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INFO – VAT Threshold

Upon Romania's the request of Romania on the 26th of April 2017, the European Commission has approved the grant of a derogation regarding the VAT exemption threshold applicable to small enterprises, modifying the threshold from EUR 65,000 to EUR 88,500, calculated at the exchange rate in force when Romania joined the EU (EUR 1=RON 3.3817). The derogation is valid between the 1st of January 2018 and the 30th of December 2020.

Therefore, starting the 1st of January 2018, the VAT threshold will be RON 299,280 (probably adjusted to RON 300,000).

DECISION OF EUROPEAN COURT OF JUSTICE in Case C – 101/16 Paper Consult, published on the 19th of October 2017

The decision clarifies and provides a perspective different from that of the fiscal authorities in Romania regarding the VAT deduction right by taxable entities **for** VAT related to acquisition of goods and services from suppliers having inactive VAT codes. VAT legislation in force by the 1st of January 2017 provided that beneficiaries purchasing goods and/or services from taxable entities established in Romania and having inactive VAT codes, do not benefit from VAT deduction rights related to acquisitions. Starting the 1st of January 2017, VAT legislation allows taxable entities that purchased from suppliers/providers during the period when the supplier had cancelled their VAT registration code, to deduct VAT related to those acquisitions, based on adjusted/modified invoices issued by suppliers/providers subsequent to their re-registration. The measure does not apply retroactively and only refers to suppliers/providers which re-register under the scope of VAT starting the 1st of January 2017.

According to the Court's opinion, as long as tax evasion in a transaction is not proven, a taxable entity should not be denied the right to deduct VAT related to an invoice issued by a supplier declared inactive, even if the notice of inactivity is public and easily accessible.

An important argument of the Court in this regard is the fact that the supplier, although inactive from a VAT perspective, paid VAT to the State Budget related to the contract signed with its customer. Therefore, denial of VAT deduction by the beneficiary according to that contract represents a breach of the principle of VAT neutrality. Since this decision is meant to clarify existing VAT legislation, this interpretation should be applied retroactively.

ORDER 2935 dated 11 October 2017 to amend and complement ANAF Presidential Order 587/2016 to approve template and content of forms used to declare taxes and contributions under self-assessment or withholding regime (Official Gazette 812/2017)

The Order brings modifications to form 100 on obligations to be paid to the State Budget, as well as rectification of form 710 to allow companies that had their fiscal registration cancelled to meet their declarative obligations.

These obligations will be completed/accomplished by successors of the persons/entities who/which have ceased their existence by ticking the box, *Statement submitted according to art. 90 para. (4) of Law 207/2015 on the Fiscal Procedure Code*, and by providing the fiscal identification number of the successor.

Identification data for the entity that ceased its existence is documented in the *taxpayer/payer identification data* section.

The new forms are submitted starting with obligations related to the month of September 2017, by the 25th of October 2017.

ORDER 2856 dated 2 October 2017 to set criteria for fiscal risk evaluation in case of registration and cancellation of registration under the scope of valued added tax (VAT), to approve Procedure to evaluate fiscal risk for taxable entities applying for registration under the scope of VAT according to art. 316 para. (1) letter a) and c) and para. (12) letter e) of Law 227/2015 on the Fiscal Code, Procedure to register, upon request, under the scope of VAT according to art. 316 para. (12) letter e) of Law 227/2015 on the Fiscal Code, as well to approve Procedure to cancel by default the registration under the scope of VAT for taxable entities presenting a high level of fiscal risk according to art. 316 para. (11) letter h) of Law 227/2015 on the Fiscal Code (Official Gazette 780/2017)

The Order is addressed to taxpayers having headquarters for their economic activities in Romania, which are registered under the scope of VAT, and to those applying for registration under the scope of VAT in the following conditions:

- if they estimate that turnover will be equal to or higher than the exemption threshold of RON 220,000;
- if turnover registered or to be registered is under the exemption threshold, but the taxpayer opts for the regular taxation regime.

The Order provides that, starting October 2017, registration under the scope of VAT by taxpayers presenting a high level of fiscal risk will be denied.

The evaluation system will be as follows:

- a) the company starts with 100 points.
- b) each criterion has a negative value associated with it.
- c) the sum of all negative values is deducted from the initial value of 100 points. When the total score is less than 51 points, the company has a high level of fiscal risk. We mention that negative values were not assigned to each criterion provided by the procedure. Therefore, the procedure continues to lack transparency.
- d) in case the company has a high level of fiscal risk, the taxpayer is invited to ANAF for an audience prior to denial of registration/re-registration under the scope of VAT.

What are the new criteria used to establish level of fiscal risk when requesting registration under the scope of VAT?

- social headquarters;
- insolvency/bankruptcy;
- fiscal inactivity;
- temporary inactivity at the Trade Register;
- refusal/cancellation of registration under the scope of VAT;
- outstanding fiscal obligations;
- contraventions and violations;
- revenue;
- fiscal residence;
- bank account;
- activity carried out;
- third parties;
- accounting services;
- employees.

For taxpayers already registered under the scope of VAT, the Order provides criteria to evaluate the level of fiscal risk for both cancellation by default of VAT registration for taxpayers with high level of fiscal risk as well as for re-registration of taxpayers which no longer present a high level of fiscal risk.

The analysis procedure applies the same evaluation system as the VAT registration/re-registration mentioned above, and the criteria used are:



New criteria to establish level of fiscal risk for VAT registration



- ☑ **social headquarters;**
- ☑ **employees;**
- ☑ **accounting services;**
- ☑ **inconsistencies** between information written on their own tax returns/informative statements/recapitulative statements in relation to its partners (suppliers/customers) including significant inconsistencies determined by analysing information provided by third parties, other than those related to tax returns/informative statements/recapitulative statements;
- ☑ **fiscal residence.**

ORDER 2927 dated 10 October 2017 on Procedure and conditions to approve transfers from VAT account (Official Gazette 813/2017)

The Order regulates conditions to perform transfer of amounts from a VAT account, under the application conditions of the VAT split payment system. Therefore, the transfer of amounts from the VAT account may be requested by submitting an Application to approve transfer of amounts from VAT account, code 310, in electronic format, at the registry office or by registered mail with confirmation of receipt.

Applications to approve transfer of amounts from a VAT account are decided on within 3 working days from registration date. The competent tax authority will document how applications were decided on a distinct file, named Transfer of amounts from VAT account.

Decisions regarding applications to approve transfer of amounts from a VAT account may be appealed within 45 days of communication date.

Situations when transfers are most likely necessary:

1. Previously, an amount was transferred from the current account to the VAT account in order to pay VAT-related obligations where a refund is requested. Payment orders/bank account statements and other documents should be attached.
2. More VAT payments in cash were made in comparison to VAT cash collections on the same day, and refund of these amounts from the VAT account is requested. Invoices/fiscal bills/DVI (Import Custom Declaration)/receipts/petty cash registers/any other documentation should be attached.
3. VAT payment by card were made and refund of these amounts from the VAT account is requested. Invoices/fiscal bills/DVI/payment orders/bank account statements/any other documentation should be attached.

ORDER 2800 dated 20 October 2017 to approve Procedure to cancel delayed payment penalties related to main fiscal obligations representing VAT, in the case of taxpayers opting for VAT split payment system, as well as to approve template and content of certain forms (Official Gazette 846/2017)

The Order approves Procedure to cancel delayed payment penalties related to main fiscal obligations representing VAT, in the case of taxpayers opting for the VAT split payment system.

According to Government Ordinance 23/2017 on the VAT split payment system, taxable entities registered under the scope of VAT opting for the split payment system between the 1st of October 2017 and the 31st of December 2017 benefit from the following facilities:

- a) Postponed payment of penalties related to delayed payment of main fiscal obligations representing VAT, unpaid by the 30th of September 2017.
- b) Cancellation of delayed payment penalties related to main fiscal obligations representing VAT, unpaid by the 30th of September 2017.
- c) A 5% discount on corporate tax/tax on micro-enterprises related to the 4th quarter of 2017.

Based on the notification regarding the option for VAT split payment system (form O86), the tax authority issues and communicates *ex officio*:

- ☑ To taxpayer – decision for postponed payment of delayed payment penalties;
- ☑ To credit institutions where the debtor has open accounts – addresses on temporary, total or partial termination of enforcement procedure carried out through garnishment.



The formalities to approve transfers from VAT account have been established



Cancellation of delayed payment penalties related to main fiscal obligations representing VAT is made ex-officio, based on notification (form O86) submitted between the 1st of October 2017 and the 31st of December 2017. Therefore, during the 1st and 31st of January 2018, the tax authority will analyse whether conditions provided by art. 24 from GO 23/2017 were met, and if so, the tax authority will issue a decision to cancel delayed payment penalties.

ORDER 2768 dated 13 October 2017 to approve Specification on the format, XSD schema and elements of electronic account statements issued by the State Treasury units (Official Gazette 819/2017)

The Order approves format, XSD schema and elements of electronic account statements issued by the State Treasury units

ORDER 2541 dated 28 September 2017 to amend and complement Order of the Minister of Public Finance 246/2005 to approve Methodological Norms to use and prepare payment order for the State Treasury (OPT) (Official Gazette 789/2017)

The Order changes OMPF 246/2005 regulating payment orders for State Treasury accounts.

The concept of multiple electronic payment order (OPME) is introduced, representing an instrument for making payments to the State Treasury, according to provisions of the Regulation of the National Bank of Romania 2/2016 on operations related to credit transfer and direct debit.

Multiple electronic payment orders (OPME) are used by taxable entities registered under the scope of VAT applying the VAT split payment system, in order to make payments from an account opened at the State Treasury, but only to accounts that contain VAT in their IBAN code.

ORDER 2899 dated 4 October 2017 to amend ANAF Presidential Order 2012/2016 to approve Procedure to change ex officio fiscal status (vector fiscal) related to VAT, as well as template and content of certain forms (Official Gazette 802/2017)

The Order aligns the Procedure to change *ex officio* fiscal status on VAT with provisions of the Fiscal Code. Specifically, the Procedure to change fiscal status in case of temporary inactivity recorded at the Trade Register is repealed. Cancellation of the VAT code for temporary inactivity at the Trade Register was already carried out in case the taxpayer became fiscally inactive according to the Fiscal Procedure Code. (One of the reasons to be included in the Register of inactive/re-activated taxpayers is because of temporary inactivity registered at the Trade Register.)

ORDER 2779 dated 28 September 2017 to approve template and content of form 110, Settlement return/reimbursement claim on income tax withheld (Official Gazette 793/2017)

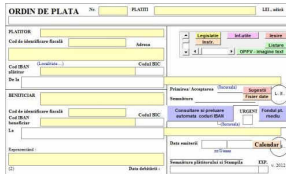
The Order approves template and content of form 110, *Settlement return/reimbursement claim on income tax withheld*.

The statement is completed and submitted by income taxpayers who withheld an income tax which was higher than the amount legally due. The form compares settlement between amounts refunded to income beneficiaries and fiscal obligations of the same type owed during the fiscal period when the reimbursement was made.

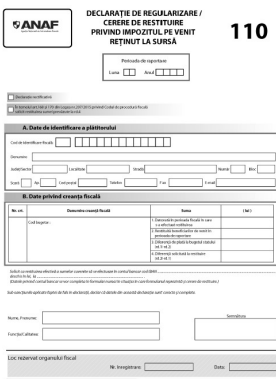
The form shall be submitted if either, during the tax period in which recipients of income were reimbursed, the tax due is higher than amount refunded, or, in the situation when the amount refunded to income beneficiaries is higher than the tax due, which in turn results in payment differences or differences to be recovered from the State Budget. In the situation where settlement shows differences to be recovered from the State Budget, the form is a reimbursement claim, in which case the box provided for this is checked.

Settlement return/reimbursement claim for withheld income tax is submitted to the competent tax authority managing tax liabilities owed by the payer.

The form shall be filed for the tax period in which the taxpayer refunded amounts to the



New form 110 for settlement of income tax withheld



beneficiary within the period where reimbursement claims are allowed.

In the case of non-resident income recipients who submit a tax residence certificate after deduction of tax by the income payer, the settlement statement/refund claim for income tax withheld at source is filed within the allowed period, including a reserve for subsequent verification as a result of a tax inspection.

The form is submitted to the competent tax authority as in PDF file format with a separate XML file saved on a CD, together with a hard-copy printout of the form, signed according to law, or it is submitted electronically.

In case income payers adjust a previously-submitted form, the adjusted return is prepared using the same form, by providing the correct information and ticking the box provided for corrections.

ORDER 2853 dated 29 September 2017 to amend and complement ANAF Presidential Order 3845/2015 to approve Procedures to register/change fiscal domicile, as well as to approve template and content of certain forms (Official Gazette 783/2017)

The Order aligns Procedure to change fiscal domicile of taxpayers - individuals holding a personal numeric number (CNP) and legal entities - having the same fiscal domicile as its social headquarters, to provisions of the Fiscal Procedure Code amended by GO 30/2017.

Therefore, if a taxpayer changes its social headquarters, and the fiscal domicile is registered at the same address, the taxpayer does not submit form 050, because the fiscal file is automatically transferred from one tax authority to another. **Responsibility for administration is transferred to the new tax authority after 15 working days from the date when the change in social headquarters was registered at the Trade Register.**

If the fiscal domicile is different from the social headquarters (e.g. if the fiscal domicile is registered where the main activity is actually carried out) and it changes, then the taxpayer must submit form 050.

ORDER 1690 dated 27 September 2017 on certain international treaties coming into force (Official Gazette 792/2017)

The Order approves several international treaties, of which we mention the Agreement between Romania and the People's Republic of China to avoid double taxation on income and to prevent fiscal evasion and failure to pay taxes, an agreement that came into force on the 17th of June 2017.

AGREEMENT dated 4 July 2017 between Romania and People's Republic of China to avoid double taxation on income and to prevent fiscal evasion and failure to pay taxes (Official Gazette 351/2017)

Main taxation rates provided by the agreement between Romania and People's Republic of China:

- Dividends - 3%
- Interest - 3%
- Royalties - 3%

LAW 196 dated 29 September 2017 to amend art. 465 of Law 227/2017 on the Fiscal Code (Official Gazette 778/2017)

The Law clarifies calculation of taxes/tax on land located outside cities, depending on the usage category recorded in the agricultural register.

The Law comes into force on the 1st of January 2018.

ORDER 2792 dated 28 September 2017 to approve Technical Norms to register exporters in order to issue certificates of origin and declarations as well as declarations on invoices (Official Gazette 813/2017)



**A new Convention
for double tax
avoidance with
China has entered
into force**



ORDER 2883 dated 3 October 2017 on Procedure to set taxes owed in Romania by the Allied Forces Commandment or their dependents, for goods which were purchased without paying taxes owed, as well as to approve certain forms (Official Gazette 804/2017)

The Procedure is used to set taxes owed in Romania, for goods subject to tax assessment because of selling, changing or donating them, which were purchased without paying the owed taxes by members of Allied Forces Commandment or by their dependents.

The Procedure is applied by the department which is responsible for management of tax returns of individuals within the competent central tax authority.

Individuals, members of Allied Forces Commandment or their dependents, submit to the competent central tax authority form 280, Application to set taxes owed in Romania by members of Allied Forces Commandment or their dependents, for goods to be assessed and which were purchased without paying taxes owed.

The form should have supporting documents attached, in copy, such as: acquisition documents (invoice, receipt), etc.

ORDER 2932 dated 10 October 2017 to complement certain normative acts in the field of administration and supervision of medium and large taxpayers (Official Gazette 828/2017)

The Order complements administration and supervision procedures of medium and large taxpayers with information on opening accounts for VAT split payment, accounts opened at the State Treasury units or at the office for Activity of Treasury and Public Accounting of Bucharest.

ORDER 2949 dated 13 October 2017 to amend ANAF Presidential Order 1155/2016 on issuing certain administrative fiscal and procedural acts from massive printing centre (Official Gazette 830/2017)

The Order updates list of administrative fiscal acts that may be issued from the massive printing centre.

ORDER 2950 dated 13 October 2017 to amend and complement ANAF Presidential Order 967/2017 to approve template of certain forms used for tax receivables, issued and printed through rapid printing unit (Official Gazette 830/2017)

The Order approves template for the following forms:

- Address to set garnishment for amounts owed by the debtor to third parties;
- Decision to compensate fiscal obligations;
- Note on restitution/reimbursement of certain amounts.

REMINDER - Valuation of monetary items in foreign currency

The October 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 = 4,5985 RON; 1 CHF = 3,9589 RON; 1 GBP = 5,2250 RON; 1 USD = 3,9533 RON

NOVEMBER 2017 - 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



Do not forget the deadlines for tax returns submission and payment of taxes



- ☑ 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 for NOVEMBER 2017, visit the following link on ANAF webpage (in Romanian):

https://static.anaf.ro/static/10/Anaf/AsistentaContribuabili_r/Calendar/Calendar_obligatii_fiscale_2017.htm#nov

KEY HR FIGURES

2017 Contributions	Employer and Beneficiary of activities considered dependent activities (% rate)	Employee and provider of dependent activities (% rate)
Social security contribution (pension) <i>See note 1</i>	15.8% for normal working conditions 20.8% for particular working conditions 25.8% for special working conditions	10.5%
Health insurance fund (based on gross salary) <i>See note 2</i>	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% (100% starting 1 September 2017) minimum gross salary for every 100 employees	
Minimum monthly gross salary	RON 1450	
Luncheon voucher	up to maximum RON 15.09	
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: Basis for calculating social insurance contribution (CAS) is no longer capped after February 1, 2017 (applicable for both employer and employee contribution)

Note 2: Basis for calculating health insurance contribution (CASS) has been capped for the period 1 to 31 January 2017. As of February 1, 2017 capping the tax base is repealed returning to the regime applicable in 2016.



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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*