

NEWSLETTER no. 3/2018

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ROMANIA

Tax revolution (2) – Corporate income tax and income tax for microenterprises

REFERENCES: LAW 227/2015, GEO 79/2017

In the Official Gazette no. 885/10.11.2017 was published the Emergency Ordinance no. 79 for amending and supplementing the Law 227/2015 regarding the Fiscal Code. The changes made by this Emergency Ordinance are already known as the Tax Revolution, being ample and with a significant impact on several taxes and duties.

In November, we introduced you the changes brought to income tax and social security contributions (Newsletter no. 11/22.11.2017), while in this newsletter we continue with the analyze of the main changes on **corporate income tax and income tax for microenterprises**.

The provisions in relation to corporate income tax transpose the EU Directive 2016/1164 regarding rules against tax avoidance (ATAD).

Please note that since November, in the Parliament there are certain debates regarding several amendments to GEO 79/2017. We will revert on this subject once they will be approved and published in the Official Gazette.

The provisions of GEO 79/2017 presented in this newsletter apply **starting with 01.01.2018**.

CORPORATE INCOME TAX

INTEREST DEDUCTIBILITY RULES

- The deductibility limitation will take into account **the exceeding borrowing costs**, meaning the amount with which the interest expenses and foreign exchange differences exceed the interest income.
- The interest deductibility calculation rules are radically modified. Thus, a **deductible threshold of EUR 200.000** is given and **the exceeding borrowing costs which exceed this threshold will be deductible up to the limit of 10%** of the calculation base (established according to the **EBITDA** calculation formula).
- If the calculation base is negative or equal to zero, **the exceeding borrowing costs are treated as non-deductible for corporate income tax purposes during the current tax period, but can be carried forward indefinitely**.
- The new interest deductibility rules also apply to financial institutions.
- By way of exception, if the taxpayer is an **independent entity** (not part of a consolidated group for financial accounting purposes and without related parties and permanent establishments), **the exceeding borrowing costs are fully deductible** in the fiscal period when they are incurred.
- Interest and foreign exchange net losses carried forward according to the provisions in force until 31 December 2017 will be subject to deductibility as per the new interest deductibility rules starting with 1 January 2018.
- We mention that there are certain discussions in the Parliament regarding the increase of the thresholds for the application of the interest deductibility rules.

EXIT TAX	<ul style="list-style-type: none"> The concept of exit tax is introduced, based on which the taxpayer is subject to 16% corporate income tax (applied to the difference between the market value of the transferred assets and their fiscal value) for the gains derived from the following operations for which Romania would lose the right to taxation: <ul style="list-style-type: none"> Transfer of assets; Transfer of tax residency and/ or economic activity carried out through a permanent establishment. We mention that also for this tax there is a debate in the Parliament to postpone its entry into force.
CONTROLLED FOREIGN COMPANY RULES	<ul style="list-style-type: none"> The concept of controlled foreign company and new rules regarding the taxation of the income generated by it, are introduced. Thus, under strictly conditions, certain income categories non-distributed by the controlled entity (i.e., interest, dividends, royalties etc.) are included in the taxable base of the controlling entity.
INCOME TAX FOR MICROENTERPRISES	
THRESHOLD FOR APPLYING THE SYSTEM	The revenue threshold under which a company is considered a microenterprise has been increased from EUR 500.000 to EUR 1.000.000.
AMENDMENTS TO THE SCOPE OF APPLICATION	<ul style="list-style-type: none"> Starting with 01.01.2018, the taxpayers that obtain revenues from management and consultancy activities, representing more than 20% of the total revenues, are included in the microenterprises category. Romanian legal entities that carry out activities as banking, assurance and reassurance, capital market, gambling activities and exploration, development, exploitation of oil and natural gas, are no longer excluded from applying the tax on microenterprise system (as exception are included specific guarantee funds, as well as entities with legal personality that are transparent from a tax perspective). The option regarding the application of the corporate income tax regime if the share capital value is of at least RON 45.000, has been eliminated. Currently, there are certain discussions in Parliament regarding the possibility to maintain the option to apply corporate income tax.

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