

Tax alert

November 15th, 2017



Summary:

Emergency Ordinance no. 79/08.11.2017 regarding the changes and the addition of the Law no. 227/2015 regarding the Tax Code - main elements:

1. The transposing in the national law of the provisions of the Directive 2016/1164/EU, for the control of the externalization of the profits of the multinational companies - valid from January 1st, 2018;
2. The change of the taxation system for microenterprises - valid from January 1st, 2018;
3. The change of the right of VAT deduction - valid from January 1st, 2018;
4. Social contributions, the applicable quotas for the income tax, changes of personal deductions, changes regarding the taxation of PFA - from January 1st, 2018.

Example of salary calculation before and after January 2018

ECOVIS Romania: Financial Audit Services

Esteemed client,

We would like to inform you that the Official Monitory 885 from November 10th, 2017 has published the Emergency Ordinance of the Cabinet no. 79 regarding the change and the addition of the Law no. 227/2015 regarding the Tax Code.

This Ordinance introduces new changes regarding:

- The transposing in the national law of the provisions of the Directive 2016/1164/EU for the control of the externalization of the profits of the multinational companies;
- The taxation system for microenterprises;
- The VAT deduction right for acquisitions from taxable persons declared by ANAF as inactive;
- The social contributions, applicable quotas for the income tax, changes of the personal deductions, changes regarding the taxation of authorized individuals (PFA).

1. Multinational companies: the control of the externalization of the profits not taxed

A new chapter is introduced: "Chapter III¹: Norms against the practices of avoiding the tax duties with direct impact to the functioning of the internal market", a chapter which states mainly:

- The definitions of the debt costs, the exceeding costs of the debts, associated enterprises, financial enterprises, assets transfer, the transfer of the fiscal residence, etc.;
- The differentiation of the companies on the basis of the affiliation to a consolidated group or of the independent functioning, according to the ownership type (direct or indirect).

The main consequence of this measure is reflected by the different approach compared to the current situation of the deductibility of the expenses with the interests and with other costs equivalent to interests.

Thus, pursuant to the provisions of the above-mentioned ordinance, the tax payers who pay the profit tax that are:

- ◆ **Independent entities**, meaning that they are not affiliated to a consolidated group for financial accounting, and they do not have any associated enterprise or a permanent headquarters, deduct completely the exceeding costs of debt, during the tax period when they are paid.
- ◆ **Associated enterprises or financial enterprises** deduct in a limited way the exceeding debt costs during the tax period when they are paid.

We will revert to you in a separate message about the particularities of the deductibility of debt costs starting with the tax year 2018.

ECOVIS Romania: Rent a CFO

2. The taxation system for microenterprises starting with 2018

This chapter introduces significant changes compared to the current Tax Code. Please find below the most significant ones:

⇒ **The increase of the ceiling of the annual incomes** taken into consideration for the determination of the classification into the microenterprise category from the equivalent in lei of the current **500.000 EUR** ceiling to the equivalent of **1.000.000 EUR**;

⇒ **The massive extension of the categories of companies** taxed as microenterprises through:

* The cancelling of the limitations regarding the classification of activities (from January 1st, 2018 are included: management, consulting, gambling, activities of exploring, developing, exploiting of gas and oil reserves, but also insurance domain, capital market, banking, etc.);

* The cancelling of the possibility of exiting from the taxation system for microenterprises for companies with a specific amount of the shared capital (currently 45.000 RON);

We would like to remind you that currently the companies with annual incomes under the ceiling of 500.000 euro, but with a paid shared capital of minimum 45.000 RON are allowed to opt for exemption from the microenterprise tax and for applying the provisions regarding the profit tax.

The Romanian legal persons exempted from applying this taxation system are redefined:

- The guaranteeing fund for bank deposits;
- The compensation fund for investors;
- The guaranteeing fund for private pensions;
- The guaranteeing fund for insured persons;
- The entity transparent from tax standpoint with legal personality.

⇒ **The sole possibility to leave the taxation system for the incomes of the microenterprises**, respectively after the overcoming of the annual ceiling of 1.000.000 euro.

In conclusion, one can assess that starting with 2018 all companies which are not in the category specifically exempted by the Ordinance, and which will derive in 2017 incomes under the ceiling of 1.000.000 euro at the exchange rate of December 31st, 2017 will be mandatorily subject of the microenterprise incomes tax, without the possibility of opting out of the system.

The taxation quotas from January 1st, 2018 will be:

- **1%** for microenterprises with one or more employees;
- **3%** for microenterprises without employees.

ECOVIS Romania: Payroll & HR Services

3. Value Added Tax

Art. 297 regarding the VAT deduction right stipulates a new paragraph (8). According to it, the tax authority is entitled to refuse the VAT deduction right if they (tax authority) can demonstrate beyond any doubt that the tax payer knew or should have known that the transaction was part of a VAT fraud scheme occurred before or after in the chain of deliveries/providings.

The change comes on the background of the Decision of the European Court of Law (Second Chamber) C-101/16 of October 19th 2017, ruling which regards the interpretation of the Directive 2006/112/EC of the Council from November 28th, 2006 regarding the common VAT system for cases when the tax authority of a member state refuses the VAT deduction right to a tax payer citing as a reason the fact that „the operator who provided services in exchange of an invoice mentioning separately the price and the VAT was declared as inactive by the tax administration of a member state(...)”, pursuant to item 33 of the document.

The right of the taxable persons to deduct from the owed VAT the VAT owed or paid for the purchased goods and/or the services received previously represents a fundamental principle of the common VAT system imposed by the law of the EU, as stipulated by the above-mentioned decision.

This change allows the companies that have not deducted VAT or their VAT deductibility was rejected during a tax audit for VAT reimbursement based on the fact that the invoices are issued by a provider declared as inactive to require the acceptance of the retroactive VAT deduction for these transactions, under the condition that the other legal obligations regarding the deductibility are fulfilled.

Attention! We do not recommend the acquisition of goods and/or services from providers declared as inactive - stipulations of Art. 11 par. 7 of the Law no. 227/2015 regarding the Tax Code are still applicable (“The beneficiaries that acquire goods and/or services from taxable persons headquartered in Romania, after their registering as inactive in the Register of inactive tax payers /reactivated tax payers according to the Tax Procedure Code, do not benefit of the right for deducting the expenses and the VAT due to those transactions, excepting the acquisition of goods made within the procedure of forced execution and/or the acquisitions of goods/services from taxable persons under the bankruptcy procedure, pursuant to Law no. 85/2014 regarding the procedures for preventing insolvency and insolvency , with the subsequent changes and additions. In case of the VAT registration pursuant to art. 316 par. (12) of the supplier/provider, the beneficiaries that have acquired goods and/or services during the period when the VAT code of the supplier/provider was cancelled carry out the VAT deduction right for those acquisitions, on the basis of the invoices issued by the supplier/provider according to par. (6), through the registering of the tax in the first tax return mentioned by art. 323 and filled in after the registration of the supplier/provider or, according to each situation, in a following tax return.”)

ECOVIS Romania: Transfer Pricing File Preparation & Updating

4. The social contributions, income tax, PFA

Pursuant to OUG 79/2017, starting with January 1st, 2018 the total percentage of the salary taxes (social contributions and income tax) will be diminished **from 55,25% to 47,25%**.

The mandatory social contributions for the salary incomes will be the following:

1. Social contributions calculated on the basis of the gross income (owed by the employee):

- a) Pensions contribution - **25%**);
- b) Health contribution - **10%**.

2. The social contribution owed by the employer: assuring contribution for work – **2,25%**.



Thus, starting with January 1st, 2018:

- **3 social contributions will be paid, compared to 9 contributions currently paid** by the employee and the employer;
- **The total amount of the contribution decreases from the current 39,25%** (22,75% paid by the employer, 16,5% paid by the employee) **to 37,25%**;

The structuring of the duties due to the total social contributions in amount of 37.25% owed for the salary activity is as it follows:

- ◇ **35%** will be contributions owed by the employee, but withheld and paid by the employer on behalf of the employee;
- ◇ **2.25%** will be the contribution owed by the employer, named “assuring contribution for work”.

ECOVIS Romania: Staff Appraisal and Recruitment Support

The income tax is reduced from 16% to 10% for the following categories of incomes: salaries and incomes assimilated to salaries, independent activities, leases, investments, pensions, farming activities, forestry and fish farming, prizes, incomes from other sources.

The increase of individual deduction

For the natural persons with a monthly gross income of maximum 1.950 lei (included), the individual deductions will be granted as it follows:

- ◆ For the tax payers without dependents - 510 lei;
- ◆ For the tax payers with one dependent - 670 lei;
- ◆ For the tax payers with two dependents - 830 lei;
- ◆ For the tax payers with three dependents - 990 lei;
- ◆ For the tax payers with four or more dependents - 1.310 lei.

For the individuals deriving monthly gross incomes from salaries between 1.951 lei and 3.600 lei, the deductions are decreasing from the list above. For the monthly gross incomes derived from salaries above the level of 3.600 lei the individual deduction is not granted.

Changes regarding the incomes from the intellectual property rights (royalties)

For the incomes from the intellectual property rights, the income payers, legal persons or other entities have the obligation of calculating, withholding and paying the corresponding tax for the amounts paid through withholding, representing anticipated payments, from the paid incomes.

Starting with January 1st, 2018:

- The taxation ratio for the incomes from intellectual property rights is **decreased to 7%** (compared to the current ratio of 10%). In this situation, the tax for the final income will be calculated again by the tax authorities on the basis of the derived income statement;
- Through written option expressed at the moment of the conclusion of the contract, **the ratio of 10%** representing the tax for the final income can be applied.

The deductible expenses ratio is maintained in 2018 at 40%.

Changes applicable to PFA

The authorized individuals will maintain in 2018 the obligation of owing the social insurance contribution (pension) and the social health contribution, regardless if they derive or not incomes from salaries.

Social insurance contribution(pension) - 25%

The monthly calculus basis for the social insurance contribution (pension) is represented by the income chosen by the tax payer, **which cannot be lesser than the level of the minimum gross national salary guaranteed for payment** (1.900 lei, according to the draft Cabinet Decision), valid for the month the contribution is owed for.

ECOVIS Romania: Preparation of job descriptions & Internal Order Regulation

Exceptions: Will be exempted from the payment of the social insurance contribution (pension) in a 25% ratio:

- The natural persons insured in other systems of social insurance which do not bear the obligation of insuring with the public pensions system;
- The persons that have the quality of retired persons.

The social health insurance contribution - 10%

The calculus basis of the social health insurance contribution for the persons deriving incomes from independent activities is the gross minimum national salary guaranteed for payment valid for the month the contribution is owed for.

Currently a PFA may opt for a ratio of the pensions contribution of 10,5% or 26,3%, and the health contribution is of 5,5%.

In order to highlight the taxation differences between the years 2017 and 2018, we present you below a comparative calculation for a gross monthly income of 8.400 lei (100.800 lei/year).

2017		2018		Difference
Annual received income	100.800	Annual received income	100.800	
Health contribution (5,5%)	5.544	Health contribution (10%)	2.280	- 3.264
Pension contribution (10,5%)	10.584	Pension contribution (25%)	5.700	- 4.884
Income tax (16%)	13.548	Income tax (10%)	9.282	- 4.266
Net income	71.124	Net income	83.538	12.414
Total taxes	29.676	Total taxes	17.262	- 12.414

Example of salary calculation before and after January 1st, 2018

We have chosen two situations for our example: one case when the employee owes the income tax (16% in 2017 and 10% in 2018), and the second case is when the employee benefits of the income tax exemption for the persons whose activity is the software creation.

Also we have taken into consideration two circumstances: the one when the employer increases the gross salary such as the net salary stays the same, and the second one when this increase does not take place. As references we used two values of the gross salary: 1.900 RON, and 8.400 RON for the simulation regarding the income tax payers, and 10.000 RON for those exempted for this tax.

ECOVIS Romania: Rent a CFO

For the individuals owing the income tax:

The gross employment salary must be modified such as the amount received by the employee stays the same (**scenario 1**). In this case, the tax differences are not significant, and starting with 2018 one can see a slight decrease of the total costs for the company.

If the gross employment salary will not be changed starting with 2018 (**scenario 2**), for the same gross salary we will have:

- * a decrease of the net salary of ~ 16,6%;
- * a decrease of the total taxes to be paid to the national budget of ~ 17%.

Reference year	Gross income	Net income	Employee taxes	Employer taxes	Total taxes to be paid	Total company costs
2017	8.400	5.892	2.508	1.915	4.423	10.315
2018 – scenario 1	10.072	5.892	4.180	227	4.407	10.299
2018 – scenario 2	8.400	4.914	3.486	189	3.675	8.589
2017	1.900	1.367	533	434	967	2.334
2018 – scenario 1	2.268	1.367	901	51	952	2.319
2018 – scenario 2	1.900	1.162	738	43	781	1.943

For the individuals exempted from the payment of the income tax (the incomes derived from the activity of software creation), the results are as it follows:

If the gross employment salary will be changed such as the amount received by the employee stays the same (**scenario 1**), we will have a **increase of the total costs of the employer with ~ 6.97%**.

If the gross employment salary will not be changed starting with 2018 (**scenario 2**), for the same gross salary we will have:

- * a decrease of the net salary with ~ 22,16%;
- * a decrease of the total tax paid to the national budget of ~ 5.19%.

Reference year	Gross income	Net income	Employee taxes	Employer taxes	Total taxes to be paid	Total company costs
2017	10.000	8.350	1.650	2.281	3.931	12.281
2018 – scenario 1	12.847	8.350	4.497	289	4.786	13.136
2018 – scenario 2	10.000	6.500	3.500	225	3.725	10.225

ECOVIS Romania: Tax Consulting

The information presented above is expressed for your information only and it cannot be and it should not be considered as tax consulting. In order to assess the impact of the tax changes for your company, we kindly invite you to contact our senior team members and to schedule an appointment for clarifying all aspects related to these changes.

We would like to remind you that the modification of the gross salaries is made on the basis of additional deed to the employment agreement, and it must be concluded **before** its coming into force. The time span until the end of the year is already shortened (taking into consideration the legal holidays and the winter celebrations holiday), thus we kindly invite you to take a decision in the shortest time possible regarding this matter, allowing us to finalize the modification within the legal deadline.

For any other questions, please feel free to contact us!

Best regards,

ECOVIS Romania team



ECOVIS Romania: One Stop Shop

Accounting

- Financial accounting;
- Reporting preparation and consolidated reports (VAT, income tax, social security, individual tax reports);
- Harmonization of national financial accounting with accounting rules of the parent-company;
- Preparing and certification of annual financial statements;
- Staff outsourcing for accounting services;
- Tax consulting;
- Fiscal reports and revisions;

Audit

- Financial audit according to ISA;
- Restatement of financial statements prepared according to national regulations, to International Financial Reporting Standards (IAS/IFRS) or Reporting Standards specific to the Client (GAAP);
- Financial audit required by the group's policy;
- Internal audit
- Due diligence audit;

Payroll

- Payroll calculation;
- Preparation and verification of salary and wage data;
- Delivery of reports: pay slips, synoptic tables of benefits, retentions, contributions;
- Interface with banking applications and performing of salary payment transactions;
- Standard reporting to the management;
- Collection and processing of employee related data;

Consulting

- Business & company appraisal;
- Financial analysis and feasibility studies;
- Consulting for M&A, restructuring processes;
- Assistance in implementing IT solutions regarding: financial and management accounting, employees' records, management reports, etc.;
- Assistance in preparation of transfer pricing documentation;
- Notifications about law changes.

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