

28 January 2019

# Fiscal Bulletin



## Summary:

1. Law No. 30/2019 for the approval the Government Emergency Ordinance No. 25/2018 for amending and supplementing certain normative acts, as well as for approving certain fiscal-budgetary measures (“Law 30/2019”)

## Law 30/2019

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Law 30/2019 for the approval of the Government Emergency Ordinance No. 25/2018 for amending and supplementing certain normative acts, as well as for approving certain fiscal-budgetary measures was published in the Official Gazette No. 44/17.01.2019, thus amending certain provisions from the Fiscal Code (the “Fiscal Code”) and the Fiscal Procedure Code (the “Fiscal Procedure Code”).

### 1. Amendments to the Fiscal Code

- *Extension of interest deductibility limit and other equivalent costs*

Starting with 1 January 2019, the deductible threshold for the exceeding costs of indebtedness is extended from EUR 200,000 to EUR 1,000,000.

Moreover, the costs of indebtedness which are higher than the EUR 1,000,000 threshold are deductible up to 30% of the designated computation base<sup>1</sup>, for the fiscal period in which they were incurred. If the computation base is negative or equal to zero, the exceeding costs of indebtedness are non-deductible in the respective fiscal period, but they may be carried forward indefinitely, under the same deductibility conditions. Also, clarifications are brought regarding the right to carry forward the indebtedness costs exceeding EUR 1,000,000 for taxpayers that cease to exist as a result of a merger or spin-off operation, as well as for those that do not cease to exist subsequent to a going concern operation.

- *Sponsorship expenses*

According to Law 30/2019, starting with 1 April 2019, taxpayers granting sponsorships for non-profit legal entities, including cult units, will be able to deduct the related amounts

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<sup>1</sup> The computation base is the difference between the income and expenses accrued under the applicable accounting regulations throughout the reference tax period, minus non-taxable income, plus the corporate income tax, the exceeding borrowing costs and the deductible tax depreciation.

from the corporate income tax due within the limits provided by the Fiscal Code, only if the beneficiary of the sponsorship is registered, on the date of concluding the contract, in the Registry of cult entities/units for which tax deductions are granted.

The Registry of cult entities/units for which tax deductions are granted is organised by the Romanian Tax Authority (ANAF), and it is publicly displayed on ANAF's website. The enrolment is performed based on a request filed by each entity, if a number of conditions are cumulatively met.

- ***Tax on income derived by the micro-enterprises***

Starting with 1 April 2019, the earnings from expected loss adjustments made in respect of financial assets, are deducted from the taxable base of the income tax on micro-enterprises.

Separately, sponsorship expenses registered by micro-enterprises are deducted from the income tax on micro-enterprises according to the provisions of the Fiscal Code (methodology similar to the one applied to corporate income tax payers), only if the beneficiary is registered at the date of concluding the contract in the Registry of the cult entities/units for which tax deductions are granted.

- ***Expenses with limited deductibility***

Starting with 1 January 2019, Law 30/2019 introduces cultural vouchers into the category of social expenses that can be deducted within the limit of 5% applied to the value of the expenses related to the personnel's salary.

- ***The income tax regime for the cryptocurrency revenue earned by individuals***

For cryptocurrency gains earned by individuals during 2019, these fall into the category of income from other sources, being taxed with a 10% rate (in the past, the tax was applied to the income from the sale of virtual coins).

Such earnings must be included in the Single Tax Return regarding the income and social contributions.

However, if the cryptocurrency gain is less than RON 200/transaction, such amounts will not be taxed provided that the annual value of the earnings do not exceed RON 600.

- ***Adjustment of the VAT taxable base***

The amendment, applicable starting with 1 of January, allows for the adjustment of the VAT taxable base in situations when the cost of the supply of goods/services cannot be recovered from the beneficiary as a result of the latter entering into bankruptcy procedure, and not as a result of closing the bankruptcy procedure for the beneficiary, as it was stipulated in the amended legal provision. Therefore, the date from which the adjustment of the VAT taxable base is allowed, is the date of issuance of the sentence/decision for starting the bankruptcy procedure, as opposed to the date of the court decision for closing the bankruptcy procedure, final/final and irrevocable, as previously stated. The adjustment

shall be performed within 5 years from 1 January of the year following that in which bankruptcy was decided by sentence or court decision.

As a transitory situation, Law 30/2018 provides that, where bankruptcy begun prior to 1 January 2019, and the final/final and irrevocable court decision for closing the procedure has not been delivered by this date, the adjustment of the VAT taxable base is made within 5 years from 1 January 2019.

- ***Reduced VAT rate for the supply of housing***

The conditions for the supply of housing with a reduced VAT rate of 5% have changed, meaning that the limitation of purchasing only one property by either an unmarried person or a family is eliminated. It also removes the previous limitation related to the 250 m<sup>2</sup> land area on which the property is built.

The amendment shall apply from 1 January 2019.

- ***Securities for the payment of excise duties***

In general, the amendment introduces the manner of establishing the guarantee that the registered warehousekeeper/registered consignee/registered consignor/authorised importer has to submit in order to secure the payment of the excise duties that may become chargeable, provisions that were already included in the Methodological Norms for the application of the Fiscal Code.

The amendment shall apply from 1 January 2019.

## **2. Amendments to the Fiscal Procedure Code**

- ***Administration of fiscal debts according to the fiscal risk class/subclass***

Law 30/2019 clarifies the criteria and risk analysis of taxpayers. Thus, the procedures for administering the fiscal debts, except for the procedure for settling administrative challenges, are performed according to the fiscal risk class/subclass in which the taxpayers are classified, respectively the low/medium/high fiscal risk. The general criteria according to which the fiscal risk class/subclass is established are: criteria for tax registration, filing of tax returns, compliance degree and fulfilment of payment obligations to the general consolidated budget and to other creditors. The risk analysis is carried out periodically and the taxpayer cannot challenge the manner in which the risk is determined nor the attributed fiscal risk class/subclass. The criteria for fiscal risk quantification will be introduced through ANAF Order.

The amendment shall apply from 20 January 2019.

- ***Communication procedure of administrative acts***

Law 30/2019 introduces the possibility of registering taxpayers *ex officio* in the electronic communication system of ANAF (i.e. the Private Virtual Space) for the purpose of communicating administrative acts. As well, the communication procedure of printed fiscal

administrative acts for taxpayers who were registered *ex officio* and did not access (i.e. therefore validating the registration) the electronic communication system within 15 days of receiving the account data, is made only by means of publicity.

The amendment shall apply from 20 January 2019.

- ***Outstanding tax liabilities***

Law 30/2019 introduces the notion that the tax liabilities established via administrative acts, challenged and guaranteed as per the Fiscal Procedure Code are not considered outstanding tax liabilities.

In addition, it is provided that a taxpayer is considered to have outstanding tax liabilities when the amount of tax liabilities due is less than or equal to:

- The amount to be returned or reimbursed for which there is a pending settlement request, along with
- Certain, liquid and payable amounts that the taxpayer has to collect from contracting authorities.

Last but not least, individuals who register outstanding tax liabilities, as well as the amount of these liabilities, will no longer have to be published by the tax authorities on their own website.

The amendment shall apply from 20 January 2019.

- ***Introduction of the mediation procedure***

Starting with 20 January 2019, Law 30/2019 introduces, as a new concept, the mediation procedure which has the purpose of clarifying the scope of the tax liability included in the summons to initiate the enforcement procedure and of analysing the financial and fiscal situation by the tax authority together with the taxpayer, in order to identify optimal solutions for settling the tax liabilities.

Among others, the procedure stipulates that the taxpayer notifies the tax authority of its intention to initiate the mediation procedure within 15 days of receipt of the summons, further to which the tax authorities will the meeting with the taxpayer in maximum 10 days from receiving the notification.

If within 15 days after completion of the mediation procedure the debit is not covered or payment facilities (e.g. rescheduling of payments, etc) are not requested, the tax authority shall continue the enforcement procedure.

## Editors

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