

Tax Newsflash

Law 296/2023 - fiscal changes and other relevant regulations for the business environment

On 27 October 2023, Law 296/2023 was published in the Official Journal of Romania no. 977. Among other things, the law substantially modifies the Fiscal Code. Most of the provisions of the law will enter into force starting from 2024, but there are also exceptions, such as those concerning the tax exemptions applied to some categories of salary income (IT, construction, agriculture) which will come into force starting with the income related to the month following the adoption of the legislation and its publication in the Official Journal of Romania, i.e. starting from November 2023.

We present below the main changes to tax legislation, as well as other relevant laws for the business environment in Romania.

Special tax on high value immovable and movable assets

This new type of tax will raise revenue for the state budget revenue and will be payable by:

- ✓ individuals who own (including joint ownership) residential buildings located in Romania whose taxable value exceeds 2,500,000 lei (approximately 500,000 euros). A rate of 0.3% will be applied on the difference between the taxable value and the ceiling of 2,500,000 lei. Those liable must submit a declaration and pay the tax up to and including 30 April of the year for which the tax is due. It will therefore be due on 30 April 2024 for the year 2024.
- ✓ individuals and legal entities which own cars that are required to be registered/have been registered in Romania and whose individual purchase value exceeds 375,000 lei (approximately 75,000 euros). The tax is payable at a rate of 0.3% of the difference between the purchase value and the ceiling of 375,000 lei. Those liable must submit a declaration and pay the tax by 31 December inclusive of the year for which the tax is due. It will therefore be due on 31 December 2024 for the year 2024.

KPMG Comment

In the case of cars, the tax is due for a period of 5 years starting from the fiscal year in which the handover-receipt of the car takes place or for the remaining fraction of years until the completion of the 5-year period from this date for those in which the handover-receipt of the car occurred previously. So, if the individual or legal entity acquired the car in 2018, for example, they do not owe anything. If, however, they acquired it in March 2019, they owe this tax for 3 months of 2024 and will no longer owe it in the future. As a last example, if the car were to be purchased in March 2024, the tax will be paid for 9 months in 2024 and then for whole years from 2025, or for fractions of years, until the 5 years of application are completed.

Minimum tax on turnover, additional turnover tax for banks, and specific tax for the oil and gas sector

Starting with the fiscal year/amended fiscal year 2024, for commercial companies paying profit tax (so not for other legal entities such as foundations, associations, private schools/universities/tenant associations, etc.), a **Minimum tax on turnover** has been introduced, if the turnover exceeds 50 million euros in the previous year of calculation (for example, in 2023 for tax assessment in 2024). Companies in this category, if in the calculation year they determine a profit tax lower than the minimum turnover tax, are required to pay profit tax at the level of the minimum turnover tax. Businesses that exclusively carry out activities involving distribution/supply/transport of electricity and natural gas and that are regulated/licensed by the National Energy Regulatory Authority are exempt from this tax regime.

The minimum tax is calculated in the current quarter/year by applying a tax rate of **1% of the turnover (total income), adjusted downwards** by:

1) **Income categories** such as

- ✓ Exempt income which is also non-taxable for calculation of profit tax, such as income typical of holding activity - from share sales, liquidation, dividends,
- ✓ Income not yet realized, such as income related to the costs of product stocks, income related to the costs of services in progress, income from the production of tangible and intangible assets;
- ✓ Compensatory income such as from subsidies and income from indemnities, from insurance/reinsurance companies, for damage caused to goods of the nature of stocks or own tangible assets
- ✓ Income representing excise duties that were simultaneously reflected in the expense accounts.

2) **Investments** - the value of fixed assets under construction caused by the acquisition/production of assets, recorded in the accounting records starting from 1 January 2024

3) **Depreciation** - accounting at the level of the historical cost related to assets purchased/produced starting from 1 January 2024. This indicator does not include the accounting depreciation of the assets included in point 2. In determining the turnover; the assets taken into account (investments and amortization) are those to be established by an Order of the Minister of Finance, and the selection of eligible asset categories will be made based on criteria related to the nature of the activity carried out. The deadline for issuing this order is 60 days from the entry into force of the law.

If the negative adjustments to the total income result in the calculation of a negative turnover, the minimum tax due on the turnover is zero.

All companies concerned will pay either profit tax or the minimum turnover tax, whichever is higher.

To determine which is the higher tax, the minimum turnover tax is compared with the quarterly/annual profit tax before the deduction of amounts set out in law, adjusted as follows:

- amounts representing sponsorship/patronage are deducted from this profit tax, as are other amounts that are deducted from profit tax, according to current legislation, as well as the reduction according to the provisions of Government Emergency Ordinance no. 153/2020 for the establishment of fiscal measures to stimulate the maintenance/increase of own capital, as well as for the completion of some normative acts.

- amounts representing external tax credit, exempted profit tax according to Art. 22 of the Fiscal Code and exempted profit tax according to the Agricultural Cooperation Law no. 566/2004, are also deducted, as appropriate,

If the minimum turnover tax is due, sponsorships are deducted from it at the level of the minimum value between the value calculated by applying 0.75% to the turnover and the value representing 20% of the profit tax.

The minimum turnover tax is calculated and payable by the same payment deadlines as profit tax (quarterly/annually).

In the case of taxpayers which have opted for the annual system with advance payments - the minimum quarterly turnover tax is compared with the advance payment related to quarters I, II, III (cumulatively), and the finalization is carried out at the deadline for submission of the annual declaration (D101).

In the case of taxpayers which pay profit tax in the annual system, without making advance payments, the minimum tax is determined only once, at the annual declaration and payment deadline. The law also includes special provisions for tax groups, establishing that the aggregated minimum tax of a group's members is compared with the profit tax due at the group level.

For credit institutions - Romanian legal entities and Romanian branches of foreign legal entities- in addition to the profit tax, an additional tax on turnover calculated by applying a rate of 2% (in 2024 and 2025), and 1% (from 2026) on the turnover, has been introduced. The turnover subject to tax includes:

- ✓ interest income;
- ✓ income from dividends;
- ✓ revenues from taxes and commissions;
- ✓ gains (losses) from the derecognition of financial assets and liabilities that are not valued at fair value through profit or loss, net;
- ✓ gains or losses related to financial assets and liabilities held for trading, net;
- ✓ gains or losses related to financial assets not intended for trading, necessarily valued at fair value through profit or loss, net;
- ✓ gains or losses related to financial assets and liabilities designated as being valued at fair value through profit or loss, net;
- ✓ gains or losses from hedge accounting, net;
- ✓ exchange rate differences (gain or loss), net;
- ✓ gains or losses from the derecognition of non-financial assets, net;
- ✓ other operating income.

Thus, credit institutions will have to pay the two taxes (profit tax and additional turnover tax) simultaneously, so they will pay the sum of the profit tax and the turnover tax with the rate of 1%, not just one of these obligations. In addition, in the case of these institutions, it does not matter if the turnover is lower or higher than 50 million euros. The turnover tax will be payable on the 25th of the month following a quarter, and for the last quarter up to and including 25 March of the following year. The turnover tax expense is not deductible when calculating the taxable profit.

In the case of tax groups, the turnover tax is applied accordingly by the members, depending on their individual situation.

The model and content of the additional tax declaration will be established by order of the president of the National Tax Administration Agency (ANAF) within 60 days of the entry into force of Law no. 296/2023.

Specific tax for the oil and natural gas sector

Legal entities with activities in the oil and natural gas sectors, which in the previous year register a turnover of over 50,000,000 euros, will pay a specific turnover tax in addition to the profit tax, at a rate of 0.5% of turnover. The calculation base is established identically to the calculation base of the minimum turnover tax detailed above.

The specific turnover tax is calculated, declared and paid quarterly, up to and including the 25th of the month following the quarter for which the payment is made (for quarters I - III), and for quarter IV, up to the date of submission of the annual tax return on profit.

The specific turnover tax is a non-deductible expense when determining the fiscal result of these companies.

The specific turnover tax is calculated, declared and paid quarterly, as follows:

- ✓ for quarters I - III, up to and including the 25th of the month following the quarter for which the payment is made;
- ✓ for the IV quarter, by the date of submission of the annual profit tax return.

KPMG comment

An exemption from the specific turnover tax applies to businesses which exclusively carry out activities involving distribution/supply/transport of electricity and natural gas and which are regulated/licensed by the National Energy Regulatory Authority. Moreover, taxpayers which carry out activities in the oil and natural gas sectors as well as electricity and natural gas distribution/supply/transport activities and which are regulated/licensed by the National Energy Regulatory Authority, for the determination of the specific tax, will not include within the total income, exempt income, investment and depreciation indicators from the calculation formula of this tax for the elements related to activities involving distribution/supply/transport of electricity and natural gas. In conclusion, regulated/licensed electricity and natural gas distribution/supply/transport activities are not subject to either the minimum turnover tax or the specific tax for the oil and natural gas sector.

Microenterprise income tax

From 1 January 2024, the tax rates on the income of micro-enterprises become:

- ✓ 1%, for micro-enterprises that earn income that does not exceed 60,000 euros and that do not carry out the activities for which the 3% rate is due
 - ✓ 3%, for micro-enterprises that earn income of over 60,000 de euro;
- or
- ✓ carry out activities corresponding to CAEN codes: 5821 – Computer games publishing activities, 5829 – Other software product publishing activities, 6201 – Custom software development activities (customer oriented software), 6209 – Other service activities on information technology, 5510 – Hotels and other similar accommodation facilities, 5520 – Holiday and short-term accommodation facilities, 5530 – Caravan parks, campsites and camps, 5590 – Other accommodation services, 5610 – Restaurants, 5621 – Food activities (catering) for events, 5629 – Other food services n.e.c., 5630 – Bars and other beverage serving activities, 6910 – Legal activities – only for companies with legal status that are not fiscally transparent entities, constituted by lawyers according to legislation, 8621 – General medical assistance activities, 8622 – Specialized medical assistance activities, 8623 – Dental assistance activities, 8690 – Other activities related to human health.

KPMG Comment

If, during a fiscal year, a micro-enterprise either achieves income greater than 60,000 euros, or begins to carry out the activities listed above, the 3% rate will be due starting from the quarter in which such situations are recorded.

VAT (Value Added Tax)

From 2024

- the VAT rate increases from 9% to 19% for:
 - ✓ delivery of alcohol-free beer;
 - ✓ foods with added sugar (more than 10g/100g product), except cookies and biscuits.
- the VAT rate increases from 5% to 9% for:
 - ✓ delivery of high-quality food, i.e. mountain, eco, or traditional products;
 - ✓ the delivery of housing as part of social policy (usable surface area of a maximum of 120 sqm, exclusive of household annexes, the value of which, including the land on which the housing unit is built, does not exceed 600,000 lei, exclusive of VAT). The reduced rate applies only to homes that can be lived in as such at the time of delivery, and the definition of "housing that can be lived in as such at the time of delivery" has been changed in the sense that it must offer: individual free access to the living space, without disturbing the possession and exclusive use of the space owned by another person or family; access to electricity and potable water, controlled disposal of waste water and household waste. Moreover the home should consist of at least a space for rest, a space for food preparation and a bathroom; exterior finishes and interior finishes; sanitary installations and sanitary objects; electrical installations.
 - ✓ delivery and installation of photovoltaic panels, solar thermal panels, heat pumps and other high-efficiency, low-emission heating systems, including installation kits, as well as all necessary components purchased separately for housing/central public administration buildings or local administration buildings with the exception of commercial companies;
 - ✓ the delivery and installation of components for the repair and/or expansion of systems as a component part of construction deliveries, or as extra options when delivering a construction;

- ✓ access to pubs, amusement parks and recreational parks whose activities are included in CAEN codes 9321 and 9329, fairs, exhibitions, cinemas and cultural events, other than tax-exempt ones;
- ✓ access to sports events.

- the VAT rate increases from 5% to 19% for:

- ✓ the right to use sports facilities whose activities are included in CAEN codes 9311 and 9313, other than those exempted;
- ✓ the transport of people by trains or historic steam-powered vehicles on narrow gauge lines for tourist or leisure purposes;
- ✓ the transport of people using cable transport facilities - cable cars, chair lifts, ski lifts - for tourist or leisure purposes;
- ✓ transporting people with animal-drawn vehicles, used for tourist or leisure purposes;
- ✓ transporting people in boats used for tourist or leisure purposes

- the VAT exemption with the right of deduction applicable for the following operations carried out to state hospital units is eliminated:

- i) construction, rehabilitation, modernization services of hospital units from the public state network;
- ii) delivery of medical equipment, apparatus, devices, and similar;
- iii) adaptation, repair, rental and leasing of such goods.

The VAT exemption is maintained only when these operations are carried out to non-profit entities registered in the Public Registry organized by ANAF and are intended for hospital units owned and operated by the non-profit entity or those in the state public network.

Transitional measures are established for delivery of houses for which contracts are concluded before or on 31 December 2023, and which will be delivered between 1 January and 31 December 2024, in order to apply the reduced VAT rate of 5% or 9%.

Excise duties

As part of the changes to the Fiscal Code, new administrative offenses have been introduced in the field of excisable products and the fines for non-compliance with the legislation in the field have been increased. In addition, non-harmonised excise duties have been introduced for:

- ✓ non-alcoholic drinks with added sugar for which the total sugar level is between 5g - 8g/100ml of 40 lei/hl
- ✓ non-alcoholic drinks with added sugar for which the total sugar level is over 8 g/100 ml of 60 lei/hl

By added sugar we mean cane sugar, brown sugar, crystalline sucrose, invert sugar, dextrose, molasses, honey sugars, molasses and syrups such as malt syrup, fruit syrup, rice malt syrup, corn syrup, high fructose corn syrup, maple syrup, glucose syrup, glucose-fructose, fructose, sucrose, glucose, lactose, hydrolyzed lactose and galactose added as ingredients, sugars in nectars such as coconut flower nectar, nectar of dates, agave nectar, sugars from unsweetened fruit juices, fruit juice concentrate, sugars from fruit purees and jam.

- ✓ products containing tobacco, intended for inhalation without burning, with tariff classification NC 2404 11 00, including those contained in supplies delivered together with electronic cigarettes and other similar personal electric vaporization devices with NC code 8543 40 00;
- ✓ liquids with or without nicotine, intended for inhalation without burning, with tariff classification NC 2404 12 00, 2404 19 90, including those contained in supplies delivered together with electronic cigarettes and other similar personal electric vaporizing devices with NC code 8543 40 00;
- ✓ products for non-combustion inhalation containing tobacco substitutes, with or without nicotine with NC code 2404 12 00, 2404 19 10, including those contained in refills supplied with electronic cigarettes and other similar personal electric vaporizing devices with NC code 8543 40 00;

The excise duty level for alcohol, alcoholic beverages and processed tobacco increases from 1 January 2024, but in the period 1 January 2024 to 31 December 2024, for alcohol and alcoholic beverages, the excise duty level will not be updated with the increase in consumer prices.

Tax on personal income whose source has not been identified

Any income ascertained by the fiscal authorities whose source has not been identified is taxed at a rate of 70%

applied to the adjusted taxable base (the currently applicable rate is 16%). This provision will apply starting with income related to the month of July 2024.

CASS (health contribution) for certain income from wages and income from self-employment

Starting with the income related to January 2024, holiday vouchers and meal vouchers are subject to CASS and thus, in addition to the 10% tax, they will also be subject to the 10% health contribution. Cultural, nursery and social vouchers granted based on legislation will keep the same fiscal treatment as now, i.e. they will only be included in the income tax calculation base (tax -10%).

If employees benefit from holiday vouchers, they will no longer benefit from a non-taxable ceiling for the settlement of tourist and/or treatment services, including transport, during the leave period, granted by the employer for their own employees and their family members.

For income from independent activities, an increased ceiling of 60 minimum wages has been introduced for the contribution to social health insurance. Thus, authorized individuals (PFAs) and generally those who have independent activities will owe CASS (at the 10% rate) on the new basis starting with the income related to the year 2024.

Income tax from wages

Exemptions for IT, construction, agriculture and food industry activities have been eliminated or reduced.

Thus, employees with income from software creation will pay tax on salary income which exceeds 10,000 lei. Also, for the exempted income, they will be exempted from paying the contribution to Pillar II for pensions (3.75% for the year 2023), but they will be able to opt to pay the entire contribution (25%).

Employees in the construction, agriculture and food industry sectors will pay the health contribution (CASS).

Employers in the construction, agriculture and food industry sectors will become again (as in the past) payers of the social security contribution, for activity carried out under special or other working conditions.

The facilities specific to all these industries are valid until 31 December 2028, including those for employees in the IT sector.

The new provisions will apply starting with the income for the month following the one in which the law is published, so starting with the income for November 2023.

New requirements to send information in the national electronic invoice system- RO e-Factura

Starting from 1 July 2024, between taxable persons established in Romania, for the supplies of goods and the provision of taxable services in Romania, carried out in a B2B relationship, only invoices sent through the RO e-Invoice system are considered invoices. As such, taxable persons established in Romania, regardless of whether they are registered for VAT purposes or not, and taxable persons not established in Romania, but registered for VAT purposes, are required to submit the invoices issued for the supply of goods and the provision of taxable services in Romania, carried out in the B2B relationship, in the RO e-Invoice system, regardless of whether or not the recipients are registered in the RO e-Invoice Register (except for certain VAT-exempt operations). The requirement also applies to public institutions. It is not necessary to send the invoices specified above to the beneficiaries, if both the supplier and the beneficiary are registered in the RO e-Invoice Register.

The deadline for submission in the RO e-Invoice system is five working days from the date of issuance or from the deadline provided in the Fiscal Code for issuing the invoice, and after 31 March 2024, failure to comply with the requirement will lead to fines, set according to whether taxpayers are in the small, medium or large category, as follows:

- ✓ from 5,000 lei to 10,000 lei for large taxpayers,
- ✓ from 2,500 lei to 5,000 lei for medium taxpayers,
- ✓ from 1,000 lei to 2,500 lei for other legal entities and individuals.

Moreover, the receipt and registration of invoices by recipients - taxable persons established in Romania, in a different way than through the RO e-Invoice system, for B2B transactions, is penalized with a fine equal to the amount of VAT entered in the invoice received.

New requirements in relation to the RO e-Seal system

The law introduces a new national system, RO e-Seal, based on the use of electronic devices and an IT application that allows relevant authorities, such as the National Agency for Fiscal Administration or the Romanian Customs Authority, to identify potential points of diversion of road transport of goods, regardless of whether they are in transit or have as final destination a business in Romania.

Measures introduced to combat tax evasion

Certain provisions of Law 12/1990 on the protection of the population against illicit commercial activities, repealed in 2020, have been reintroduced, in order to establish a new instrument which can be used by the tax authorities to combat tax evasion and discourage illicit commercial activities. The new measures will enter into force 15 days after the publication of the law in the Official Journal of Romania.

These measures introduce a framework of action against illicit economic activities (economic activity carried out by persons not registered for tax purposes according to the legal provisions, as well as economic activity carried out with goods that are not accompanied by documents of origin), through which the relevant bodies within the National Agency for Fiscal Administration, the Romanian Customs Authority and the National Authority for Consumer Protection, may:

- ✓ Freeze assets whose origin is not proven for a period of 24 hours;
- ✓ Confiscate goods, if documents of origin are not made available within 24 hours;
- ✓ Suspend a business's activity;
- ✓ Notify criminal investigation bodies.

The measure covers goods whose origin is not proven by invoices, accompanying notices of delivery, customs documents or other documents that are the basis for booking in the accounts. Cash and cash substitutes are treated in the same way as such goods.

Law 70/2015 has been amended so that within 15 days of publication in the Official Journal of Romania, the new ceilings on cash collection and payment operations become applicable, as follows:

- ✓ Receipts are limited to a daily ceiling of RON 1,000/person (currently RON 5,000/person);
- ✓ Cash and carry store receipts are limited to a daily ceiling of RON 2,000/person (currently RON 10,000/person);
- ✓ Receipts / payments between individuals and professionals representing the equivalent value of delivery / purchase of goods / services, dividends, assignments of debt or other rights, refunds / receipts of financing / loans are limited to a daily ceiling of RON 5,000
- ✓ Receipts / payments between individuals are limited to a daily ceiling of RON 10,000 / transaction (currently RON 50,000) until 31 December 2024, and RON 5,000 / transaction as from 1 January 2025.
- ✓ Payments are limited to a daily cap of RON 1,000/person (currently RON 5,000/person), and also to a total cap of RON 2,000/day (currently RON 10,000);
- ✓ Advance payments for settlement are limited to a daily ceiling of RON 1,000/person (currently RON 5,000/person).

Fragmented cash payments are prohibited for invoices whose value is higher than RON 1,000 (except for sale-purchase contracts with payment in installments).

At the end of the day, the amounts in the cash register cannot exceed the ceiling of RON 50,000 (under previous legislation, the cash register balance was not capped). By way of exception, amounts related to the payment of salaries and other personnel rights and other operations involving individuals may exceed the ceiling imposed for a period of 3 working days. As a general rule, cash amounts exceeding the ceiling must be deposited within two working days.

Failure to comply with the ceilings is penalized with a fine of 25% (currently 10%) of the amount collected/paid, or held in the cash register which exceeds the ceiling set for each type of operation, but not less than 500 lei (currently 100 RON).

The new law also amends Law 203/2018 on measures to streamline the payment of administrative offense fines and Government Ordinance no. 2/2001 in the sense that offenders penalized under the following laws no longer benefit from the possibility to pay half of the minimum fine provided by law within 15 days:

- ✓ Accounting Law 82/1991
- ✓ Law 70/2015 for strengthening financial discipline in relation to cash collection and payment operations
- ✓ GEO 193/2002 on the introduction of modern payment systems
- ✓ GEO 28/1999 on the requirement for economic operators to use fiscal electronic cash registers
- ✓ Law 207 on the Fiscal Procedure Code
- ✓ Law 227/2015 on the Fiscal Code
- ✓ GEO 41/2022 on the establishment of the National System for the monitoring of road transport of goods with high fiscal risk, RO e-Transport

At the same time, the new law also amends:

- ✓ Companies Law nr. 31/1990, so that within 45 days from a communication by ONRC to ANAF of a list of companies for which dissolution/deregistration actions will be taken, ANAF communicates the companies on the list that have outstanding budgetary obligations and/or for which a fiscal audit is ongoing. In this case the dissolution/deregistration will not take place until the outstanding obligations are extinguished or the fiscal audit is completed.



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