominated in RON but pegged to a foreign currency for collection/disbursement are:

1 EUR = 4.8694 RON; 1 CHF = 4.4997 RON; 1 GBP = 5.4201 RON; 1 USD = 3.9660 RON.

DON'T FORGET to define the 2021's range / series / numbers allocated to the financial-accounting documents (invoices, receipts, shipping notices, etc.) by internal decision

**PLEASE KEEP YOUR
DISTANCE**



AND WEAR A MASK

MONTHLY AGENDA

Every day - do not forget

- ☑ To complete the petty cash register (or print electronic version)
- ☑ To complete the purchase ledger and sales ledger
- ☑ To update electronic employee registers with information regarding labour contract inception/amendment or termination, if any

At month end - do not forget

- ☑ To complete the journal ledger
- ☑ To register contracts concluded during the month for services rendered by non-residents with tax authorities as per article 8 point 8 of the Fiscal Code
- ☑ To revalue monetary assets and liabilities in foreign currency (cash on hand, assets, liabilities) at the NBR exchange rate in force on the last banking day of the month
- ☑ To organise a stock count of inventories if the enterprise does not use a perpetual inventory system
- ☑ To issue final invoices for the current month.

To comply with requirements regarding VAT

- ☑ Mention the registration code under the scope of VAT on documents for EU business partners
- ☑ Check validity of registration code under the scope of VAT mentioned on invoices received
- ☑ Check amount of VAT disclosed on invoices received
- ☑ Check references related to VAT (e.g.: “reverse charge,” “operation not subject to VAT,” etc...)
- ☑ On invoices, write VAT amount received in case of reverse charge
- ☑ Maintain ledger of goods received
- ☑ Maintain ledger of non-transfer of goods
- ☑ Maintain non-current assets ledger
- ☑ Mention which exchange rate will prevail (NBR, commercial bank or Central European Bank) in contracts with foreign partners

To consult the calendar of tax liabilities, visit the following link from ANAF (in Romanian):

https://static.anaf.ro/static/10/Anaf/AsistentaContribuabili_r/Calendar/Calendar_obligatii_fiscale_2021.htm

KEY HR FIGURES

2021 Contributions for dependent activities	Employer and beneficiary (for activities considered dependent) (% share)	Employee and dependent worker (% share)
Social security contribution (pension)	Nothing due for normal working conditions 4% for special work conditions 8% for special work conditions	25% (**)
Contribution to health insurance fund (calculated on gross income)	Not due	10% (***)
Work insurance contribution	2.25% (*)	
Income tax		10% (****)
Disability Fund (for employers with more than 50 employees)	4 x minimum wage for every 100 employees	
The amount of a taxable meal tax in the sense of income tax	maximum 20.01 lei	
Minimum wage (gross) from 1 January 2021	2,300 lei (under approval process) 2,350 lei (for more than 1 year and functions requiring higher education) 3,000 lei for employees in the construction field	
Diurnal (in the country) For employees of public institutions For private sector employees (* 2.5)	20 lei 50 lei	

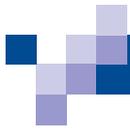
The below tax facilities are available for employers on the field of construction, when minimum 80% of turnover if from construction activities defined by law:

(*)not due by employer

(**) the social security owed by the employee is decreased to 21,25%

(***) health insurance is not due by the employee

(****) tax on income is not due for monthly realised gross salaries up to 30.000 lei.



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***Our Mission:
Adding Value to Client's Business***

APEX Team includes qualified professionals able to provide a full range of accounting and payroll services. Our consultants are ready to share their knowledge and experience gained whilst working in Romania as consultants for one of the Big 4 international companies, having many international companies acting in a wide range of industries as clients.

The team includes chartered accountants (Romanian Chartered Accountants Body and also ACCA) specialised in accounting for business entities, as well as a group specialised in payroll administration on behalf of the client.

APEX Team provides a full range of accounting services, payroll services, local tax compliance and tax advice, as well as services tailored to your company needs:

- Bookkeeping*
- Recurring accounting assistance*
- Payroll computation and additional HR services*
- Accounting and tax advice « on line »*
- Consulting and assistance in drafting transfer price files*
- Start up services*
- Organization of the accounting function*
- Assistance in implementation of ERP*
- Training*
- Audit*

H A P P Y N E W Y E A R

