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INFO – Simplification and "de-bureaucratisation" measures suggested by Ministry of Public Finance (MFP)

MFP released a public document presenting a draft project on new simplification and "de-bureaucratisation" measures to amend the Fiscal Code, Fiscal Procedure Code and other normative acts.

We present the main targeted measures below.

FISCAL CODE

a. Corporate tax

- complementing provisions on setting the fiscal year for periods different than calendar year, by introducing the possibility of revising the option (returning to calendar year);
- extension of application period for facility on exemption from tax on profit for reinvested profit, without time limit (currently the facility is in effect through the end of 2016);
- introduction of certain provisions on deducting expenses related to theoretical and/or practical training of students and other categories of persons who follow any form of education and training within an institutional framework.
- Tax on micro-enterprise income
- reducing minimum threshold of share capital from which a company may opt to apply corporate tax instead of tax on micro-enterprise income. This threshold may be reduced from the equivalent of EUR 25,000 to the equivalent of EUR 10,000.

b. Mandatory social contributions

- inclusion of day labourer remuneration on the list of exemptions from social contributions.

c. VAT

- Special VAT regime for farmers, characterised by the following:
 - o farmers do not deduct VAT for purchases and nor do they collect VAT on sales of agricultural products/provision of agricultural services, regardless of turnover level, and they do not maintain any VAT records (except intra-community operations) ;
 - o farmers applying the special regime will be registered in a special register and their beneficiaries will have the obligation to mention acquisitions from farmers in distinct records
 - o the regime is optional. Farmers may opt to apply normal VAT regime if it is to their advantage
 - o those currently registered under the scope of VAT may de-register in favour of applying the special regime for farmers;
 - o only farmers carrying out economic activities, other than agricultural (which cannot benefit from special regime) will have to register under the scope of VAT, if from those activities they obtain revenue exceeding the threshold of RON 220,000.
- Change of VAT adjustment rule in case of capital goods so as to renounce the one-off adjustment and to apply an annual adjustment (a deferred adjustment) of 1/5th or 1/20th of tax related to capital goods. The suggested change will modify the way adjustments are calculated. Adjustments will no longer be performed on a "one off" basis: there will be adjustments of 1/5th or 1/20th of associated tax per-

formed annually during the adjustment period.

- ☑ Abolishment of provisions on Register of Intra-community Operators (ROI);
- ☑ Postponement of obligation to submit three annual informative statements (code 392A, 392B and 393) to the 31st of December 2019;
- ☑ Amendment of provisions regarding measures applied to taxpayers which reinstate VAT registration after ex-officio cancellation, as follows:
 - to re-invoice by applying VAT to all sales they performed during the period when they did not have a valid VAT code (In this way they will recover VAT paid to the State when they did not have the possibility to collect it from customers)
 - their beneficiaries should have the possibility to deduct VAT for purchases during the period when the supplier had its VAT code cancelled
 - to deduct VAT after re-registration for purchases related to sales during the period when taxpayer had their VAT code cancelled.



FISCAL PROCEDURE CODE

- ☑ Extension of list of documents accepted as proof of payment in relation to public institutions for all types of payment modalities at the national level (internet banking, mobile banking, payment devices, ATMs belonging to credit institutions). This measure aims to encourage the use of modern methods of payment by citizens by regulating acceptance as a proof of payment by all public institutions of documents which confirm performance of transactions both over the counter and online. Therefore, printed electronic documents, affidavits containing all payment details, including digital transmission of data to institutions which use applications for providing online services, will be recognised as proof of payment. Verification of amount collected will be carried out by public institutions;
- ☑ Development of blocking/unblocking methods for bank accounts in real time, through digital exchange of information and documents, between fiscal administration and credit institutions where taxpayers have bank accounts. In this way, the period to establish/lift a sequestered (seized) account will diminish, and only the accounts/amounts necessary to execute receivables will be frozen and not all bank accounts opened at each bank. Unblocking bank accounts will be performed within two hours from the moment payment of the outstanding liability identified, compared to the current time period of at least 10 days.

OTHER LEGAL REGULATIONS

- ☑ **Law 241/2005 to prevent and fight against tax evasion:** the act of withholding taxes at source (example: payroll taxes) and non-payment to the State Budget will be reintroduced as a crime ;
- ☑ **Amendment of Government Emergency Ordinance 146/2002 regarding formation and use of resources through the State Treasury:** creation of legal framework to allow banks having concluded conventions with the Ministry of Finance on opening transitory account to collect any tax or other amounts owed to public institutions, from individuals who are not customers of the bank;
- ☑ **Other simplification measures:** income certificates and fiscal attestation certificates may be required and transmitted to public institutions online. Starting the 1st of November 2016, ANAF will provide other public institutions, including city halls, based on protocols of information exchange, the necessary means to electronically transmit documents which attest the fiscal situation of taxpayers to allow those institutions to grant certain legal rights.

ORDINANCE 22 dated 24 August 2016 to amend Government Emergency Ordinance 77/1999 on certain measures to prevent default (Official Gazette 658/2016)

The Ordinance amends provisions of Government Emergency Ordinance 77/1999 on certain measures to prevent default, a normative act that constrains legal entities, regardless of organisation form or property type, to organise the record evidence of liabilities and receivables to/from any creditor or debtor, respectively, by due date.

The regulations are old, only slightly amended, but they still remain ambiguous in many aspects.

Legal entities, regardless of organisation form or property type, starting the 15th of Sep-

Interesting
simplification
proposals from
MFP



tember (15 days subsequent to the Ordinance going into effect) have the obligation to organise a record liabilities and receivables, by date due, to any creditor or from any debtor, depending on the case. In this regard, the balance of amounts outstanding for more than 30 days from the invoice issuance date or due date, if the latter is clearly specified, to any creditor or from any debtor legal entity with its headquarters in Romania should be prepared. This statement includes:

- ☑ identification elements of the creditor/debtor: name; headquarters and fiscal code;
- ☑ number, issuance date, due date (if clearly specified) of the receivable, or of the debt, the value and balance of the invoice.

Reporting based on the above is completed in detail, at partner and invoice level.

The Ordinance mentions that the information will be submitted online at an address created especially for this purpose, in order to be included in the compensation procedure for outstanding debts.

New regulations mention that the information should be constantly updated by each entity, **within one work day from the occurrence of any change** (previously the deadline was within 30 days).

Even though whether updated payable and receivable details should be reported daily to the same authority are not clearly mentioned, we assume this is the lawmaker's will.

The Ordinance also updates the value of fines applied for not fulfilling the above-mentioned requirements, as follows:

- ☑ failure to keep and to update the record of payment liabilities and receivables – fines from RON 500 to RON 1,000 RON;
- ☑ failure to transmit the information via internet to the competent authority – fines from RON 1,000 to RON 5,000;
- ☑ failure to comply with obligations on confidentiality of information, data and situations – fine from RON 1,000 to RON 5,000.

To conclude, some changes were brought to the old regulations, but there are still certain ambiguous aspects.

What is the purpose of certain regulations to track payment of receivables or liabilities, regulations binding to all entities, regardless of property type or size?

The argument that the invoices will be settled through compensation is only valid for those which opt for this procedure or for public entities or entities having the State as a shareholder.

We ask ourselves if this data flow reported by all economic agents does not raise issues related to data management, storage and analysis. Who uses this data and how is confidentiality assured? Is the human effort justified? Is it possible to respect all requirements of the law in order to avoid sanctions for contraventions?

ORDER 2018 dated 23 August 2016 on qualification within applied research and development and/or technological development activity (Official Gazette 718/2016)

The Order regulates application of exemption from tax on income for income such as salaries/wages and other similar income obtained by individuals carrying out research and development and/or technological development activity. This facility came into force on the 1st of August 2016.

The Order defines activity types qualified as eligible applied research and development and/or technological development activities and sets application conditions, a procedure to determine computation base for exemption from taxation and supporting documents required in order to qualify individuals who are exempted from paying tax on income obtained from salaries/wages and other compensation as a consequence of carrying out research and development activities.

Eligible activities for facility

A. Applied research and development and/or technological development activity

- ☑ **applied/industrial research**, defined as critical and planned research or investigation, performed in order to obtain new knowledge and skills to develop new products, processes or services or to obtain a significant improvement to existing products, processes or services. This includes creation of parts for complex systems and



**Pay attention at
the reporting
requirements in
the legislation on
preventing
default!**



may also include prototype construction in a laboratory or in an environment with simulated interfaces with existing systems, such as test manufacturing lines, when this is necessary for industrial research and for generic validation of technologies in particular.

- ☑ **experimental/trial development**, defined as acquisition, combination, shaping and use of existing relevant scientific, technological, business and other knowledge and skills, in order to develop new or improved products, processes or services.

The Order lists different examples of activities which may be included in this category. The fact that covered activities do not include routine or periodic changes to existing products, production lines, manufacturing processes, services or other operations, even if the changes may represent improvements.

- ☑ **testing activities carried out in order to solve scientific and technological uncertainties and to achieve objectives of research and development activities** (e.g.: testing intermediate results or prototypes).

- ☑ **technological development** consists of activities such as engineering of systems and technological engineering, through which results of the research are transferred to and applied by economic operators, as well as for social purposes, aiming to introduce and materialize new technologies, products, systems and services as well as to refine existing knowledge, and which contains:

- **Pre-competitive research** as an activity oriented to transform the results of applied research into plans, schemes or documentation for new products, processes or services, including manufacturing of experimental models and prototypes, which cannot be used for commercial purposes;
- **Competitive research** as an activity oriented to transform results of pre-competitive research into products, processes and services which may directly answer a market requirement, including engineering of systems or engineering and technological projection activities.

B. Applied research and development and/or technological development project is the method to achieve the goal of a programme with a well-defined scope, which is scheduled to be attained during a determined period of time using assigned resources and which contains at least the following elements: project purpose, research and development field, objectives, research and development activities, performance period, financing sources (public/private/domestic/foreign), project budget explicitly mentioning expenses related to income such as wages and similar types of compensation earned by personnel assigned to the project, category of result and innovative character of result.

Ineligible activities

The following activities are not included in the category of research and development and/or technological development activities:

- a) routine programmes to test and analyse quality and quantity;
- b) chromatic or aesthetic changes to products, services or existing processes, even though these changes represent improvements;
- c) operational research, such as management or efficiency studies which are carried out prior to the beginning of a research and development activity;
- d) adjustment actions related to deterioration which appeared during commercial manufacture of a product;
- e) legal and administrative activities related to application, patent or settlement of litigation linked to inventions or sale/patent of inventions;
- f) activities, including design and building engineering, related to construction, relocation, re-arrangement or commissioning of facilities or equipment, other than activity entirely and exclusively used by the enterprise for carrying out research and development activities;
- g) market research, market testing and development studies, sales promotion and consumption studies;
- h) prospecting, development, extraction and production of ore, oil and natural gas;
- i) commercial and financial activities necessary for market research, commercial production or distribution of a material, product, equipment, process, system or service which is new or improved;



Income Tax exemption in R&D activities - conditions and requirements



- j) assistance services (such as provision of transportation, storage, cleaning, repair, maintenance or security services) which are not entirely and exclusively conducted in relation to a research and development activity.

Who may benefit from this fiscal facility?

Beneficiaries of the exemption may be employees who carry out eligible activities based on an individual labour agreement, employment relationship, special status provided by the law or an assignment document signed by/concluded with a unit /public or private institution, included in the national system of research and development according to provisions of Government Ordinance 57/2002.

Cumulative conditions which should be accomplished:

- the job position is part of a research and development department, highlighted in the employer's organisational chart as follows: directorate, department, office, division, compartment, laboratory, or similar;
- the employee carries out eligible activities in applied research and development and/or technological development, as part of an applied research and development and/or technological development project;
- the employee is a graduate from at least the 1st stage of long-term higher education studies and holds a bachelor's degree or equivalent, granted by an accredited higher education institution in Romania, or holds a degree obtained by university studies at an accredited higher education institution from abroad, recognised by the Ministry Of National Education and Scientific Research;
- the costs of salaries and similar compensation are provided within the budget of the research and development and/or technological development project;
- the employer also has research and development and/or technological development activities as its object(s) of activity;

In case of detached individuals, fulfilment of the above cumulative conditions along with supporting documents listed below is the responsibility of the income payer/entity where the employee carries out eligible applied R&D and/or technological development activities in Romania.

What supporting documents are necessary?

The supporting documents are:

- articles of incorporation or the employer's act of establishment/creation;
- employer's organisational chart, highlighting the research and development structure;
- copy of higher education degree or equivalent document, certified as conforming to original;
- document containing all identification data of the research and development and/or technological development project;
- copy of individual labour agreement, certified as conforming to original, or copy of another document proving the legal relationship or the assignment decision;
- job description;
- time sheet related to the project;
- document highlighting components related to income from salaries/wages and the like obtained by each employee from activities carried out within the project.

How is the exemption granted?

Exemption from tax on income obtained from salaries/wages and other compensation is granted on a monthly basis for only income obtained under an individual labour agreement, work relationship, assignment note or under a special status provided by the law, included in each project, within the limit of the allocated budget for the respective project. In case the allocated budget includes amounts representing holiday allowances, the corresponding income is exempted from tax on income.

The Order also provides the calculation/computation methodology, for both situations – if the employee obtains taxable income as well as tax-exempt income.

Exemption from tax on income obtained from salaries/wages and similar compensation is granted even if objectives of the applied research and development /technological development project are not achieved.



**Supporting
documentation
needed to benefit
of income tax
exemption**



Other specifications

In order to validate qualification of activities so as to receive exemption from tax on income obtained from salaries/wages and similar earnings as being eligible activities related to research and development and/or technological development, the employer, employee or tax authorities may require reports developed/prepared by experts registered with the Register of experts in the field of research and development, provided by the Order of the Minister of Public Finance and the Minister of Scientific and National Education 1.056/4.435/2016 to approve Norms on deductions for research and development expenses upon determination of taxable profit.

EMERGENCY ORDINANCE 46 dated 31 August 2016 to complement Law 227/2015 on the Fiscal Code (Official Gazette 685/2016)

The Ordinance amends the Fiscal Code in order to clarify aspects related to applying the exemption of individuals who are war veterans or spouses of war veterans from local taxes.

ORDER 1938 dated 17 August 2016 to amend and complement certain accounting regulations (Official Gazette 680/2016)

The Order incorporates into Romanian accounting legislation provisions of European directives on implementation of reporting non-financial information by public-interest entities which, on the financial statement date, have more than 500 employees.

These entities have the obligation to prepare and submit a non-financial statement, in addition to financial statements.

The non-financial statement is included in the Director's report, aiming to describe activity of the company in relation to environmental issues, social and personnel situations, observance of human rights, as well as combatting corruption and bribery.

The statement should at least contain the following elements:

- description of business model applied by the entity;
- description of policies adopted by the entity in relation to the above-mentioned situations;
- result of these policies;
- main risks related to the entity's operations, including business relations, products or services which may have a negative impact on mentioned objectives, the manner in which the entity manages these risks;
- key indicators of non-financial performance relevant to the entity's activity.

The Order details different presentation aspects of these non-financial elements.

If a public-interest entity is part of a group of companies, and it has the quality of parent company, then the entity will prepare a consolidated non-financial statement for the entire group.

In addition to revising OMFP 1286/2012 for companies applying IFRS, OMFP 1802/2014 for all other companies was also updated for provisions of this Order.

The regulations will come into force starting the 1st of January 2017.

ORDER 2546 dated 5 September 2016 to approve Procedure to apply precautionary measures by competent fiscal authorities and to approve templates, usage instructions and appropriate storage of forms (Official Gazette 703/2016)

The Order approves the Procedure to apply precautionary measures by fiscal authorities, measures applied when there is a risk that the debtor may evade, hide or diminish its patrimony, resulting in impairment of a receivable.

Precautionary measures may apply in the following situations:

- during a tax inspection through completion of inspection;
- during or as a consequence of an unannounced inspection;
- in case of fines or seizures of goods or amounts of money already disposed of;
- during inspection actions when there is a reasonable suspicion that illegal acts were committed, up until the date when the differences in taxes and contributions through administrative fiscal acts are set.



New requirements for public interest entities to report non-financial information



Precautionary measures are:

- a) Precautionary seizure of real estate;
- b) Precautionary seizure of movable property, including securities and tangible goods;
- c) Precautionary garnishment of amounts owed to the debtor by a third party – known as procedure of the third garnishee;
- d) Precautionary seizure of liquid assets in bank accounts.

Precautionary measures on goods held by a debtor are applied to goods whose value is limited to 150% of the amount for which the precautionary measure is applied.

The procedure also sets the sequence of the type of goods to which the precautionary measure will be applied as well as conditions in which application of the precautionary measures ceases.

ORDER 2070 dated 14 July 2016 to amend and complement ANAF Presidential Order 2.594/2015 to set competent fiscal authorities to organise and manage the fiscal record, the procedure to register, delete and rectify information in/from the fiscal record, to request and issue a fiscal record certificate, the template and content of necessary forms, as well as the proper level of access to information registered on the fiscal record (Official Gazette 706/2016)

ORDER 2554 dated 6 September 2016 to approve Procedure to authorize import of goods under the regime of exemption from customs duties by organisations and institutions by applying provisions of art. 43-53, art. 57-59, art. 61-80 and of art. 82 of EU Regulation 1.186/2009 of the Council dated 16 November 2009 to establish a community-wide system for exemption from customs duties (Official Gazette 712/2016)

REMINDER – Valuation of monetary items in foreign currency

The August 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 = 4.4523 RON; 1 CHF = 4.1041 RON; 1 GBP = 5.1627 RON; 1 USD = 3.9822 RON.

OCTOBER 2016 – 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 organize 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



**October 25,
deadline for
paying income tax
or micro
enterprise tax
related to the
3rd quarter**



- ☑ 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 for September 2016, visit the following link on ANAF website (in Romanian):

https://static.anaf.ro/static/10/Anaf/AsistentaContribuabili_r/Calendar/Calendar_obligatii_fiscale_2016.htm#oct

KEY HR FIGURES

2016 Contributions	Employer and Beneficiary of activities considered dependent activities (% rate)	Employee and provider of dependent activities (% rate)
Social security contribution (<i>pension</i>)	15.8% for normal working conditions 20.8% for particular working conditions 25.8% for special working conditions (contribution base capped at an amount representing the average amount of insured persons during the month for which the contribution is determined as 5 times the average monthly gross salary) ¹	10.5% (contribution base per employee capped at 5 average monthly gross salaries according to Budget for public social insurance, i.e. 5 x 2,681 = RON 13,405) ¹ (contribution base for a person under civil contract: gross income)
Health insurance fund (based on gross salary)	5.2%	5.5%
Medical leave contribution and health insurance allowance (based on gross salary)	0.85%	
Unemployment fund (based on gross salary)	0.5%	0.5%
Work accident and occupational disease fund (based on gross salary) ²	0.15% - 0.85% depending on CAEN code for main activity	
Contribution to fund to guarantee payment of salary liabilities (based on gross salary) ³	0.25% (only for employees under labour contract included for retired persons)	
Salary tax		16%
Contribution for non-employment of disabled persons (for employers with more than 50 employees)	4 x 50% minimum gross salary for every 100 employees	
Minimum monthly gross salary	RON 1250 (starting 1 May 2016)	
Luncheon voucher - employee subject to salary starting May 2016	RON 9.57	
Per diem (in Romania) Employees in the public sector Employees in the private sector (x 2.5)	RON 17.00 RON 42.50	

Note 1: Contribution to pension is also due during periods when the insured person benefits from medical leave and health insurance allowances. For these periods, the contribution base is 35% of the average monthly gross salary corresponding to the number of business days of medical leave.

Note 2: Contribution for work accident and occupational disease is also due during periods when the insured person benefits from medical leave and health insurance allowances. For these periods, the contribution base is the minimum gross salary where payment is guaranteed on a national basis corresponding to the number of business days of medical leave.

Note 3: The contribution to Fund to guarantee payment of salary liabilities is also to be calculated for health insurance allowances but only in respect of the first 5 days of temporary incapacity to work supported by the employer as well as for allowances for temporary incapacity to work further to a work accident or occupational disease but only in respect of the first 3 days of temporary incapacity of work supported by the employer.

Be Aware! Income paid to a person who carried out an activity considered dependent activity is disclosed on a separate "Payment statement" and is included on form 112.



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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*