

Tax Alert

April 3rd, 2018



Summary:

- **The increase of the VAT exemption ceiling** - Law 72/2018
- **Changes regarding assigned debts** - Law 72/2018
- **Changes regarding the health subscriptions** - Law 72/2018
- **Optional - from microenterprise to profit tax payer** - OUG 25/2018
- **Sponsorship in case of microenterprises (quotas)** - OUG 25/2018
- **Other changes** - OUG 25/2018
- **Sole statement** - OUG 18/2018

ECOVIS Romania: Financial Audit Services

Esteemed Client,

The Official Monitor no. 260/23.03.2018 published the Law no. 72 for the acceptance of the Cabinet Ordinance no. 25/2017 for the change and the addition of the Law no. 227/2015 regarding the Tax Code.

The main regulation concerns **the increase of the ceiling of VAT exemption to the amount of 300.000 lei per year** (88.500 euro at the exchange rate from the date of the EU accession of Romania).

The following transitory measures are stipulated:

The taxable persons set-up before the year 2018 or between January 1st – March 31st 2018 will require the VAT registration in the following situations:

- ⇒ If they overcome the ceiling of a turnover of 220.000 lei during January 1st – March 31st 2018;
- ⇒ If they overcome the ceiling of a turnover of 300.000 lei until December 31st, 2018.

The taxable persons set-up after April 1st, 2018 will require the VAT registration if they overcome the ceiling of a turnover of 300.000 lei between the setting-up date and December 31st, 2018.

The persons already registered for VAT may require the cancellation of the VAT registration if they meet simultaneously the following conditions:

- ◇ They did not overcome the exemption ceiling of 220.000 lei in the year 2017;
- ◇ They did not overcome in 2018 the ceiling of a turnover of 300.000 lei.

The solicitation of the cancellation of the VAT registration is made through the filling in of the form 010 before the 10th day of the month following the tax period. These persons will keep the status of VAT payer until the decision for the cancellation of the VAT registration will be issued, and they will register the final VAT statement until March 25th of the month following the one the cancellation decision was issued.

Other tax provisions:

For the **assigned debts**, when they are made in loss, the expense with the loss is deductible to the calculation of the profit tax in a 30% percentage. This percentage is calculated at the difference between the debt selling price and the acquisition price. Previously the expense was deductible in a 30% percentage from the nominal value of the assigned debt.

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For the persons conducting independent activities and determining the income tax in a real system, it is permitted to deduct from the calculation of the income tax the **medical subscriptions** besides the voluntary health insurance, under a ceiling of 400 euro/year/person.

For employees, it is kept in place the exemption from the income tax and from the social insurance of the insurance premiums for private health services and/or medical subscriptions, under the annual ceiling of 400 euro/person, if the premiums are paid by the employer.

The Official Monitory no. 291/30.03.2018 has published the Emergency Ordinance no.25/2018 regarding the modification and the addition of a series of laws, and for the acceptance of a tax and budgetary actions.

The main modification regards the **option for the microenterprises to apply the profit tax regimen** if two conditions are met simultaneously:

- Minimum shared capital – 45.000 lei
- At least two full time employees (8h). The condition is considered to be met as well by the microenterprises which:
 - ◇ Hired employees through a partial time individual employment agreement, if the fractions of the work load stipulated, added-up, represent the equivalent of a full work load;
 - ◇ Have concluded administration or attorney contracts, pursuant to the law, if their remuneration is at least at the level of the national gross minimal basic salary guaranteed for payment (1.900 lei).

If in the period when the legal person applies the profit tax the employee number fluctuates during the year (in the understanding of decreasing under two), the condition must be met again in term of 60 days, a term that is extended in the next fiscal year.

The option is applicable starting with the quarter when the conditions are met. The option can be exerted starting with April 1st, 2018 and **it can be exerted only once**. If one of the two conditions is not met, the company reverts back to the payment of the tax to the microenterprise income starting with the tax year following the one the conditions ceased to be met.

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For the **microenterprises** it is introduced the possibility of subtracting from the tax value **the expenses with the sponsorship** (made pursuant to the Law no. 32/1994) to the level of the value representing 20% of the owed tax. The amounts which are not subtracted from the tax owed on the income of microenterprises are carried forward for the next 28 consecutive quarters (7 years).

The microenterprises that act as sponsors have the obligation to register a statement regarding the beneficiaries of the sponsorship. This statement must be registered until the day of January 25th of the following year or until the date of 25 (included) of the month following the last quarter the tax on the microenterprise incomes is owed for. There will be mentioned as beneficiaries of sponsorships **the non-profit entities and cult entities, which are providers of social services accredited with at least one licensed social service.**

The Ordinance determines an increased quota from 2% to 3,5% for the amounts which can be re-directed from the income tax (salaries or assimilated to salaries, independent activities, intellectual property rights, pensions, etc.) for supporting non-profit entities and cult entities, which are providers of social services accredited with at least one licensed social service. For the non-profit entities and the cult entities which are not providers of social services accredited with at least one licensed social service, the ratio is still 2%. The obligation for the calculation and the payment of this amount belongs to the competent tax authority. As an exception, the tax payers may opt for the calculation, withholding and payment of that amount by the income payers before the due payment term of the tax.

Other specific stipulations of the OUG 25/2018:

- The operations made in the margin of R&D projects are not subject to VAT if the results of the development are not transferred to other persons;
- The freight transporters with transportation vehicles bigger than 7,5 tons or persons transporters with transportation vehicles from the category M2 and M3 benefit by a reduced excise for Diesel-fuel, diminished with 183,62 lei/1.000 liters. This tax facility is made through a procedure of restitution of the excise;
- The simplification of the procedure of restitution of the amounts representing the special tax for cars and vehicles, the pollution tax for vehicles, the tax for the polluting emissions generated by vehicles and the environment tax for vehicles;
- It is modified the registration term for the statement 205 regarding the tax on the income of individuals, from the last day of February of the following year to January 31st of the following year.

ECOVIS Romania: HR & Payroll Services

On March 23rd, 2018 the Official Monitor has published the Emergency Ordinance no. 18/2018 which regulates **the mechanism of declaring and paying of the income tax and of social contributions** owed by natural persons.

The main changes brought by the OUG no.18/2018 are:

- 1) **It is introduced the "Sole statement regarding the income tax and the social contributions owed by individuals" ("Sole statement") – code 212.**
- 2) **ANAF will cease issuing taxation decisions for payments in advance.** The tax-payers are responsible for the correct filling in of the statement and for the calculation of the owed tax.
- 3) **The elimination of the incomes from intellectual property rights from the category of independent activities.** The incomes from intellectual property rights become a new category among the incomes subjected to the income tax.

I. Sole Statement

1) The sole statement replaces the following statement:

- ⇒ Form **220** "Statement regarding the estimated income/income norm";
- ⇒ Form **200** "Statement regarding the incomes derived in Romania";
- ⇒ Form **201** "Statement regarding the incomes derived abroad";
- ⇒ Form **221** "Statement regarding the incomes from farming imposed on the basis of income norm";
- ⇒ Form **600** "Statement regarding the fulfilling of the conditions of coming under the category of the persons mandatorily insured with the public pensions system";
- ⇒ Form **604** "Statement for determining the payment obligations as social health contributions owed by the individuals that not derive incomes or other categories of persons mentioned by art.180 of the Tax Code";
- ⇒ Form **605** "Request of ceasing the payment obligations representing the social health contributions owed by the individuals not deriving incomes or other categories of persons mentioned by art.180 of the Tax Code".

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2) Who registers the sole statement?

The obligation of registering the sole statement belongs to the individuals conducting a activity, individually or through a association formula, who derive **incomes subject to taxation in the real system**, and bear the obligation of keeping accounting evidence, incomes from the following categories:

- ◆ **Independent activities;**
- ◆ **Intellectual property rights;**
- ◆ **Assignment of goods, excepting the land lease incomes;**
- ◆ **Farming, forestry, fish farming.**

The statement will mention the final income for the previous year and the income estimated to be derived in the current tax year.

The sole statement is not registered with a view to the payment of the income tax by the individuals deriving incomes withhold **as final taxation**, as it follows:

- * **Net incomes established on the basis of the income norm, excepting those who registered the sole statement;**
- * **Incomes from intellectual property rights;**
- * **Incomes from assignment of goods as land lease;**
- * **Incomes as salaries and incomes assimilated to salaries, which transmit the due information through the specific statements;**
- * **Incomes from investments;**
- * **Incomes from prizes and gambling;**
- * **Incomes from pensions;**
- * **Incomes from the transfer of real-estate properties from personal patrimony;**
- * **Incomes from other sources.**

The individuals deriving incomes from **independent activities, from intellectual property rights, from assignment of goods, associations, from investment (including dividends), from other sources**, from one or more sources and/or other income categories, **owe the social health contributions**.

The classification in the annual ceiling of at least 12 national gross minimal salaries (22,800 lei/year) is made **on the basis of the sole statement**, until March 15th, (included) of each year.

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If the activity is started during the tax year, the sole statement is registered in 30 days after this date.

As an exception, for the year 2018, the term of registering the sole statement is July 15th, 2018.

For the year 2018, the sole statement may be registered on paper form too. Starting with the sole statement due to the year 2019, it can be registered online only.

4) The due term for the obligations:

The payment term of the obligations determined on the basis of the sole statement is the same with the registration term: March 15th of the following year.

For the anticipated payment of the annual estimated income tax a bonus is granted. The level of the bonus and the terms for the anticipated payments are established through the annual national budget law.

In the year 2018 the next two bonuses are granted:

1. 5% for the online registering of the sole statement until July 15th, 2018, included – it is granted a bonus from the value of the tax and of the social contributions;
2. 5% for the anticipated payment of the income tax and of the social contributions before December, 2018 included.

If both conditions are met, **both bonuses** are granted.

5) Details about the payment obligations:

5.1) Income tax (10%)

Following the registering of the sole statement, ANAF will issue a decision for the finalization of the tax due to the year 2017 (with a payment term for a potential tax difference in 60 days since the communication), and it will register automatically in the tax record a tax on the estimated income due to the year 2018, corresponding to the incomes estimated to the obtained in 2018.

The sole payment term for the tax due to the year 2018 will be March 15th, 2019, and the taxpayer has the possibility to make payments until that date (there were eliminated the quarterly terms for anticipated payments during the year; ANAF will not issue decision for anticipated payments or regularization decisions for the incomes derived starting with the year 2018).

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5.2) The contribution for pensions insurance (CAS) – 25%

The calculation of the pensions contribution is made by the individual through the registering of the sole statement.

Important: The natural persons that derive **incomes from independent activities and / or from the intellectual property rights** owe the pensions insurance contribution.

Exceptions: Do not owe the pensions insurance contributions:

- ⇒ The pensioners deriving incomes from independent activities;
- ⇒ The pensioners and the individuals deriving incomes from salaries and simultaneously incomes from intellectual property rights.

The individual will assess the classification as a payer of pensions contributions, according to the estimated income for the current year (independent to the income derived in the previous year):

a) if the net estimated income for the current year ≥ 22.800 lei – CAS is owed for a chosen income, but no lesser that the level of the national gross minimal salary ($25\% \times$ at least 1.900 lei $\times 12$ months);

b) if the net estimated income for the current year < 22.800 lei – the CAS payment is not mandatory (the insurance can be made by option). However, if in the next year, at the same with the registration of the final statement, an overcome of the ceiling is observed, the CAS is owed pursuant to lett. a).

For the incomes from intellectual property rights estimated to overcome, at one payer, the annual ceiling of 22.800 lei, the pensions insurance contribution will be withheld by the payer.

The incentive system implemented for the income tax is applied accordingly to the CAS as well.

5.3) The contribution for health insurance (CASS) – 10%

The calculation of the contribution for health insurance is made by the tax-payer – natural person – through the sole statement.

Important:

The contribution for health insurance will be owed **pursuant to the incomes estimated to be derived in the current year, cumulated, from independent activities, intellectual property rights, assignment of goods, associations, farming activities, investment and other sources:**

a) if the net income estimated to be derived from the above mentioned sources for the current year ≥ 22.800 lei – they owe CASS at the national gross minimal salary ($10\% \times 1.900$ lei $\times 12$ months).

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b) if the net estimated income for the current year < 22.800 lei – the payment of CASS is not mandatory (the insurance may be optional). However, if in the following year, at the same time with the registering of the sole statement, it is observed an overcome of the ceiling, then CASS is owed pursuant to the lett. a).

If there are estimated **incomes lesser than 22.800 lei, the natural persons may opt for the payment of the contribution**, and they will pay CASS as it follows:

a) if they register the statement before the legal due term, at a calculation basis representing the value of 6 national gross minimal salaries, valid for the date of the registration;

or

b) if they register the statement after the legal due term, at a calculation basis equivalent to the value of the national basic gross minimal salary, valid for the date of the registration of the statement, multiplied with the number of months until the legal term of registering the statement, including the month the statement is registered in.

The individual will have the status of insured persons with the health system since the date of the registering of the statement, the date of the payment not being relevant.

Exceptions: The individuals deriving incomes from salaries and simultaneously incomes from intellectual properties rights do not owe the contribution for health insurance.

The individuals not deriving incomes and who are not in the categories exempted from the payment of CASS may opt, through the registering of the sole statement, for the payment of the contribution, thus owing CASS to a calculation basis of 6 gross minimum national salaries.

6) Important notice regarding the incomes from intellectual property rights whose withholding is final

As above mentioned, if the individual derives income salaries or assimilated to salaries or has the quality of retired person, he or she does not owe CAS and CASS for the incomes from intellectual property rights.

Income tax:

The income tax is withheld and it is determined by applying the 10% ratio to the taxation basis (representing the income derived pursuant to the authorship rights contract decreased with the lump ratio of 40%).

The persons with a major or accentuated physical disability will be exempted from the payment of income tax for the incomes from intellectual property rights as well.

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Pensions Contributions (CAS):

It is withheld at the level established by the individual through the intellectual property agreement, only if the annual estimated income derived from at least one income payer overcomes the ceiling of 12 minimal national salaries (22.800 lei / year).

The CAS ratio is 25%, and the monthly minimal taxation basis is the gross national minimal salary (respectively 1.900 lei). The contract concluded between the parties has to appoint the income payer for the calculation, withholding and payment of the contribution, and the income chosen for the payment of the contribution in the current year.

Health Insurance Contributions (CASS):

The CASS is withheld for intellectual property rights only if the estimated annual income derived from at least one income payer overcomes the ceiling of 12 national minimal salary. If the ceiling is overcome, the 10% CASS is owed to a monthly taxation basis of 1.900 lei.

The CASS ratio is of 10%, and the taxation basis is the gross minimal national salary (respectively 1.900 lei). The contract concluded between the parties has to mention that the assigned income payer has the obligation for the calculation, withheld and the payment of the contribution through withholding.

Important: if the estimated incomes overcome the ceiling of 12 x gross minimum salary (22.800 lei / year), but the ceiling is not overcome at any of the income payers, the beneficiary of authorship rights has the obligation of filling in the sole statement until March 15th (included) of the next year with a view of paying the pensions and health contributions.

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