

Tax Alert

March 22nd, 2020



Summary:

- OUG 29/21.03.2020 — regarding economy & tax and budget measures;
- OUG 30/21.03.2020 — regarding measures for social protection on the background of the spreading of Coronavirus SARS-CoV-2; includes conditions for the receiving the allowance for "technical unemployment" – 75% of the gross salary;
- Decision 217/2020 — for the application of the Law no. 19/2020 regarding the granting of parents' days off for child caring, if the education units are temporarily closed down — attached the draft of the declaration

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Emergency Order 29/2020 (18.03.2020) regarding economy & tax and budget measures — published in the Official Monitor no. 230/21.03.2020

1. Art.1 modifies the Emergency Order (O.U.G.) 110/2017 regarding the Sustenance Program for small and mid-sized companies – IMM INVEST ROMÂNIA. Mainly the program consists in the state guarantees for the loans for investments and operations. Due to the fact that the changes are relatively numerous and the content is relatively large, for the interested reader we attach the OUG 110/2017 updated at 21.03.2020.
2. **The payment term** for the tax on buildings {art. 462 par. (1) C.F.}, of the land tax and land charge {art. 467 par. (1) C.F.}, as well as the tax on transportation vehicles {art. 472 par. (1) C.F.} – March 31st, 2020 **is prorogated to June 30th, included**. The payment term for the local taxes and charges with the 10% bonus for the integral payment is extended up the same date.
3. For the **tax duties in payment** starting with the date of coming into act of this Emergency Order (21.03.2020) and not paid in 30 days after the discontinuance of the state of emergency **there are not calculated and not owed overdue penalties and interests** pursuant to the Tax Procedure Code and **they are not considered overdue tax duties**.

There are suspended or not started the execution proceedings through garnishing for the budgetary debts, with the exception of the executions applicable for the reclaim of the budgetary debts determined through court of law decisions pronounced in criminal cases. The proceeding of suspending the execution/foreclosure through garnishment on the traceable amounts representing incomes and liquid assets are applied, through the effect of the law, by the credit institutions or by garnished third parties, without additional formalities from the tax authorities.

4. As a waiver of the stipulations of the art. 41 par. (8) of the Law no. 227/2015 regarding the Tax Code, with the subsequent changes and additions, the tax-payers applying the system of annual declaring and paying of the profit tax, **with anticipated payments made by quarter**, may pay the quarterly in advance payments for the year 2020, at the level of the amount resulted from the calculation of the current quarterly profit tax. The calculation modality is maintained for all the quarters of the fiscal year 2020.

For the tax-payers applying a financial year different by the calendar year, the above-mentioned stipulations are applied for the payments in advance owed for the remaining quarters from the modified year closing in 2020, as well as the calculation of those due to the quarters of the modified fiscal year starting in 2020 and contained in the calendar year 2020.

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5. During the state of emergency, the small and mid-sized enterprises, as they are defined by Law no. 346/2004 regarding the stimulation of setting-up and development of small and mid-sized companies, with the subsequent changes and additions, **which have totally or partially ceased activity on the basis of the decisions issued by the competent public authorities, pursuant to the law, during the state of emergency instituted and which have obtained the state of emergency certificate issued by the Ministry of Economy, Energy and Business Environment**, benefit from the postponement of the payment of some services and utilities – electricity, natural gas, water, phone and internet services, as well as from the postponement of the payment of the rent for the buildings used as headquarters (official address) and secondary business units.

Definitions pursuant to law 346/2004:

- "In the understanding of this law, by "enterprise" it is understood any form of organization of a business activity, authorized in accordance with the acting law to conduct production operations, commerce or service providing, with the purpose of deriving income, in competitive conditions, respectively: companies regulated by the Law of Companies no. 31/1990, republished, with the subsequent changes and additions, cooperatives, authorized natural persons, undertakers holding an individual enterprise and family enterprises, authorized pursuant to the acting law dispositions, who conducts business operations.
- The provisions of this law are applicable to associations and foundations too, to farming associations and to farming companies conducting business operations".
- "Small and mid-sized enterprises are defined as being those businesses which meet cumulatively the following conditions: they have an annual average number of employees smaller than 250 and derive a net annual turnover of up to 50 million Euro, equivalent in lei, or they own total assets which do not overcome the lei equivalent lei of 43 million Euro, according to the most recent approved financial situations. Through total assets it is understood fixed assets plus working assets plus in advance expenses".

As a waiver of other legal dispositions, for the ongoing contracts, others than those mentioned above (utilities, rent) concluded by the small and mid-sized firms which ceased their activity completely or partially based on the decisions issued by the competent public authorities, pursuant to the law, during the instituted state of emergency, and which obtained the emergency state certificate issued by **the Ministry of Economy, Energy and Business Environment**, the force majeure may be invoked against them only after the attempt, proven by deeds communicated between the Parties through any modality, inclusively through electronic means, of renegotiating the contract, for the adjustments of its clauses with the taking into consideration of the exceptional conditions generated by the state of emergency.

It is presumed to represent a force majeure act, in the understanding of this emergency order, the unpredictable circumstance, absolutely invincible and inevitable referred to by art. 1.351 par. (2) of the Civil Code, resulting from an action of the authorities for the implementation of the proceeding imposed by the prevention and the control of the coronavirus pandemic, which impacted the activity of the small and mid-sized company, **impact proven through the state of emergency certificate**. The resumption can be overrun by the interested party through any probation modality. The unpredictable nature is reported at the moment of the generation of the affected legal relation. The decisions of the authorities pursuant to the decree introducing the state of emergency will not be unpredictable.

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6. The penalties stipulated for delays for the execution of the duties derived from the contracts concluded with public authorities by the small and mid-sized enterprises which interrupted activity totally or partially on the basis of the decisions issued by the competent public authorities, pursuant to the law, during the formal state of emergency and which have obtained the emergency state certificate issued by the Ministry of Economy, Energy and Business Environment are not owed during the state of emergency.
7. The benefit of the delayed payment for utility services – electricity, natural gas, water, phone and internet services, and for the rent for the building used as headquarters and secondary business units **is applicable to the family physicians cabinets and to the dental care cabinets** where activity is conducted, under any form, by maximum 20 persons, and whose activity is directly affected by the dispositions of the public authorities for the prevention and control of the coronavirus pandemic.

The criteria for determining the beneficiaries of this decision are preset through a Cabinet decision.

The same proceedings are applicable to **the national sports federations and sport clubs** owning the sports identity certificate and whose activity is directly affected by the dispositions of the public authorities for the prevention and control of the coronavirus pandemic.

The criteria for determining the beneficiaries of this decision are preset through a Cabinet decision.

8. **The term for the registration of the declaration regarding the real beneficiary (ultimate controller)**, stipulated by art. 56 par. (4) and 62 par. (1) of the Law no. 129/2019 for the prevention and control of money laundering and financing of terrorism, as well as for the modification and the addition of other normative deeds, **is extended with 3 months after the date of the termination of the state of emergency** introduced by the Decree no. 195/2020 regarding the institution of the state of emergency on Romania's territory, **and during the state of emergency the registration of this declaration is suspended.**

The deadline for the registration of the declaration regarding the real beneficiary (ultimate controller), as stipulated by art. 344 par. (4) of the Cabinet Order no. 26/2000 **regarding the associations and foundations**, with the subsequent changes and additions, and the term mentioned by art. 63 of the Law no. 129/2019 for the prevention and control of money laundering and financing of terrorism, as well as the modification and addition of normative deeds, for the addition of the documents pursuant to the requirements mentioned by art. 6, 7, 16 and 17 of the Cabinet Order no. 26/2000 regarding the associations and foundations, approved with changes and additions through the law no. 246/2005, with the subsequent changes and additions, **is extended for 3 months after the cancellation of the state of emergency** introduced through the Decree no. 195/2020 regarding the institution of the state of emergency on the entire territory of Romania, **and during the state of emergency the registration of the declaration and the filling in of the documents are suspended.**

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The Emergency Order 30/2020 for the modification and the addition of normative deeds, as well as for the introduction of proceedings for social protection on the background of the coronavirus pandemic

1. Art.1 of the OUG 30/2020 **modifies the Law 19/2020 regarding the granting of days off for parents with the purpose of child caring**, if the educational units are temporary closed. Attached you will find the modified content of this law.

2. **The grating of the insertion incentive** mentioned by art. 7 of the Cabinet Emergency Order no. 111/2010 **regarding the leave and the monthly allowance for child bearing**, approved with changes through the Law no. 132/2011, with the subsequent changes and additions, is made without interruption, for a period of 90 days for the persons who, starting with the date of the coming into act of this Emergency Order (21.03.2020) are in one or more of the following situations:

a) They benefit from the leaves mentioned by art. 2 par. (1) lett. a), b) and d) of the Emergency Order no. 158/2005 regarding the leaves and the allowances for social health insurances, approved with changes and additions through the Law no. 399/2006, with subsequent changes and additions, meaning:

► Sick leaves and allowances for temporary work incapacity, caused by common diseases or by accidents unrelated to work;

► Sick leaves and allowances for the prevention of disease and the recuperation of the work capacity, exclusively for the situations resulted after work accidents or professional diseases;

► Sick leaves and allowances for the caring for a sick child.

b) They benefit from the leave mentioned by Law no. 19/2020 regarding the granting of days off to the parents for child caring, if the education units are temporarily closed;

c) They are during the period of the suspension of the employment contract by the initiative of the employer, if the activity is interrupted or temporarily decreased, without the cessation of the work relations, for business, technological or structural reasons, or other similar reasons;

d) Their work or service relations are suspended or ceased as a consequence of the institution of the state of emergency under the conditions of the Cabinet Emergency Order no. 1/1999 regarding the regimen of the curfew and the regimen of the state of emergency, approved with modifications and additions through the Law no. 453/2004, with the subsequent modifications and additions.

3. If after the period mentioned by par. (2) – **(90 days)**, the entitled person derives incomes where the income tax is applicable (incomes from salaries and assimilated to salaries, from independent activities, from intellectual property rights and from farming activities, forestry and fish farming), the insertion incentive is granted, pursuant to the law, up the child's age of 3 or 4, for the children with disabilities.

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The above-mentioned stipulations are conformably applicable to the persons **benefitting from the allowance for work schedule reduced at 4 hours** for one of the parents or for the person being in one of the following situations: has adopted the child, has the child in the formal due care before adoption or the one who has the child in foster care or in emergency foster care, with the exception of the professional maternal assistant, who can benefit of these rights only for his/her children, as well as the person designated as legal guardian, who is effectively in charge for the attendance of the child with disability (major or accentuated), up to the age of 18 of the child, at parent's request, under the conditions stipulated by the Law no. 53/2003 – Employment Code, republished, with the subsequent changes and additions.

The stipulations are applicable as well to the persons who at the date of the coming into act of this Emergency Order **are under the provisions of the payment of the insertion incentive**, with the observance of the provisions of art. 17 par. (1) lett. a) of the Cabinet Emergency Order no. 111/2010, approved by the Law no. 132/2011, with the subsequent changes and additions. (The right to the insertion incentive stops with the day following the day when the child reaches the age of 2, respectively the age of 3 for children with handicap, with the exception of the situation mentioned by art. 7 par. (2);).

4. Starting with the date of the coming into act of this Emergency Order and based on the Decree no. 195/2020 regarding the institution of the state of emergency on the territory of Romania, the applications, the declarations and the justifying documents for the solicitation of the social assistance benefits granted from the state budget through the budget of the Ministry of Work and Social Protection can be submitted in writing or through e-mail.

The submitting through e-mail of the applications, declarations and justifying documents is optional and it is executed if the territorial agencies or the local public administration authorities have developed systems of receiving by electronic channels, with the observance of the provisions of the EU Regulation 679/2016 of the European Parliament and of the Council of April 27th, 2016 regarding the protection of natural persons for the processing of personal data and regarding the free movement of this data and of the cancellation of the Directive 95/46/CE (The General Regulation for Data Protection).

Starting with the date of this Emergency Order, for the applicability period of the Decree no. 195/2020 regarding the institution of the state of emergency on the territory of Romania, the decision of granting/rejecting/cessation/suspension of the social assistance right for any of the social benefits can be transmitted to the beneficiary in written form or through the e-mail by the issuing territorial agency. The National Agency for Payments and Social Inspection, the territorial agencies and the authorities of the local public administration will display at the institution's headquarters and on their own website the necessary information regarding the possibility and the procedure for the solicitation of the social assistance benefits through the e-mail, in a maximum term of 10 days after the date of the coming into act of this Emergency Order.

During the state of emergency instituted through the Decree no. 195/2020 regarding the institution of the state of emergency on the territory of Romania, the transmittal through the e-mail of the applications and the justifying documents for the solicitation of the insurance rights becomes the main communication channel.

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5. During the state of emergency instituted by Decree no. 195/2020 regarding the institution of the state of emergency on the territory of Romania, **the applications and justifying documents for determining and payment, under the conditions of the law, of the financial rights paid from the budget of the unemployment insurances, as well as from the Guarantee Fund for the Payment of the Salary Debts** may be registered at the county agencies for the employment of the workforce or, if applicable, at the agency for the employment of the workforce in Bucharest, in writing or through the e-mail, with the observance of the stipulations of the (EU) Regulation 2016/679 of the European Parliament and of the Council from April 27th, 2016, regarding the protection of natural persons with regard of the processing of the personal data and the free movement of this data and the cancellation of the Directive 95/46/CE (General regulation regarding data protection).

In exceptional cases, the county agencies for the employment of the workforce, and the Bucharest agency, may solicit to the persons who registered the application and the justifying documents through e-mail to come in person at the office of the Agency.

By "exceptional cases" are understood:

- a) The identification of inconsistencies in the documents transmitted;
- b) The information in the documents transmitted is incomplete or on its basis it is not possible to determine the fulfillment of the legal conditions for the granting of the financial rights.

The terms stipulated by the law for the settlement of the applications in the exceptional cases mentioned above are extended with up to 15 work days for the checking of the reality, legality and the conformity of the documents transmitted, and for requesting additional documents, if applicable, too.

The county agencies for the employment of the workforce, and the Bucharest agency bear the obligation to display at their office and on own website the information necessary regarding the transmitted through e-mail of the applications and justifying documents mentioned above.

TECHNICAL UNEMPLOYMENT (75%):

6. During the state of emergency instituted by Decree no. 195/2020 regarding the institution of the state of emergency on the territory of Romania, for the period of the temporary suspension of the individual employment contract, at the initiative of the employer, pursuant to art. 52 par. (1) let. c) of the Law no. 53/2003 – Employment Code, republished, with the subsequent changes and additions, following the effects induced by the coronavirus SARS-CoV-2, **the allowances for employees are determined at 75% of the basic salary corresponding to the job of the employee, and they are supported from the budget of the unemployment insurances, but no more than 75% of the gross average salary income stipulated by the Law of the national social insurance budget for the year 2020 no. 6/2020 (5.429 lei). 75%= 4.072 lei gross**

The above-mentioned stipulations are applicable to the employees of the employers who meet one of the following conditions:

They interrupt activity totally or partially based on the decisions issued by the competent public authorities pursuant to the law, during the state of emergency instituted, and they have obtained the emergency situation certificate issued by the Ministry of Economy, Energy and Business Environment, mentioned at art. 12 of the annex 1 at the Decree no.195/2020 regarding the institution of the state of emergency on the territory of Romania. The Ministry of Economy, Energy and Business Environment issued the emergency situation certificate according to the methodology approved by order;

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b) They reduce activity as a consequence of the COVID-19 epidemic and they do not have the financial capacity for paying all the salaries of their employees. **The employers might benefit of the payment of the allowance mentioned above for up to 75% of the employees with individual employment contracts active at the date of coming into act of this Emergency Order.** For these employers, the payment of the allowance will be made based on a self-responsibility declaration, which mentions that the employer registers a decrease of the collection in the month prior to the registration of the declaration, with a percentage of minimum 25% in comparison with the average collection of the period January-February 2020, and there is no financial capacity for the payment of the salaries for all employees.

The above-mentioned allowance (75% of the gross salary) is subject to taxation and to the payment of the mandatory social contributions, pursuant to the stipulations of the Law no. 227/2015 regarding the Tax Code, with subsequent changes and additions. The calculation, withholding and the payment of the income tax, of the contribution for national social insurances and of the contribution for health social insurances **is made by the employer from the allowances received from the budget of the unemployment insurances.**

For the calculation of the income tax are applicable the provisions of art. 78 par. (2) lett. b) of the law no.

227/2015 regarding the Tax Code, with the subsequent changes and additions. (It is calculated by the application of the 10% ratio to the calculation basis determined as the difference between the gross income and the mandatory social contributions due to a month, and, if applicable, of the individual contribution to the state budget owed pursuant to the law, for each place of their deriving). The declaration of the income tax, of the national social insurance contribution and of the health social insurance contribution is made by the employer, through the registration of the declaration mentioned by art. 147 par. (1) of the Law no. 227/2015 regarding the Tax Code, with the subsequent changes and additions (Declaration 112).

The payment term and the term for the declaration of the tax duties mentioned above is the date of 25 (included), of the month following the month of the payment from the budget of the unemployment insurances.

For the above-mentioned allowance (75% of the gross salary), the insuring contribution for work is not owed according to the provisions of art. 2205 of the Law no. 227/2015 regarding the Tax Code, with the subsequent changes and additions.

For the granting of the amounts necessary to the payment of the allowance (75%) the employers submit, through e-mail, at the county agencies for the employment of the workforce, as well as to the agency in Bucharest (agencies competent for the address of the headquarters), an application signed and dated by the legal representative, prepared according to the drafts mentioned by annexes no. 1 and 2 at this Emergency Order, together with the list of the persons who will benefit from this allowance, assumed by the legal representative of the employer, prepared according to the draft stipulated by annex no. 3.

The payment will be made on the basis of the application signed and dated by the legal representative, submitted through e-mail to the county agencies for the employment of the workforce, as well as in Bucharest (agencies competent for the address of the headquarters). The above-mentioned documents are registered in the active month for the payment of the allowance due the previous month. The payment from the budget of the unemployment insurances is made in maximum 30 days after submitting the documents.

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7. Other professionals, as they are regulated by the Law no. 287/2009 regarding the Civil Code, re-published, with the subsequent changes and additions, who do not have the employer quality and they have to interrupt their activity, totally or partially, based on the decisions issued by the competent public authorities pursuant to the law, during the state of emergency instituted through the Decree no. 195/2020 regarding the institution of the state of emergency on the territory of Romania, benefit from the general consolidated budget of an allowance even with the national gross minimum basic salary established for the year 2020 (2.350 lei).

This allowance is subject to taxation and payment of the contributions in the conditions stipulated by the Law no. 227/2015 regarding the Tax Code, with the subsequent changes and additions.

8. The sick leave certificates spanning 91 days or overcome 183 days, issued during the state of emergency instituted by the Decree no. 195/2020 regarding the institution of the state of emergency on the territory of Romania, are issued and settled without the notice of the doctor with expertise in social insurance.

The decision 217/2020 for the application of the provision of the Law no. 19/2020 regarding the granting of days off to parents for child caring, if the education units are temporary closed down.

There are determined as paid days off for one of the parents, if the classes are suspended or the education units are temporarily closed down, and under the provisions of the Decree no. 195/2020 regarding the institutions of the state of emergency on the territory of Romania, the work days until the cancellation of the instituted state of emergency, with the exception of the work days during the school vacations.

The provisions are applicable to the parents who meet cumulatively the following conditions:

- a) They have children aged up to 12, enrolled in an education unit or they have children with disabilities aged up to 18, enrolled in an education unit;
- b) The job position they have does not allow work from home or teleworking.

The days off are granted at the request of one of the parents, registered at the employer of the person who will take care of the child/children in the above mentioned period, together with a self-responsibility declaration from the other parent, mentioning that he/she has not requested from his/her own employer the days off he/she would be entitled for pursuant to Law no. 19/2020, respectively that they are not during their holiday leave or unpaid leave, and a duplicate of the birth certificate/certificates of the child/children.

For each day off under the conditions of this decision, the employer grants an allowance paid from the account due to personnel expenses from the incomes and expenses budget of the employer, in the sum of 75% of the basic salary, but no more than 75% of the gross average salary income used at the foundation of the budget of the national social insurances (no more than 4.072 lei gross);

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For the payment of the amounts for the payment of the allowance **the employer will register an application to the county agencies for the employment of the workforce, respectively to the agency of Bucharest,** authorities competent for the area where the employer conducts activity or runs a branch/business unit, according to each situation.

The application will be joined by the next documents:

The list of the employees who benefitted from days off, and the allowance granted for this period;

b) Duplicates of the payrolls proving the payment of the allowance;

c) The declaration on self-responsibility of the legal representative of the employer ascertaining that the list mentioned at let. a) includes the persons who meet the conditions regulated by art. 2 par. (2) of the Law no. 19/2020; **the draft of the declaration is approved through an Order of the president of the National Agency for the Employment of the Workforce**, which is published in the Official Monitor of Romania, Part I; **(attached)**

d) The proof of payment of the contributions and taxes due to the month the allowance was paid in.

The application will be signed and dated by the legal representative and it will contain mandatorily the following elements:

a) The identification data for the employer, including the e-mail address;

b) Bank account;

c) The name of the legal representative of the employer;

d) The total amount solicited;

e) The number of the employees the amount is solicited for.

The above-mentioned documents are transmitted through e-mail at the e-mail address communicated by the county agencies for the employment of the workforce, respectively the agency of the city of Bucharest, in maximum 30 days after the payment of the contributions and taxes due to the allowance. In the situation when these documents cannot be transmitted through the e-mail, they will be transmitted through any other communication channel.

The settlement of the amounts paid as allowance will be made in 60 calendar days since the date of the registration of the applications. The county agencies for the employment of the workforce, respectively the agency for the city of Bucharest, bear the obligation that in 24 hours since the receiving through the e-mail or through any other communication channel of the documents mentioned above to inform the employer about the registration number for their application.

This info is a selection of some elements of new legislation, with a strictly informing purpose. It is not considered professional consulting and, in consequence, we do not assume any responsibility in this respect. For additional questions regarding the situations mentioned above, please do not hesitate to contact us.

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- Financial audit required by the group's policy;
- Internal audit;
- Audit missions such as: agreed procedures (ISA 4.400), revisions (ISA 2.400), due diligence;

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Contact us at:

29A Tudor Vladimirescu Avenue, 5th District, Bucharest, Romania

Phone (landline): +4021.410 20 60; **Fax:** +4021 .404.31.60

Cell phone: +40724.343.500

E-mail address: office@ecovis.ro; **Web:** www.ecovis.ro, www.ecovis.com