

Further tax changes 2018

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On 8th November 2017 the emergency ordinance 79/2017 (**EO**) was published. The EO details far-reaching tax changes which will come into force on 1st January 2018.

The changes in social security contributions and the resulting challenge for the employers during the last weeks of this year, is what everybody talks about. The EO implemented further changes for e.g. micro-company tax and corporate tax, which are briefly presented below.

1. Micro-company tax

The scope of the micro-company tax (3% of turnover, not profit, if the company has no employees, otherwise 1% of turnover) has been significantly expanded by the EO. Starting on 1st January 2018, all companies that have revenue of less than €1,000,000 as of 31st December 2017 are obliged to pay the micro-company tax (until now the limit was €500,000). The current exemptions (companies that get more than 20% of their revenue from consulting services, banks, insurance companies, gambling businesses, oil and gas distributors) have been abrogated, ie. these sectors are now liable to pay microbusiness tax when they fall below the turnover limit.

The chance to opt for corporate income tax (16% of taxable profit) if the share capital of a company is 45,000 RON or higher has been abrogated.

The EO also states that all companies that have either:

- been excluded from the micro-company tax so far, or
 - have opted to pay corporate income tax because of their share capital
- must, from 1st January 2018, pay micro-company tax.

As of 1st January 2018, the only criterion used to decide whether a company pays micro-company tax or corporation tax is the company's turnover.

2. Corporate tax

The changes are primarily based on the early implementation of part of EU Directive 2016/1164 (on rules against tax avoidance practices which must be implemented by 1st January 2019 at the latest) which includes among other things, rules on interest limitation. The exceeding borrowing costs are, in general, tax deductible up to a limit of €200,000; amounts above this threshold have limited deductibility (up to 10% of a result figure defined in the EO).

Furthermore, an exit taxation is now in place: if a person taxable in Romania relocates assets, its business activities (eg. related to a permanent establishment) or its fiscal residence to a foreign country – and Romania therefore loses the right to tax – the difference between the market value

and the tax value of these relocated assets is taxed as a capital gain at 16%. Under certain conditions a deferral of payment is possible.

The existing anti-abuse rules have been confirmed (article 11 of the Romanian Tax Code enables tax authorities to disregard issues without economic background and only aiming at tax avoidance).

A controlled foreign company rule has also been put into place. These refer to investments which are not subject to taxation in Romania, are more than 50% owned directly or indirectly by a Romanian taxpayer liable to corporate tax and whose effectively paid corporate tax is lower than the difference between the hypothetical tax paid in Romania and the actual paid tax. In such cases the taxpayer, subject to corporate tax in Romania, has to include in its own tax base in Romania certain non-distributed income of this foreign investment (eg. interest, royalties, dividends, etc.).

Conclusion

Besides the well-known challenges over the transfer of the social security contributions to the employee, the 2018 tax changes do include some positive elements. Notably, the increased scope of the micro-company tax can lead to a simplification of tax calculation, meaning a reduction in the administrative workload in companies.

The early implementation of the EU Directive regarding rules against tax avoidance practices could, in principle, send out a positive signal for Romania. However, it is feared that this could get lost in light of the uncertainties in other subjects (news of the decreased scope for the Split-VAT including only insolvent companies or companies with VAT arrears is still not regulated by law).

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