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IMPORTANT – JUSTIFICATION OF VAT EXEMPTION FOR INTRA-COMMUNITY DELIVERY OF GOODS STARTING THE 1st of JANUARY 2020

Legislative situation

- ☑ Directive 2018/1910/EC – this directive amends Directive 112/2006 on VAT. The amendments should be incorporated into domestic law, but unfortunately this will be made throughout 2020, given the fact that Romania did not manage to apply the amendments to the Fiscal Code in due time.
- ☑ Regulation 2018/1912/EC
- ☑ Regulation 2018/1909/EC
- ☑ Disclosure notes - They are only comments, with a guiding purpose, but not opposable by authorities.

The Directives, even though mandatory, should be integrated into domestic law in order to be applied. Regulations at the European level are directly applicable: they should not be incorporated into domestic law.

Besides incorporating the Directive into the Fiscal Code, it is also mandatory to amend Order 103/2016 which regulates Instructions to apply VAT exemption for operations provided by art. 294 para. (1) letter a)-i), art. 294 para. (2) and art. 296 of the Fiscal Code.

What changes start the 1st of January 2020?

- ☑ Directive 2018/1910, amending the base Directive 2006/112, includes as a **background condition** to apply exemption for intra-Community delivery (art. 138) the **communication of a valid VAT code to the client/customer** from a Member State other than the one from where the delivery of goods starts. Previously, this was not a background condition, even though stipulated in the Fiscal Code.
- ☑ **The provider registers intra-Community deliveries in for D390.** If not declared or erroneously declared, **the exemption does NOT apply**, except when the fiscal authority considers the justification of the provider regarding the errors (new background condition) as motivated.
- ☑ **The performance of transportation is justified** though a set of documents regulated by art. 45a of Regulation 1912/2018.

How will the transportation be justified starting the 1st of January 2020?

It will be presumed that the intra-Community goods delivered will be transported to another Member State, in any of the following situations:

1. When the transportation is organized by the provider:

- o Has in its possession 2 conclusive elements among documents specific to the type of transportation provided (signed CMR/international consignment note, bill of lading, invoice issued by the carrier, air bill), issued by two entities which are independent of each other, as well as independent from the provider or buyer

OR

- o An above-mentioned element, along with conclusive proof from other documents issued by the two entities which are independent from each other, as well as independent from the provider or buyer:
 - an insurance policy related to expedition or transportation of goods or bank documents attesting to payment for expedition or transportation of goods;
 - a receipt issued by a warehouse from the destination Member State attesting to the storage of goods in the respective Member State;



- official documents issued by a public authority, such as a notary office, attesting to the arrival of goods in the destination Member State.
- 2. When the transportation is organized by the client (e.g. deliveries in EXW condition)**

- o Those mentioned above, point 1

AND

- o **written statement from the buyer**, attesting that the respective goods were sent or transported by the buyer or by a third party on behalf of the buyer with the following information:
 - destination Member State for goods;
 - issuance date;
 - name and address of the buyer;
 - quantity and nature of goods;
 - date and place of arrival for goods and, in case of delivery of transportation services, the identification number of transportation vehicle;
 - identification of the person who will accept the goods on behalf of the buyer.

The statement should be provided by the 10th of subsequent month.

INFORMATION – OFFICIAL STATEMENT OF THE MINISTRY OF PUBLIC FINANCE ON JUSTIFICATION OF TRANSPORTATION FOR DELIVERY OF INTRA-COMMUNITY DELIVERY OF GOODS

“Justification of intra-Community transportation in order to apply VAT exemption for intra-Community delivery of goods, starting the 1st of January 2020:

Legislation in the field of VAT provides a series of conditions for application of the VAT exemption in case of intra-Community supply of goods. One of the exemptions is that the goods must be shipped or transported from one Member State to another.

In practice, different approaches by the Member States in the application of VAT exemptions for intra-Community supply of goods have been found in certain situations, which have created difficulties and a lack of legal certainty among both the economic operators who carry out such transactions and from the perspective of tax administrations.

In order to provide concrete solutions and to harmonize conditions under which VAT exemptions may be applied at the EU level, it was considered appropriate to specify certain circumstances in which a European regulation, directly applicable to all Member States, should consider that goods are transported from one Member State to another.

In this respect, the Implementing Regulation (EU) no. 2018/1912 of the Council amending the Implementing Regulation (EU) no. 282/2011 regarding certain exemptions for intra-Community operations, will enter into force on 1 January 2020.

At art. 45a of Regulation 282/2011 (as amended by Regulation 2018/1912), establishes that, if the conditions set out in paragraphs (1) letter a) and b) thereof are met, it is presumed that the supplier proves intra-Community transport of goods in order to apply the VAT exemption for intra-Community delivery of goods.

However, the presumption provided for in art. 45a of the Regulation does not cover all the situations that may appear in practice, provided that documents necessary to justify the intra-Community transport of goods must be issued by two entities which independent of each other, as well as the supplier and the buyer.

Therefore, starting January 1, 2020, with a view to applying the VAT exemption for intra-Community supply of goods:

- in the case of taxable entities who fulfill conditions stipulated in art. 45a of the Regulation, it is assumed that the goods were transported intra-Community;
- in the case of taxable entities who do not fulfill conditions provided in art. 45a of the Regulation, intra-Community transport of goods is justified according to provisions of art. 10 of the Instructions for applying exemption on the value added tax to operations provided for in art. 294 paragraph (1) letter. a) – i), art.294 paragraph (2) and art. 296 of the Law no.227/2015 regarding the Fiscal Code, approved by Order of the minister of public finance no. 103/2016. Such situations may arise, for example, when: the supplier or the buyer transports goods using its own means of transport, the transport is carried out on wheels, and, in the case of means of transport, the supplier cannot prove that it is independent from the carrier or of the shipment or

Pay attention to the new conditions for VAT exemption of intra-Community supplies of goods!

that they are independent of each other or the buyer.

We emphasize that justification of the intra-Community transport of goods is not sufficient for application of the VAT exemption in the case of intra-Community supply of goods. For application of this facility, it is necessary to fulfill all conditions provided by Law no. 227/2015 regarding the Fiscal Code.”

LAW 263 dated 30 December 2019 to amend Law 227/2015 on the Fiscal Code (Official Gazette 1054/2019)

The Law repeals provisions of the Fiscal Code through which social contributions related to part-time labor contracts should have been at least at the level of those owed for the minimum gross salary. Thus, starting the 1st of January 2020, for part-time labor contracts, the social insurance contribution (CAS) and social health insurance contribution (CASS) will be set according to income effectively obtained, without having a minimum threshold.

The Law also amends the level excise duties for fuel.

Provisions come into force starting the 1st of January 2020.

EMERGENCY ORDINANCE 78 dated 18 December 2019 to amend certain normative acts and to set certain measures in the field of agriculture, as well as to approve certain fiscal and budgetary measures (Official Gazette 1031/2019)

The Ordinance repeals the VAT split payment system, known as *VAT split*, starting the 1st of February 2020.

Starting the 23rd of December 2019, fiscal authorities no longer register entities applying the VAT split payment system in the applicable Register.

By the 1st of February 2020, the VAT account may be foreclosed on by any creditor, regardless of the debt's nature. Within 10 days from the 1st of February 2020, State Treasury units where the entities applying the system have their VAT accounts will automatically transfer amounts existing in the VAT accounts into accounts of the entitled entities opened at the same State Treasury units.

Within the same time limit of 10 days, entities which applied the VAT split payment system not having an account opened at the State Treasury will communicate to the respective unit an account opened at a credit institution from which amounts may be transferred. In case these entities do not communicate information regarding the bank account, based on a list provided by the State Treasury, the fiscal authority asks the entitled entities for this information, within 10 days from receiving the request from the State Treasury, which will be transmitted to State Treasury units in order to transfer the respective amounts.

Starting the 1st of February 2020, through VAT accounts opened at State Treasury units for entities applying the VAT split payment system, no operations will be carried out, except for those mentioned above.

DECISION 935 dated 13 December 2019 to set national guaranteed gross minimum wage (Official Gazette 1010/2019)

The Decision amends the guaranteed minimum wage applicable starting the 1st of January 2020. This wage is differentiated according to education level and work experience in the field of study.

Thus, guaranteed gross minimum wage starting the 1st of January 2020 is RON 2,230 (from RON 2,080 in December 2019), related to a monthly work schedule with an average duration of 167.333 hours/month. This salary corresponds to an hourly rate of RON 13.327.

For persons with higher education with seniority of at least one year of work experience in their field of study, starting the 1st of January 2020 the guaranteed minimum gross wage is RON 2,350.

For other rights related to salary which are conditioned on the level of minimum wage, those will be calculated according to minimum gross wage of RON 2,230.

In the construction field, the minimum gross wage is kept at RON 3,000.



**The VAT Split
system is
repealed!**



DECISION 968 dated 20 December 2019 to set quota of newly-admitted foreign workers to the labor market in 2020 (Official Gazette 1031/2019)

For 2020, a quota of newly-admitted foreign workers to the labor market in Romania is set at 30,000.

ORDER 3194 dated 26 November 2019 to amend ANAF Presidential Order 3731/2016 to approve frame-template of collaboration protocol regarding exchange of information between ANAF and non-banking financial institutions (Official Gazette 1015/2019)

The Order regulates the modality of communication for information held by ANAF to non-banking financial institutions (IFN) in order to inspect personal data. The Procedure holds that both entities should be accountable for following Regulation 679/2016 on protection of personal data.

Thus, a non-banking financial institution will ask the customer concerned for his/her written approval to consult on, transmit and process the data held by ANAF. According to current protocol, the following data is considered personal: name, surname, home address, personal identification number, number and series for identity card and fiscal information.

ORDER 3321 dated 10 December 2019 to amend Annex no. 1 of ANAF Presidential Order 3626/2016 to establish a list of reporting jurisdictions with which Romania will collaborate based on Multilateral Agreements concluded by competent authorities in order to carry out automatic exchange of information regarding financial accounts, a list of non-reporting financial institutions and a list of excluded accounts, provided by instruments of international law to which Romania is engaged from the perspective of automatic exchange of financial information (Official Gazette 1011/2019)

The Order updates the list of reporting jurisdictions with which Romania will collaborate based on Multilateral Agreements concluded by competent authorities in order to carry out automatic exchange of information regarding financial accounts, the list of non-reporting financial institutions and the list of excluded accounts, provided by instruments of international law to which Romania is engaged from the perspective of automatic exchange of financial information.

DECISION 970 dated 20 December 2019 to set the 27th of December 2019 and the 3rd January 2020 as non-working days (Official Gazette 1029/2019)

The Decision sets the 27th of December 2019 and the 3rd of January 2020 as non-working days for employees in the public sector, the days being recovered by extending the schedule no later than through the 31st of January 2020, according to a plan.

Provisions do not apply to workplaces where the activity may not be interrupted due to production processes and its specifics.

INFO – Advance payment system regarding the tax on profit

As a reminder, for those applying corporate tax regime, analysis of opportunity to opt for advance payment system or to return to quarterly calculation system is recommended as this year begins.

Those which opted to apply the system a year ago are required to maintain it in 2020 (the system is mandatory for 2 consecutive fiscal years). For those which opted to apply the system two or three years ago or those who have not chosen the system yet, it is time to perform a new opportunity analysis on whether to apply for this system.

The main advantage of this regime is to cancel mandatory computation of profit tax at each quarter-end, which means applying regulations for computing fiscal profit starting with accounting profit every quarter. As per the regime on paying profit tax through advance quarterly payments, a preliminary amount continues to be paid quarterly, but this amount is based on prior-year fiscal profit adjusted for inflation. Annual adjustment occurs upon preparation of the annual profit tax return and is the only time during the respective year that computation of fiscal profit starts from accounting profit, the outcome being profit tax to be paid after deduction of advance quarterly payments.



A new level of minimum gross wage is in force from January 1, 2020



The profit tax payment regime of advance quarterly payments will consist of:

- ☑ an option to enter or exit the advance quarterly payment regime at inception of the fiscal year, by 31 January;
- ☑ the option is made for at least 2 consecutive fiscal years;
- ☑ taxpayers under the regime of profit tax payment through advance quarterly payments which post a fiscal loss for the first year of the mandatory 2-year period, pay advance quarterly payments by applying the tax rate to the applicable current year quarterly accounting profit, if any;
- ☑ taxpayers under profit tax payment regime through advance quarterly payments which benefited from profit tax exemption the previous year as per law and no longer benefit from these fiscal facilities for the year when quarterly payments must be determined and disbursed, will determine advance quarterly payments based on profit tax disclosed on the previous year profit tax return even if they were actually exempt from payment.

Exceptions from the advance payment system

The categories of taxpayers which will not be allowed to opt for payment of advance profit tax payments and for which a special regime for declaration and payment is established are the following:

- a) non-profit organizations which must declare and pay profit tax on economic activity annually, by 25 February of year which follows the year for which profit tax is computed;
- b) taxpayers which obtain most of their income from growing cereal, "technical" plants, tree cultivation and viticulture, which must declare and pay profit tax annually, by 25 February of subsequent year;
- c) the following taxpayers must declare and pay quarterly profit tax because they are not allowed to exercise the option for advance quarterly payments:
 - o foreign legal entities and non-resident individuals who carry out their activities through an association which is not a legal entity
 - o foreign legal entities which obtained revenue from or in relation to real estate property located in Romania or from disposal of an ownership interest they held in a Romanian legal entity
 - o resident individuals associated with Romanian legal entities for revenue obtained both in Romania and abroad from associations which are not legal entities

Furthermore, the option will be denied for categories of taxpayers which were, during the previous year, under one of the circumstances mentioned below, and must compute and pay profit tax each quarter:

- ☑ taxpayers which posted a fiscal year loss at the end of the previous fiscal year;
- ☑ taxpayers which were subject to tax on the micro-enterprise revenue and become subject to profit tax;
- ☑ taxpayers which are in temporary inactivity or which declare under own responsibility that no activity is carried out at registered headquarters or secondary establishments, as per legal provisions, with the Trade Register or with the Registry maintained by competent judicial authorities, if applicable;
- ☑ newly set-up taxpayers, but in this respect, taxpayers which register further to reorganization as per law are not considered new taxpayers.

We want to emphasize the need to perform a careful analysis of the forecasted evolution of the company in the next few years, especially for financial results. The opportunity of whether or not to opt into the new system should be based on this analysis.

As we have already mentioned above, the option is mandatory for at least 2 consecutive fiscal years. This system will not produce positive results for companies registering decreases in turnover or profitability, and, in general, in cases of decline company financial results. The system is especially opportune for companies registering growth in activity and results, due to advance payment of profit tax (at previous year levels) and deferral of actual profit tax payment.

REMINDER – Do not forget to request tax residence certificates issued in 2020 from your foreign business partners

Tax residence certificates issued in 2019 are valid for the first 60 days of 2020.



Advance payment system or quarterly calculations for corporate income tax?



FOREIGN CURRENCY EXCHANGE RATES at the close of the 2019 financial year

The 2019 closing exchange rates communicated by NBR to value monetary items (cash on hand, receivables, payables) denominated in foreign currency or pegged to a foreign currency are:

1 EUR = 4.7793 RON; 1 CHF = 4.4033 RON; 1 GBP = 5.6088 RON; 1 USD = 4.2608 RON



REMINDER – Declarative obligations January 2020

Remember that January has a series of declarative obligations, options and other tax formalities specific to the beginning of the year. We recommend you to consult the fiscal calendar published on the ANAF website:

https://static.anaf.ro/static/10/Anaf/AsistentaContribuabili_r/Calendar/Calendar_obligatii_fiscale_2020.htm

DON'T FORGET to define the 2020's range / series / numbers allocated to the financial-accounting documents (invoices, receipts, shipping notices, etc.) by internal decision



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_2020.htm

KEY HR FIGURES

2020 Contributions for dependent activities	Employer and beneficiary (for activities considered dependent) (% share)	Employee and dependent worker (% share)
Social security contribution (pension)	<ul style="list-style-type: none"> • It is not due to normal working conditions • 4% for special work conditions • 8% for special work conditions 	25% (**)
Contribution to health insurance fund (calculated on gross income)	It's 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	max 15,18 lei	
Minimum wage (gross) from 1 January 2020	<ul style="list-style-type: none"> • 2,230 lei • 2,350 lei (for more than 1 year and functions requiring higher education) • 3,000 lei for employees on construction field 	
Diurnal (in the country) For employees of public institutions For private sector employees (* 2.5)	<ul style="list-style-type: none"> • 20 lei • 50 lei 	

The below tax facilities are available for employers on the field of construction, when minimum 80% of turnover is 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

Happy
New Year
2020