

## TAX NEWS

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Dear collaborators,

**Government emergency ordinance no. 115/2023 regarding some fiscal-budgetary measures in the field of public expenditures, for fiscal consolidation, combating fiscal evasion, for the modification and completion of some normative acts, as well as for the extension of some deadlines**

**1. The changes brought by GEO 115/2023 on Law no. 296/2023 regarding some fiscal-budgetary measures to ensure Romania's long-term financial sustainability**

**A. Changes applicable from 01.01.2024**

**Minimum turnover tax**

- Clarifications have been made regarding the determination of turnover for the tax group.

Thus, in the case of the fiscal group, the turnover of over 50,000,000 euros is calculated by the responsible legal entity by adding up the turnover of the members of the fiscal group.

- Taxpayers who reduce the value of fixed assets under construction/assets according to indicators I and A, have the obligation to keep the respective assets in their patrimony for at least a period equal to half of the duration of economic use, established according to the applicable accounting regulations, but not more than 5 years . In case of non-compliance with this condition, the minimum turnover tax is recalculated for the

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respective amounts and, as the case may be, additional tax claims are levied according to the Fiscal Procedure Code, from the quarter/year of their decrease. In this case, the taxpayer has the obligation to submit the rectification tax declaration. Assets registered in any of the following situations do not fall under the scope of these provisions:

- a) are transferred within the reorganization operations, carried out according to the law;
  - b) are alienated in the liquidation/bankruptcy procedure, according to the law;
  - c) are destroyed, lost, stolen or defective and replaced, provided that these situations are demonstrated or duly confirmed by the taxpayer. In the case of stolen assets, the taxpayer proves the theft based on the supporting documents issued by the judicial bodies;
  - d) **are removed from the** estate as a result of the fulfillment of some obligations provided by law.
- From the formula for calculating the minimum tax on turnover and the additional tax for legal entities that carry out activities in the oil and natural gas sectors, the phrase "not included in indicator I" referring to income from the production of tangible and intangible assets was removed .

#### VAT

- milk powder for newborns, infants and small children was excluded from the category of foods with added sugar for which the 19% quota was applied .

Thus, the VAT rate of 19% applies to foods with "added sugar" whose total sugar content is at least 10 g/100 g of product, other than milk powder for newborns, infants and young children, cake and the biscuits.

Added sugar means 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, galactose[...], sugars in nectars,

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such as coconut flower nectar , date nectar, agave nectar, sugars from jam, added as ingredients.[...]

#### RO e-Invoice

**Exceptions** regarding the RO e-Invoice electronic invoice:

- a) the deliveries of goods provided for in art. 294 para. (1) lit. a) and b) and para. (2) from Law no. 227/2015 (exports of goods and intra-Community supplies of goods)
- b) supplies of goods/services made to taxable persons who are neither established nor registered for VAT purposes in Romania, according to art. 266 para. (2) and, respectively, art. 316 of Law no. 227/2015;
- c) deliveries of goods/services for which simplified invoices are issued according to the provisions of art. 319 para. (12) from Law no. 227/2015;
- d) the provision of services for which the issuing of the invoice is not subject to the invoicing rules applicable in Romania according to art. 319 para. (5) from Law no. 227/2015.

#### B. Changes applicable from 01.07.2024

##### RO e-Invoice

- It is foreseen, starting from July 1, 2024, the obligation of taxable persons established in Romania to submit electronic invoices through the RO E-invoice system within 5 calendar days from the date of issuing the invoice, but no later than 5 calendar days from the date limit for issuing the invoice.

For non-compliance with the above provision, contravention fines will be applied depending on the category of taxpayers, as follows:

- e) from 5,000 lei to 10,000 lei for high taxpayers;
- f) from 2,500 lei to 5,000 lei for medium taxpayers;

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g) from 1,000 lei to 2,500 lei for other legal entities and natural persons;

- Also, the following acts constitute misdemeanors, respectively - a fine equal to 15% of the total value of the invoice - if they were not committed under such conditions as to be considered crimes according to the law:
  - o non-compliance by the issuer of the invoice - taxable person established in Romania with the obligation to issue the electronic invoice in B2B relations;
  - o receipt and registration by the recipient - taxable person established in Romania, of an invoice issued by economic operators established in Romania, in the B2B relationship, without being sent to the RO E-invoice system.

Finding contraventions and applying fines are done by the competent fiscal bodies.

## **2. The changes brought by GEO 115/2023 on Emergency Ordinance no. 41/2022 for the establishment of the National System for monitoring road transport of goods RO e-Transport**

### **A. Changes applicable from 15.12.2023**

The national system regarding the monitoring of road transport of goods ("RO e-Transport System") is also established for international road transport of goods.

The international road transport of goods represents the transport activity regulated in article 2 point 2 of Regulation (EC) no. 1.072/2009 of the European Parliament and of the Council of October 21, 2009 regarding the common rules for access to the market of international road transport of goods (reform)

Thus, through the RO e-Transport System, road transports on the national territory of goods with high fiscal risk and international road transports of goods are monitored, regardless of the category of goods transported.

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The obligation to declare in the RO e-Transport System the data related to the international transport of goods rests with the following users:

- a) to the recipient listed in the import customs declaration, respectively to the sender listed in the export customs declaration, in the case of goods that are the subject of import or export operations, as the case may be;
- b) the beneficiary from Romania, in the case of intra-community purchases of goods;
- c) the supplier from Romania, in the case of intra-community deliveries of goods;
- d) the depositary, in the case of goods that are the subject of intra-community transactions in transit, both for goods unloaded on Romanian territory for storage or for the formation of a new shipment from one or more consignments of goods, as well as for goods loaded after storage or after formation a new transport on the national territory from one or more consignments of goods.

The road transport operator is obliged to ensure the transfer of the current positioning data of the transport vehicle, which are the subject of the declaration, for the entire duration of the transport route of the goods which are the subject of monitoring through the RO e-Transport System.

The road transport operator is obliged:

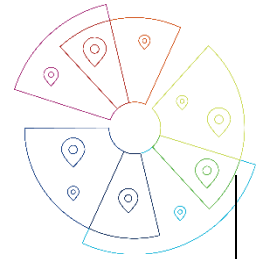
- to equip transport vehicles with telecommunications terminal devices that use satellite positioning and data transmission technologies;
- to provide the driver with the UIT code.

The driver of the transport vehicle is obliged to turn on the positioning device before starting the transport on the national territory, respectively to stop the positioning device only after delivering the goods to the declared delivery place on the national territory or after leaving the national territory.

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#### **B. Changes applicable from 01.07.2024**

Failure to comply with the obligations to declare international shipments of goods in the RO e-Transport system is sanctioned with a fine from 20,000 lei to 100,000 lei, in the case of legal entities, as well as confiscation of the value of the undeclared goods.

#### **3. The changes brought by GEO 115/2023 on Law no. 70/2015 for strengthening financial discipline regarding cash receipts and cash payments operations and for amending and supplementing Government Emergency Ordinance no. 193/2002 on the introduction of modern payment systems**

##### **Changes applicable from 15.12.2023**

- The daily ceiling for payments from advances for settlement increased from 1,000 lei to 5,000 lei.
- Collection and payment operations between legal entities, authorized natural persons, sole proprietorships, family businesses, freelancers, natural persons carrying out activities independently, associations and other entities with or without legal personality and natural persons, representing receipts or refunds of loans or other financing, regardless of their nature and destination, are carried out only through non-cash payment instruments.

Starting with December 25, 2023, non-compliance with this provision constitutes a misdemeanor and is sanctioned with a fine of 25% of the amount received/paid, but not less than 500 lei.

- "Superstores" and "hyperstores" are defined and it is stipulated that in the case of these and cash and carry type stores, the ceiling at the end of the day cannot Cash amounts that exceed the ceiling are deposited in the bank accounts of these persons within two days worker.

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- Branches and other secondary offices of legal entities that have their own cashier and/or account opened at a credit institution apply the ceilings accordingly, for each cashier.

#### 4. The changes brought by GEO 115/2023 on the Fiscal Code

##### Profit tax

##### Changes applicable starting January 1, 2024

- following are included in the category of **social expenses**, which are deductible up to a rate of up to 5%, applied to the value of staff salary expenses :
  - o expenses for the proper functioning of some units under the administration of taxpayers, such as nurseries and kindergartens
  - o the amounts paid by the taxpayer for the placement of employees' children in early education units, according to the legal regulations in the field of national education, but not more than 1,500 lei/month for each child under certain conditions.
- The expenses for the operation, maintenance and repair of service homes are deductible only within the limit corresponding to the built surfaces and are no longer increased by 10% from a fiscal point of view;
- It was limited to 50% the deduction of the expenses of operation, maintenance and repairs related to a headquarters located in the residence owned by a natural person, also used for personal purposes, corresponding to the areas made available to the taxpayer based on the contracts concluded between the parties, for this purpose;
- It was limited to 50% the deduction of operating expenses, maintenance and repairs related to a registered office purchased by the taxpayer in residential buildings or in individual

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residential buildings, from residential complexes defined according to the legal provisions, which is not used exclusively for the purpose of economic activity.

- If the registered office, located in the taxpayer's patrimony, is used for personal purposes by the shareholders or associates, the respective expenses are considered to have been incurred in their favor, being non-deductible when calculating the fiscal result;
- Expenses regarding private scholarships will no longer be deducted from the profit tax owed, but only sponsorship and/or patronage expenses within the minimum limit of 0.75% of the turnover and 20% of the profit tax owed.
- Taxpayers who spend on private scholarships , according to Law no. 376/2004 on private scholarships, with subsequent amendments, sums up these expenses within the limit of 1,500 lei/each scholarship granted with other social expenses, and the resulting amount is deducted within the limit of a quota of up to 5%, applied to the value of staff salary expenses .
- The deduction percentage, under certain conditions, of the adjustments for the depreciation of receivables, recorded according to the applicable accounting regulations, representing amounts owed by internal and external customers for products, semi-finished products, materials, goods sold, works performed and services provided by the morning from 50% to 30 % of the value of these adjustments. This provision applies to claims registered as of January 1, 2024.
- Tax depreciation is deductible at the level of 50% for a registered office that is not used exclusively for the purpose of economic activity, located in residential buildings or in individual residential buildings, from residential complexes defined according to legal provisions, registered in the taxpayer's patrimony. In the case of the use of the corporate headquarters, located in the taxpayer's patrimony, for personal purposes by the shareholders or associates, the tax depreciation related to the corporate headquarters is not deducted when calculating the fiscal result;



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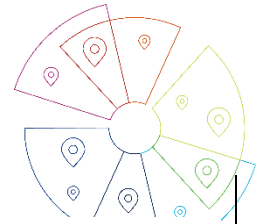


- The annual fiscal losses established by the profit tax declaration, starting from the year 2024/the modified fiscal year starting in the year 2024, as the case may be, are no longer recovered in full, in the next 7 consecutive years. These tax losses are recovered from the taxable profits made, within the limit of 70% inclusive, in the next 5 consecutive years. The recovery of losses will be carried out in the order of their registration, at each profit tax payment term.
- When establishing the market value of the transfer made between the foreign legal entity and its permanent headquarters, the provisions of the 2010 Report on the allocation of profits to permanent headquarters, issued by the Organization for Economic Cooperation and Development and published on the website of this organization at <https://www.oecd.org/ctp/transfer-pricing/45689524.pdf>.
- The excess costs of indebtedness resulting from transactions/operations that do not finance the acquisition/production of fixed assets under construction/assets established according to art. 18<sup>1</sup> para. (3) and (12), respectively art. 18<sup>3</sup> para. (2) and (9) ("established by law") and which are carried out with affiliated persons, defined according to art. 7 point 26, are deducted, in a fiscal period, up to the deductible ceiling represented by the equivalent in lei of the sum of 500,000 euros.
- The total excess costs of indebtedness resulting from transactions/operations carried out both with the respective affiliated persons and with non-affiliated persons, which can be deducted in a fiscal period, cannot exceed the deductible ceiling represented by the equivalent in lei of the amount of 1,000,000 euros. The exchange rate used to determine the lei equivalent of the respective ceilings is the exchange rate communicated by the National Bank of Romania for the last day of the quarter/fiscal year.
- The ceiling of 500,000 euros related to the excess costs of indebtedness incurred with affiliated persons does not apply to credit institutions - Romanian legal entities, Romanian branches of credit institutions - foreign legal entities, non-banking financial institutions, Romanian branches of non-banking financial institutions and companies investments defined according to the law.

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- For the application of the deductible ceilings, the total excess costs of the carried-over indebtedness are allocated to transactions/operations carried out with affiliated persons that do not finance the acquisition/production of fixed assets under execution/assets established by law, respectively with non-affiliated persons, as follows:
  - o the weight of the surplus cost not deducted related to the transactions/operations carried out with affiliated persons that do not finance the acquisition/production of fixed assets under construction/assets established according to the law, in the total surplus costs of debt not deducted, before the application of the 30% limit is determined.
  - o the weight of the surplus cost not deducted related to the transactions/operations carried out with unrelated persons, in the total surplus costs of indebtedness not deducted, before the application of the 30% limit is determined
  - o the determined percentage is multiplied by the amount representing the total excess costs of the debt carried over after the application of the 30% limit.
- The deadline for submitting the redirection form (form 177) of the profit tax related to the year 2023/the amended fiscal year ending in 2024, to sponsorships and/or acts of patronage, is carried out until the deadline for submitting the annual tax return on profit (so it is no longer submitted within the 6 months from the date of the deadline for submitting the annual profit tax return - 101).
- Starting from January 1, 2024/the modified fiscal year that begins in 2024, the amounts that are deducted from the annual profit tax, no longer include private scholarships and the cost of purchasing electronic fiscal cash registers.

The last fiscal year in which the amounts representing electronic fiscal exchanges/markers, remaining to be carried forward, according to the law, are deducted

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from the profit tax is fiscal year 2023, respectively the modified fiscal year that ends in 2024;

- The amounts representing fiscal electronic cash registers, remaining to be carried forward, according to the law, after the deduction from the profit tax related to the fiscal year 2023/the modified fiscal year ending in the year 2024, represent elements similar to the expenses starting from the year 2024, respectively starting from the fiscal year amended starting in 2024. In this case, the expenses representing the fiscal depreciation of the fiscal electronic cash registers are non-deductible expenses when calculating the fiscal result.

#### Tax on the income of micro-enterprises

##### Changes applicable starting January 1, 2024

- The condition related to the ownership by associates/shareholders of three micro-enterprises for inclusion in the category of micro-enterprises has been changed as follows: has associates/shareholders who hold, directly or indirectly, more than 25% of the value/number of participation titles or rights of voting and is the only legal entity established by the associates/shareholders to apply the provisions of this title;
- Two new conditions were introduced for classifying a company in the category of micro-enterprises:
  - o submitted the annual financial statements on time, if he has this obligation according to the law.
  - o the ceiling of 500,000 euros regarding the realized incomes is verified by taking into account the incomes made by the Romanian legal entity, cumulated with the incomes of the enterprises related to it, as defined according to the provisions of Law no. 346/2004 regarding the stimulation of the establishment and development of small and medium enterprises, with subsequent amendments and additions;
- The special provisions relating to Romanian legal entities carrying out activities in the field of Horeca are repealed. From January 1, 2024, Romanian legal entities carrying out activities corresponding to CAEN codes: 5510 - «Hotels and other similar accommodation facilities», 5520 - «Accommodation facilities for holidays and short periods», 5530 - «Caravan parks, campsites and camps», 5590 - «Other accommodation services», 5610 -

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«Restaurants», 5621 - «Food activities (catering) for events», 5629 - «Other food services nca», 5630 - «Bars and other activities of serving drinks» will apply the same conditions in order to be able to opt for the microenterprise income tax.

- The micro-enterprise that is in temporary inactivity registered in the trade register, according to the legal provisions, continues to be a tax payer on micro-enterprise incomes for the entire period in which it registers this state of inactivity.
- Secondary insurance and/or reinsurance intermediaries, defined according to law, who have earned income from insurance/reinsurance distribution activity up to 15% inclusive of total income, may opt to apply for microenterprise income tax if they cumulatively meet the conditions from art. 47 of the Fiscal Code.
- If, during a fiscal year, a micro-enterprise no longer fulfills the condition of being an employee and/or did not submit the financial statements for the previous fiscal year in time, if it had this obligation according to the law, the micro-enterprise owes profit tax starting from the quarter in that this condition is no longer met.
- Micro-enterprises will no longer benefit from a specific tax credit for sponsorships/private scholarships and the purchase of fiscal electronic cash registers, starting with the year 2024 .

The 2023 microenterprise income tax is redirected according to the provisions in force until December 31, 2023.

The last fiscal year in which the amounts representing sponsorships/scholarships and the amounts representing the purchase of electronic fiscal marking devices, remaining to be carried forward, according to the law, are deducted from the income tax of micro-enterprises is the fiscal year 2023.

## VAT

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#### Changes applicable starting January 1, 2024

- The right to deduct the tax related to the purchase, rental or leasing of buildings/living spaces, regardless of their destination, located in residential areas or in housing blocks, and the tax related to expenses related to these buildings/living spaces is limited to 50% , if they are not used exclusively for the purpose of economic activity.

This provision enters into force starting from the 1st of the month following the date from which Romania is authorized to apply a special measure derogating from the provisions Directive 2006/112/EC.

- The actual payment is not made at the customs authorities and for the following operations:
  - o imports made by taxable persons registered for VAT purposes according to art. 316, who submit customs declarations using the centralized customs clearance procedure, according to art. 179 of Regulation (EU) no. 952/2013 (previously it was the certificate of authorized economic operator).
  - o imports made by submitting a customs declaration in the form of an entry in the declarant's records, by taxable persons registered for VAT purposes according to art. 316 and who obtained authorization according to art. 182 of Regulation (EU) no. 952/2013.

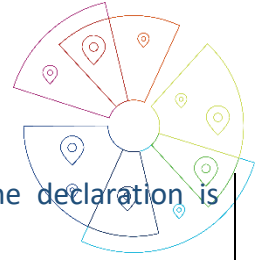
#### **5. Amendments to the Accounting Law no. 82/1991**

- Legal entities without patrimonial purpose which, in the reporting financial year, received amounts representing subsidies, sponsorships, amounts redirected, according to the law, from profit tax, microenterprise income tax, respectively from income tax owed by natural persons, as well as other similar forms of financing, regardless of their cumulative value, draw up a statement that accompanies the annual financial statements and highlights the amounts thus received, respectively used. The obligation to prepare the declaration applies starting with the annual financial statements related to the financial year of 2023.

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Non-compliance with the provisions regarding the preparation of the declaration is sanctioned with a fine from 20,000 lei to 30,000 lei.

**The changes brought to the Emergency Ordinance no. 28/1999 regarding the obligation of economic operators to use electronic fiscal marking machines**

If you have any questions regarding the aspects mentioned in this newsletter, please contact us.

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