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Emergency Ordinance 59/2021 for amending and supplementing Law no. 227/2015 regarding the Fiscal Code (OG 630/2021)

Effective 1 July 2021, a number of amendments to Directive 2006/112/EC (the VAT Directive) will start to apply to VAT rules applicable to cross-border business-to-consumer (B2C) e-commerce activities. The ordinance incorporates amendments of the EU Directive into new VAT rules for electronic commerce applicable starting 1 July 2021.

Entities covered by the new rules are:

- taxable entities caring out distance sales of goods and online provision of services to non-taxable persons, the final consumers in the EU (B2C);
- electronic interfaces, such as websites, platforms, portals and others, which are intermediaries for e-commerce.

Basically, starting with 1 July 2021 there are 3 new special VAT regimes:

- the special regime for services provided by taxable persons not established in the European Union - **Non-EU Regime**;
- the special regime for intra-Community distance sales of goods, for deliveries of domestic goods processed through electronic interfaces which facilitate such deliveries and for services provided by taxable persons established in the European Union but not in the Member State of consumption - **EU Regime**;
- the special regime for the distance sale of goods imported from third territories or third countries - **Import Regime**.

The main idea behind the new changes is to simplify trade in goods and services with final consumers (mainly natural persons) and to collect VAT from the Member State of consumption. At the same time, the new provisions aim at collecting VAT for low-value goods (under EURO 150), which are sold from non-EU countries to the EU.

Which entities fall into the category of non-taxable persons?

The new regulations will cover all sales of goods/services to non-taxable persons from EU countries other than the seller's country, in the category of non-taxable persons including:

- natural persons;
- small enterprises (not registered for VAT purposes) - which do not provide a VAT code that can be validated in VIES;
- companies exempted from registration (who only carry out exempted operations without the right of deduction: banks, insurance companies, etc.) and who do not provide a VAT code that can be validated in VIES;
- non-taxable legal persons (public institutions, NGOs, associations, etc.).

New uniform annual threshold for distance sales

The threshold for annual distance sales, which until 30 June 2021 had different values in EU member states, is set at the value of EUR 10,000 (RON 46,337) in all Member States.

The new threshold should be analysed by determining the total value of delivery of goods, electronic services and telecommunications, broadcasting or television services provided to other EU Member States.

A Romanian company that sells goods and/or services to final consumers (individuals) from other EU member states will proceed as follows:

- it can apply the VAT rate in Romania for cumulative sales under the threshold of EUR 10,000 (RON 46,337);

- ☑ if the selling company exceeds the threshold, it will apply the VAT rate in the Member State of the final consumer. This can be done either by direct registration in each Member State in which it carries out transactions, or through the One-Stop-Shop (OSS) platform in the Member State in which it is already registered.

One Stop Shop (OSS)

Be reminded that until the appearance of these new regulations, the special regime for electronic, telecommunications, broadcasting or television services (“TBE” - Telecommunications, broadcasting & electronic services), regulated by art. 314 and 315 of the Fiscal Code, was in force since 2015. The operation of this regime was ensured through the Mini-One-Stop-Shop (MOSS) platform. The mode of operation of this regime will in effect be extended to the newly introduced regimes, and MOSS becomes One-Stop-Shop (OSS).

The OSS system is an extension of MOSS functionalities and ensures simplification of VAT collection in other Member States, without the need for direct registration in multiple states. It does not imply new rules regarding the location of supply/delivery. The OSS system will involve:

- ☑ Collection of VAT at the rate in the State where the transaction takes place, without the obligation to register for VAT purposes in that State;
- ☑ Submission of a special VAT return in Romania stating the amounts, in euro, collected for each state;
- ☑ Payment of VAT in Romania and Romania will transfer the VAT to each state.

The use of OSS is optional, but those who do not opt for this system will be at a disadvantage - they will file returns and make payments to each state where they owe VAT for e-commerce. It is also important that, once the taxpayers have decided to use OSS, they will be obliged to use the one-stop shop for all transactions falling under the chosen VAT regime.

Taxable persons may have a VAT code from one or more Member States, needed for other operations (such as intra-Community supplies), but this does not prevent them from applying OSS. In addition, if they have chosen to apply OSS, they are obliged to apply OSS for all transactions falling within the scope of OSS (including transactions which take place in the state in which it is registered). Taxable persons cannot choose to have some transactions declared in OSS and apply normal rules to others.

More details about OSS can be found in the guide at the following link:

https://ec.europa.eu/taxation_customs/sites/default/files/oss_guidelines_ro.pdf

Import One Stop Shop (IOSS) - the new regime specific to electronic interfaces

Where an electronic interface intermediates a delivery of goods from a supplier to a final consumer and such delivery involves:

- ☑ goods that are imported, with a value below EUR 150
- or

☑ goods coming from the EU but the supplier is not established in the European Union. It will be considered that the interface received and delivered the goods itself (being called “assimilated supplier”), having the obligation to collect VAT from the final consumer, declare and then remit the VAT to the state.

The new Import One Stop Shop (IOSS) system is introduced, through which VAT can be declared and paid by:

- ☑ suppliers established in the EU or outside the EU;
- ☑ electronic interfaces established in the EU or Non-EU VAT payers, which are assimilated as providers

for the goods delivered by them to the final consumers, if the goods are imported and have a value not exceeding 150 euros.

Other information

The use of special regimes and the submission of special VAT returns to the One Stop Shop (OSS) does not imply elimination of the requirement to file local VAT returns (form D300). The submission of special VAT returns will be made:

- ☑ quarterly, in the case of the EU and Non-EU regimes;
- ☑ monthly in the case of the import regime.



New VAT rules for electronic commerce applicable starting 1 July 2021.



The deadline for submission in both cases is until the end of the month following the tax period reported.

Unfortunately, once enrolled in the OSS, declarations are also submitted with zero during periods when there are no transactions. The company may withdraw from OSS based on a notification and it may return to the OSS at any time.

The supplier is not obliged to issue an invoice. If the supplier chooses to issue an invoice, the rules of the Member State of identification shall apply.

The VAT exemption for imports valued below Euro 10 is eliminated.

Emergency Ordinance 44/2021 amending 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 (OG 575/2021)

The ordinance amends GEO 132/2020 extending the scope of allowances granted to compensate for the negative economic effects caused by the pandemic. Thus, in case of reduction of working time and/or income caused by the state of emergency/alert/siege, during this period, as well as for a period of up to 3 months from the end of that state, the persons who benefited from the allowance provided in art. XV para 1 and 4 of GEO 30/2020 (75% x average gross salary) will receive, upon request, based on the declaration under their own responsibility, from a monthly allowance of 41.5% of the average gross salary provided by the Social Security Budget Law state for the year 2021.

The beneficiaries of this allowance are:

- natural persons who derive income exclusively from copyright and related rights;
- other professionals (freelancers, free professions, persons with individual conventions according to the law of cooperation, etc.).

The amount of the allowance will be 41.5% of the average gross salary (i.e., 41.5% x 5,429 = 2,253 lei gross).

Allowances received are subject to income tax, social security and health insurance which are declared on the sole tax return or on declaration 112 (in case of persons who have concluded agreements based on Law 1/2005).

The allowances are granted during the state of emergency/alert/siege, as well as for a period of up to 3 months from the end of that state.

The procedure for payment of this allowance will be established by a decision of the Government. The new provisions apply to rights for starting June 2021.

Decision 677/2021 amending GD 719/2020 for approving 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 SARS-CoV-2 coronavirus, and to stimulate employment growth (OG 628/2021)

The decision changes the procedure for settling the indemnity due employees subject to a reduction in working time, for economic reasons determined by the spread of the SARS-CoV-2 coronavirus, from the unemployment fund budget.

Support measures to reduce working time caused by the pandemic were initially regulated by GEO 132/2020 (details available in the APEX Team Newsletter 8 2020) and then amended by GEO 44/2021 (presented above). In this context, it was also necessary to update the procedure for settling the allowance.

Short history

In case the employer has economic difficulties, defined as when turnover from the previous month dropped by at least 10% compared to the prior month or turnover from the previous month declined by at least 10% compared to the 2019 monthly average, the employer may decide to reduce working time. Reduction in working time must affect at least 10% of employees.

The reduction in working time can only be ordered for full-time employees and working time can be reduced by a maximum of 80% of the daily, weekly or monthly duration. The reduction in working time can be completed during the state of emergency/alert/siege and for a period of up to 3 months from the end of that state and the allowance borne by the state is 75% of the gross salary. Allowances are subject to all pay-



New beneficiaries who can receive the allowance for reducing working time / income caused by the pandemic



roll taxes, except for the work insurance contribution.

Changes to the settlement procedure

In order to apply this emergency ordinance, companies established between 1 January and 15 March 2020 which have at least one employee must have a reduction in monthly turnover of 10% compared to the prior month.

For application of the measure to reduce working time in the case of professionals regulated by art. 3 para. (2) of the Civil Code and of persons who obtain income exclusively from copyright and related rights, there must be a reduction in net income realized for the month for which the indemnity is requested by at least 10% compared to the average monthly net income compared to 2019, regardless of its value.

For persons who did not earn income in 2019, the reduction in income earned in the month for which the allowance is requested relates to income estimated on the sole tax return; that is, the income quota established in 2020. In order to benefit from the allowance, eligible persons may file the application, directly or through cooperation, accompanied by other documents (identity card and declaration under one's own responsibility).

For application of the measure to reduce working time in the case of persons who have concluded individual labour agreements, the reduction in working hours provided within the cooperation must result.

The model of the application, declaration under the employer's own responsibility and the list of persons to benefit from the indemnity will be approved by order of Minister of Labour and Social Protection and will be published in the Official Gazette.

For electronic submission of the applications and related documents, the models already existing on the platform can be used: aici.gov.ro.

The employer calculates salary rights, pays salaries and indemnity due for the term agreed by the contract and submits the related reports. Subsequently, the employer requests reimbursement of this allowance from the unemployment fund budget.

Reimbursement to employers by Employment Agencies will occur within a maximum of 10 working days from submission date of complete documentation.

Law 159/2021 on approval of GEO 10/2021 amending and supplementing GEO 224/2020 on some measures for providing financial support for tourism enterprises, accommodation structures, food structures and travel agencies, whose activity has been affected in the context of the COVID-19 pandemic, as well as on some fiscal measures (OG 590/2021)

The law approves, with modifications, the financial aid scheme for the Hotel/Restaurant/Café industry (HoReCa). Primary aspects of the law are mentioned below. Beneficiaries of the scheme are:

- licensed travel agents operating under NACE codes 7911, 7912, 7990;
- tourist reception structures with classified accommodation functions, which carry out activities according to NACE codes 5510, 5520, 5530, 5590;
- feeding structures, carrying out activities according to NACE codes 5610, 5621, 5629, 5630;
- event organizers carrying out activities according to NACE code 8230;
- tourist guides who carry out activities according to NACE code 7990,

all of which perform their activity on the Romanian territory and are organized and operate according to Romanian legislation.

Activities are eligible if they are carried out on the basis of valid travel licenses, classification certificates, operating authorizations or travel guide certificates.

The beneficiaries of the state aid scheme have the obligation to maintain the activity for which they obtained financing for at least 6 months or 12 months from the date of the first payment if the value of the grant is higher than the RON equivalent of EUR 200,000, if normative acts do not establish restrictions of a nature to impose the suspension or interruption of commercial activity. The period of suspension or interruption of commercial activity is not taken into account when determining the term of 6 or 12 months from the date of the first payment. Previously, by GEO 10/2021, which was thus amended, beneficiaries were obliged to maintain the activity for which they received funding for at least 12 months from the date of payment, and 24 months in the case of



APEX Team can help you with the preparation of the expertise report to apply to the HoReCa state aid scheme



those who received grants of over EUR 200,000.

HoReCa state aid will be capped at EUR 800,00 each, but the total aid received by a company and other schemes must not exceed EUR 1.8 million.

The value of the aid will be 20% of the decrease in the beneficiary's activity in 2020 compared to 2019.

As a way of granting aid, if the total value of financing requested exceeds the commitment or budgetary credit allocated for the scheme, the commitment or payment to the beneficiaries will be made proportionally, by reporting the approved amount for each beneficiary to the total amount of approved financing applications. Thus, if the value of all applications for financing exceeds the budget allocated to the scheme, monetary support obtained individually will also decrease.

Order 991/2021 for approval of Procedure for implementing the state aid scheme provided by GEO 224/2020 on some measures for granting financial support to enterprises in the field of tourism, public catering and event organization, whose activity was affected in the context COVID-19 pandemic (OG 594/2021)

Decision 654/2021 for the amendment and completion of the Methodological Norms regarding secondment of employees providing transnational services on the Romanian territory, approved by GD 337/2017 (OG 611/2021)

The decision approves two forms necessary to allow for employees to be seconded to Romania by companies established in the territory of a Member State other than Romania, or in the territory of the Swiss Confederation, in the framework of provision of transnational services, namely:

Declaration on the transnational posting of employees.

The form also includes the need to mention the reason why the employee is seconded to Romania:

- o under a contract concluded between the enterprise making the secondment and the beneficiary of the provision of services operating in Romania;
- o to a unit or to an enterprise belonging to the group of enterprises, located on the territory of Romania;
- o for the provision of an employee, by a temporary work agent, to a user company established or operating in Romania, if there is an employment relationship, during the secondment, between the employee and the temporary work agent.

Notification regarding extension of the secondment, provided in art. 61 para. (3) of Law no. 16/2017 on secondment of employees for provision of transnational services. This notification shall be submitted, at the latest, the day before the end of the initially-declared secondment period of the employee (which may be a maximum of 12 months), if the company that ordered the secondment wants to extend the period to 18 months.

The above forms are submitted to the Territorial Labour Inspectorate in whose territorial area the activity is to be carried out.

Emergency Ordinance 51/2021 on extension of terms provided in art. II point 9 and art. III of Law 295/2020 for amendment and completion of Law 207/2015 on the Fiscal Procedure Code, as well as approval of some fiscal-budgetary measures (OG 606/2021)

The ordinance extends until 1 October 2021 the deadline for transferring responsibility for solving appeals filed against tax decisions, as well as other fiscal administrative acts issued by the central fiscal body, from ANAF to the Ministry of Finance.

INFO – Valuation of monetary items in foreign currency

The June 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 = 4.9267 RON; 1 CHF = 4.4913 RON; 1 GBP = 5.7374 RON; 1 USD = 4.1425 RON



**Updated forms for
declaring
transnational
secondment of
employees**



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 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*