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Tax changes affecting the IT-business

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In Romania, certain employees belonging to the IT sector, such as programmers, have been benefitting from certain tax incentives since 2004. At the beginning of 2017, the Ministry of Finance has issued the ordinance 2903/2016 which redefines the income tax exemption for programmers.

This new ordinance, which is effective since February 1st 2017, replaces the former ordinance 835/2015. It includes substantial modifications which are to the benefit of companies employing such IT staff in Romania. Together with other provisions, they will be presented hereinafter.

Cancellation of sales criteria

The first important improvement consists in the abolition of previously regulated sales criteria. So far, the tax exemption for the salary received by an employed programmer could only be claimed in case the employer could prove prior annual revenues from the sale of the software developed by that employee in an amount of minimum 10.000,00 USD. As according to the new ordinance, this condition no longer exists, in order to benefit from the tax relief, only the criteria mentioned below have to be met.

It is particularly welcome that companies can now expressly apply for the income tax exemption already in the year of their incorporation or in the year in which they undergo a restructuring. This eliminates some of the former practical uncertainties.

Summary of requirements

The income tax exemption operates for employees whose employers perform certain software development activities in Romania (software publishing, programming activities, IT-consulting and other services, as defined in certain CAEN-codes). The employees themselves have to perform one of eight activities which are expressly listed in an annex to the ordinance (according to the corresponding “C.O.R. codes”).

Furthermore, the employees have to be part of a specialized IT-department and to be educated accordingly (not necessarily in the IT- field any more). The company has to disclose its revenues from software development separately in its books and to archive the employment agreements with these employees as internal instructions separately, in order to have them available during controls. We note that the tax exemption can be claimed not only by Romanian citizens, but also by citizens of EU or EEA member states or of Switzerland who prove an equivalent and acknowledged education.

In order to simplify the administration, employers may archive the necessary documents electronically, if marked with a digital certificate.

Cancellation of cap for social security contributions

In this regard, we also have to mention the cancellation of the assessment ceiling for contributions to the state pension scheme and the health insurance, introduced by Emergency Ordinance 3/ 2017. So far, the basis for these contributions had been capped at an amount of five average Romanian salaries.

This elimination also becomes effective as of February 2017 and affects the employers´ as well as the employees´ contributions to the aforementioned insurances.

As the salaries of employees in the IT-business are generally speaking above average, ANIS, the Romanian “Employers association of the software and services industry” expects significant impacts on employers and employees in the IT-business.

Tax exemptions also for Research and Development (R&D)

It is worth mentioning that since January 6th 2017, companies exclusively performing R&D activities can benefit from a corporate income tax exemption for a period of ten years as of their incorporation (or – for existing companies – as of the publication of the act). In addition, applicable regulations regarding state subsidies have to be taken into consideration.

Conclusion

Generally speaking, the elimination of the sales criterion will lead to a broader application of the income tax exemption for IT employees. We expect especially programmers employed with small and medium sized companies in this industry to benefit from it. Nevertheless, the cancellation of the social security contribution assessment ceiling will result in additional burdens for both employees and employers in the IT-business.

The new measures will therefore not result in reliefs in all cases. Yet, from an overall perspective, Romania continues to be a very attractive location for the IT-business.

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