

## NEWSFLASH

### Tax amendments at the beginning of 2021

Dear Ladies and Gentlemen,

A number of relevant fiscal amendments have been enacted in the final period of the year through **Law no. 296/2020** amending and supplementing the Fiscal Code (Law no. 227/2015), subsequently modified by the **Emergency Ordinance no. 226/2020**.

We hereby briefly present some of the newly amended / issued provisions which are relevant in practice:

#### 1. CIT consolidation at group level

In addition to the existing provisions related to VAT grouping, the new law implements provisions related to CIT grouping. Companies pertaining to the same group will be allowed to **offset fiscal profits and losses**. Consequently, only net profits after compensations within the group will represent taxable basis for corporate income tax (CIT) purposes, leading to additional amounts representing fiscal loss carried forward to be used by companies or to reduce cash flow deficit at a group level. Detailed provisions are available in respect to (i) necessary conditions for fiscal group constituting (e.g. minimum holding, tax regime, fiscal year), (ii) rules for CIT computation and compliance, (iii) minimum period for applying group fiscal consolidation, (iv) transfer pricing, (iv) fiscal loss carried forward.

#### 2. Place of effective management

A company can be considered resident in Romania if its place of effective management is in Romania. Should a foreign legal entity be considered resident both in Romania and in another state with which a double tax treaty is in force, residence will be established according to the provisions of the double tax treaty.

For the purposes of confirming a Romanian tax residence, a **Questionnaire** must be submitted to the relevant tax authority, along with proofing documentation.

Upon such confirmation, the entity's **obligations** include (i) registration with the tax authorities, (ii) preparing and keeping accounting records and submitting financial statements according to the Romanian accounting standards, (ii) registration as a corporate income tax (CIT) payer and (iv) maintaining their fiscal residence in Romania for at least one fiscal year.

### 3. CIT and micro-enterprise tax related aspects

- *Removal of the 30% deductibility limitation* in case of adjustments for impairment of receivables (applicable as of 1 January 2022). Therefore, not only expenses for provisions will be entirely tax deductible for CIT purposes, but also expenses incurred, if the case, with the write-off of non-collected receivables.
- *Expenses incurred with the depreciation of electronic cash registers* to be considered non-deductible for CIT purposes, but available for direct deduction out of the CIT due as a fiscal credit (credit fiscal), similarly to sponsorship expenses.
- *Deductibility of expenses incurred with benefits granted to employees such as equity instruments with settlement in shares* to be obtained at the moment when the benefits are actually granted, disregarding the individual taxation regime applied.
- *Sponsorships / private scholarships returned by the beneficiary* in a fiscal year different from the one in which they were granted (and deducted from CIT due) to be added as payable differences to the CIT due in the quarter / year of the refund. Should the refund be performed in the same fiscal year, the company regularizes the amounts deducted in the previous quarters in the quarter / year of the refund.
- *Exemption for reinvested profits* to be applied up to the total CIT (i) computed from the beginning of the year to the quarter in which the respective assets were commissioned (for quarterly CIT payers) or (ii) registered throughout the year (for yearly CIT payers).
- *Deductibility of expenses incurred with work performed by employees under telework regime* (ro. telemunca).
- *Exclusion of dividend revenues obtained from Romanian companies from the taxable base of the micro-enterprise tax.*

### 4. Income tax and social security contributions related aspects

- *Gift vouchers granted by companies to third party individuals* (e.g. collaborators, business partners) to be considered "Other income" for income tax purposes, subject only to a 10% income tax.
- *Possibility for employees to benefit of various amounts / facilities which are not subject to income tax and social security contributions*, such as:
  - ✓ *up to RON 400 / month / employee – aid for supporting activity performed by employees under telework.* No justifying documents will be necessary for granting this amount and it will be entirely deductible for CIT purposes at the level of the company.
  - ✓ *up to RON 1,500 / month / child – non-taxable aid for early education of employees' children.* From a CIT perspective, such amount will be considered non-deductible by the company, but fiscal credit may be obtained from CIT due (similarly to sponsorship expenses).
  - ✓ *testing and / or vaccination costs* in view of preventing the spread of diseases endangering public / other employees' health.
  - ✓ *personal use of company's vehicles – now also* in case of companies under a special tax regime (i.e. micro-enterprises, HORECA specific tax payers).

- *Non-resident individuals becoming Romanian residents for fiscal purposes to be considered subject to income tax for global income obtained as of the day in which their center of vital interests is declared to be in Romania (previously as of the date when they became resident based on the specific conditions mentioned in the Fiscal Code).*
- *Reduced 10% domestic WHT rate to be applied to various revenues derived by non-resident individuals (e.g. interest, royalties, commissions, management or consulting services and other services provided in Romania, sports and entertainment activities and independent professions activities, prizes, income from the liquidation of a Romanian resident).*

## **5. VAT and excise related aspects**

- *Possibility of adjustment of the VAT taxable base, in case of not-collected invoices for a period longer than one year, under certain conditions, such as:*
  - ✓ adjustment must be performed within 5 years counted as of 1 January of the year following the issuance date or the payment deadline set;
  - ✓ adjustment may be performed only subsequent to undertaking measures for collection (i.e. commercial measures for receivables up to RON 1,000 and judicial measures for receivables over this amount).

The adjustment is annulled upon collection of the receivable (including partial collections) or, in case of receivables exceeding the cap, in case of withdrawal from judiciary proceedings initiated.

- *Deductibility of VAT in base of correction invoices issued by the supplier within one year from the date of receipt of the correction invoice, regardless if the statute of limitation has expired for the beneficiary.*
- *Possibility to avoid VAT payments in customs for persons who are VAT registered in Romania and possess a deferred payment certificate (i.e. obtained after imports amounting minimum RON 50M in the last 6 months – previously RON 100M in the last 12 months) or who perform imports subsequently subject to reverse charge in case of local supplies (e.g. various electronic and mobile devices, wood materials).*
- *Possibility of appointing an authorized fiscal representative for VAT purposes in Romania by entities not registered for VAT purposes here, for specific transactions.*
- *Increase of VAT cash accounting scheme cap to RON 4.5 M (previously RON 2.25 M).*
- *Postponement to 1 January 2022 of application of 5% VAT rate for dwellings up to EUR 140,000 (currently RON 450,000).*
- *Detailing of concept of VAT obligations derived from a business transfer – assets' recipient takes over the entire set of VAT-related rights and liabilities, not just possibility to exercise adjustment of VAT deduction right.*
- *Increase of total excise duties for cigarettes to RON 546.21 / 1,000 cigarettes (previously RON 533.97 / 1,000 cigarettes) and exception provided for this year's first quarter set at RON 418.76 /1,000 cigarettes.*

## 6. Extension of deadlines for submitting certain tax returns

- (i) Unique Return and (ii) Form for directing part of the income tax paid to be submitted until *25 May* (previously 15 March) and payment of related income tax in case of individuals is postponed up to the same date.
- (i) Informative statement regarding the withholding tax for revenues obtained by non-residents from Romania and (ii) Informative statement regarding the profit/loss from transactions performed by non-resident individuals with securities issued by Romanian residents to be submitted until the *last day of February* (previously 31 January).

We will be happy to answer any questions you may have pertaining to this subject.

Sincerely,

The STALFORT Legal. Tax. Audit. – Team

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