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## **EMERGENCY ORDINANCE 89 dated 4 October 2018 on certain fiscal and budgetary measures, and to amend and complement certain normative acts (Official Gazette 854/2018)**

The Ordinance mainly brings changes to the Fiscal Code, but also to some other normative acts. The main changes brought to the Fiscal Code are detailed below. Changes aim to reduce the VAT rate for certain activities, grant bonuses for pre-payment of amounts set through annual tax decisions related to the 2014 to 2017 period, and explain fiscal implications for changes in accounting policies determined by initial adoption of a new international financial reporting standard (IFRS).

### **Value added tax**

Starting the 1<sup>st</sup> of November 2018, the reduced 5% VAT rate also applies to:

- ☑ accommodation within the hotel or similar sectors, including rental of campsites – currently subject to the reduced 9% VAT rate;
- ☑ restaurant and catering services, except alcoholic beverages other than beer (which has NC code 22 03 00 10) – currently subject to the reduced 9% VAT rate;
- ☑ services consisting of access to amusement and recreational parks with activities classified under NACE codes 9321 and 9329, and fairs – currently subject to the standard 19% VAT rate;
- ☑ right to use sports facilities for activities classified under NACE codes 9311 and 9313, for the purpose of practicing sports and physical education - other than similar services exempt from VAT – currently subject to the standard 19% VAT rate.

Regarding restaurant and catering services, we highlight the distinct situation when food and/or beverage services are supplied within restaurant/catering units, for which the 5% VAT rate applies. Simple delivery of food and/or beverages is subject to the 9% VAT rate.

The reduced 5% VAT also applies to draught beer served in restaurants. Delivering beer to wholesale and retail units is subject to the standard 19% VAT rate.

We emphasize that changing the VAT rate requires tax adjustments for specific situations regulated by the Fiscal Code regarding the generating fact and the change in rate (e. g. collected advances).

### **Granting 5% bonuses to taxpayers for electronic submission of sole tax return and pre-payment of income tax related to 2018**

The Ordinance is completed with amendments regarding 5% bonuses, mentioning that the bonus reduces:

- ☑ tax on income/net annual income and/or the tax on annual income, to be paid following submission of a sole tax return through electronic means by the 15<sup>th</sup> of July 2018, including full payment of tax on income by the 15<sup>th</sup> of March 2019;
- ☑ tax on estimated income declared in the sole tax return, paid entirely in advance by the 15<sup>th</sup> of December 2018.

### **Payment obligations related to CASS for individuals for whom a Tax decision on social health insurance contributions owed by individuals according to art. 180 para. (1) letter a) of the Fiscal Code was issued**

The tax decision produces effects by the submission date of the sole tax return (in 2019) and keeps its validity through submission date of the sole tax return provided by law to declare estimated income to be obtained during the fiscal year 2019.

Payment of obligations related to CASS set through a tax decision ceases when the income is declared on the sole tax return or when the fiscal authority is notified by taxpayers included in the categories of individuals exempted from paying the contribution or by those who obtain income for which the obligation to declare the income lies with the income payer, depending on the case.

### **New payment deadlines for tax liabilities set through tax decisions related to 2014-2017**

☑ The payment deadline for amounts established through these annual tax decisions, to set annual tax on income obtained by individuals in 2017 and social insurance contributions owed by individuals for the 2016-2017 period is the **30<sup>th</sup> of June 2019**.

A **10% reduction** is granted for full pre-payment by the **15<sup>th</sup> of December 2018**.

☑ The payment deadline for amounts established through annual tax decisions, issued and communicated by the competent fiscal authority subsequent to the date of entry into force of GEO 89/2018 to set individual social health insurance contributions owed by individuals for the 2014-2017 period is the **30<sup>th</sup> of June 2019**.

A **10% reduction** is granted for full pre-payment by the **31<sup>st</sup> of March 2019**.

### **Fiscal treatment for specific operations carried out due to applying IFRS**

When applying IFRS 9, "Financial Instruments," the tax result at the time of sale/assignment of equity shares, is calculated by applying accounting rules in line with IFRS and recording the fair value of equity shares in "Other items of comprehensive income." This accounting treatment occurs after having made an irrevocable choice at initial recognition, by treating the valuation/revaluation differences in the credit/debit balance of reserve accounts. From tax point of view, they are treated as elements equivalent to expenses / income, if at the date of sale/assignment they are deemed taxable income.

The application of art. 21 b) section 3 is extended to recognition of items of a similar nature at the time of initial adoption of IFRS as a basis for accounting or when implementing new standards, and for items similar to those referred to in art. 26 of the Fiscal Code - Provisions/adjustments for depreciation and reserves.

### **Other provisions**

As of the 1<sup>st</sup> of November 2018, the 5% royalty on geothermal and natural mineral water used for public consumption is eliminated.

### **INFO – European Court of Justice (ECJ) Ruling on case C-69/17 Siemens Gamesa Renewable Energy Romania SRL**

To summarise, the case refers to right to VAT deduction for acquisitions performed during the period of inactivity.

The company, Siemens Gamesa Renewable Energy Romania SRL, was declared fiscally inactive by ANAF for not submitting tax returns. After re-activating the VAT code, the company exercised the right to deduct VAT for purchases performed during the period of inactivity. ANAF rejected the deduction right, justifying that the law in force when the purchases were made specifically provided this restriction.

The ECJ decision states that for as long as the basic conditions are met, and the VAT deduction right is not fraudulently or abusively invoked, then taxpayers also have the right to deduct VAT for purchases made during the period of inactivity.

As a reminder, in a similar case (C-101/16 Paper Consult) the ECJ decided that the VAT deduction right for purchases made from inactive suppliers/providers may not be rejected and that this interpretation should be retroactively applied.

Both decisions highlight the fact that the VAT deduction right is kept for beneficiary/client and supplier/provider, during periods of inactivity, as long as basic conditions are met and the respective entities were not implicated in fiscal fraud.

### **INFO – News intra-community VAT**

#### **Reverse-taxation mechanism for operation susceptible to fraud extended to 30<sup>th</sup> of June 2022**

The European Union Council adopted an extension to apply the optional reverse-taxation mechanism for operations with goods and services susceptible to fraud.

The same act also approves rapid reaction against VAT fraud.



**Early payment of  
income tax and  
personal social  
contributions  
brings you  
bonuses**



These two measures will be in force by the 30<sup>th</sup> of June 2022, when the final VAT system is expected to be operational.

### Applying generalized reverse-taxation mechanism

During a recent meeting of the Economic and Financial Affairs Council (ECOFIN), it was decided that EU Member States severely affected by VAT fraud may apply under very strict technical conditions, by the 30<sup>th</sup> of June 2022, the generalized reverse-taxation mechanism for local operations (transferring VAT payment responsibility from supplier or provider to the customer).

Thus, EU Member States may only use the reverse-taxation mechanism for domestic delivery of goods and provision of services which exceed the threshold of EUR 17,500 per transaction. For Member States that want to apply this measure, at least 25% of the VAT deficit should be caused by *carousel* frauds.

This mechanism has already been applied as a pilot project in the Czech Republic, and Romania has also expressed its support for adopting such a mechanism.

ECOFIN has also agreed to rapid VAT-related solutions, designed to amend EU rules for providing answers to one-off issues, that occur prior to transition to the final VAT system:

- ☑ in order not to incur VAT registration costs in other Member States, rules for call-off stock supplies of goods will be simplified and harmonised at EU level;
- ☑ to benefit from the VAT exemption for intra-Community supplies of goods, the customer identification number will become an additional condition;
- ☑ the documentary evidence required to claim the VAT exemption for intra-Community supplies of goods will be harmonised at EU level;
- ☑ rules for chain transactions will be harmonised at EU level.

### ORDER 2323 dated 19 September 2018 to approve deadline to issue and transmit tax decisions on setting social insurance contributions owed by individuals for 2016 and 2017 (Official Gazette 854/2018)

The Order addresses individuals who obtained income, other than salaries, during 2016 and 2017 for which they owe social insurance contributions (pension) The Order sets that the tax decisions related to the years mentioned above will be issued and transmitted by the tax authority by the 30<sup>th</sup> of October 2018.

Payment deadline for these tax decisions is the 30<sup>th</sup> of June 2019 (according to GEO 89/2018 described earlier). A 10% reduction is granted for full pre-payment by the 15<sup>th</sup> of December 2018, applied when the payment is processed, by reducing the amount to be paid.

### ORDER 2004 dated 9 August 2018 to approve templates for certificates and frame contracts for internships, as well as application to receive bonus for promoting employment (Official Gazette 865/2018)

The Order approves templates for internship certificates, frame contracts, as well as the application to receive bonus for promoting employment.

### ORDER 2346 dated 24 September 2018 to approve Instructions to submit online tax returns for purchase and delivery of excise goods using EMCS-RO STOCKS application (Official Gazette 875/2018)

The Order addresses economic operators delivering excise goods for which they perform the release into consumption (first placement on the excise goods market at economic operators authorized as fiscal warehouses or authorized as registered recipients).

They have the obligation to submit several tax returns to ANAF on inputs, outputs and delivery of excise goods by the 15<sup>th</sup> of the following month. These tax returns are electronically submitted.

The Order regulates programs/software for submission of these tax returns, technical conditions and filing instructions.



VAT on purchases during inactivity can be deducted after reactivation



### **ORDER 1183 dated 10 October 2018 to approve template, content, submission method and management of *Statement on activity carried out by agencies which organize tours (Official Gazette 878/2018)***

The Order approves template and content for Statement on activity carried out by tour group organizers.

The statement addresses economic operators carrying out their activity in tourism and having an *operator activity* license. Starting the 1<sup>st</sup> of January 2019, they have the obligation to submit a statement on activity carried out during the respective month.

The submission deadline is the 30<sup>th</sup> of the month following the month being reported. For January the deadline is the 28<sup>th</sup> of February.

The statement will only be electronically submitted, through remote means of transmission, on the *e-guvernare.ro* platform.

Art. 19 of GO 2/2018 regulating this obligation states, "Tour group organizers carrying out their activity on the national territory by providing service packages to travellers should periodically send to the Ministry of Tourism information about their activity."

Not all agencies should submit the statement, only those carrying out *organising activities*, meaning the activity through which the agency: merges and sells, or offers for sale packages - directly or through another trader or together with another trader - or where the trader sends the traveller's data to another trader.

### **ORDER 2343 dated 24 September 2018 to complement ANAF Presidential Order 1155/2016 on issuing certain administrative fiscal and procedural acts from the large-scale printing centre (Official Gazette 854/2018)**

The Order extends the category of administrative fiscal acts which may be automatically issued, with no signature and stamp of the fiscal authorities required. Thus, the notification issued by the fiscal authority to direct 2% of tax on income obtained from salaries and pensions may be issued by the rapid printing unit without signature and stamp.

All other normative acts that may be issued by the large-scale printing unit without being signed and stamped are regulated by ANAF Presidential Order 1155/2016.

### **EMERGENCY ORDINANCE 88 dated 27 September 2018 to amend and complement certain normative acts in the field of insolvency and other normative acts (Official Gazette 840/2018)**

The Ordinance brings several amendments to the insolvency law. As a result, the following related regulations have been updated: Fiscal Procedure Code and Government Ordinance 2/2000 on judicial expertise.

### **ORDER 3320 dated 12 October 2018 to approve Procedure to use, clear, pass for payment and pay expenses related to amounts set according to decisions to approve claims to reimburse excise tax, issued based on Government Decision 549/2018 on conditions, procedure and reimbursement deadlines for amounts representing state aid to bear part of excise taxes set for diesel used as fuel (Official Gazette 914/2018)**

#### **INFO – 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 = 4.6668 RON; 1 CHF = 4.0910 RON; 1 GBP = 5.2424 RON; 1 USD = 4.1141 RON.



**New reporting obligations for tour group organizers**



## 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 on ANAF webpage (in Romanian):**  
[https://static.anaf.ro/static/10/Anaf/AsistentaContribuabili\\_r/Calendar/Calendar\\_obligatii\\_fiscale\\_2018.htm](https://static.anaf.ro/static/10/Anaf/AsistentaContribuabili_r/Calendar/Calendar_obligatii_fiscale_2018.htm)

## KEY HR FIGURES

2018 Contributions for dependent activities	Employer and Beneficiary of activities considered dependent activities (% rate)	Employee and provider of dependent activities (% rate)
Social security contribution (pension)	Not owed for normal working conditions 4% for particular working conditions 8% for special working conditions	25%
Health insurance fund (based on gross salary)	Not owed	10%
Employment insurance contribution	2.25%	
Salary tax		10%
Contribution for non-employment of dis- abled persons (for employers with more than 50 employees)	4 x minimum gross salary for every 100 employees	
Minimum monthly gross salary	RON 1900	
Luncheon voucher	Up to maximum RON 15.18	
Per diem (in Romania) Employees in the public sector Employees in the private sector (x 2.5)	RON 17.00 (RON 20 starting 1 Jan 2019) RON 42.50 (RON 50 starting 1 Jan 2019)	

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- Start up services*
- Organization of the accounting function*
- Assistance in implementation of ERP*
- Training*