

CHANGES IN THE FISCAL CODE AND THEIR INFLUENCE ON THE ACTIVITY OF ROMANIAN COMPANIES

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Abstract

Businesses, all over the world, want a stabile legislation. In the economic domain, all the companies need a clear fiscal code on a long period of time. Unfortunately, in the last ten years, the Romanian Fiscal Code has been amended several times. The old fiscal code is in force since 2003 and suffered throughout this period no less than 150 amendments. The unanimous opinion of the experts was that there was a clear need of a new code. The paper analyzes the changes brought by the Fiscal Code starting with 2016 and its implications on the activity of business operators and on the state budget for the next period of time. It seems that some of the changes will not have the desired effect on the state budget and, generally, on the economy.

Key words: state budget, fiscality, Fiscal Code, profit tax, VAT, tax on dividends

JEL Classification: H 30

I. INTRODUCTION

The general approach of the European Commission limits itself to reduce taxes on labor and to move the fiscal burden from labor and workforce to other areas such as consumption, property or capital. Romanian government policy, shown by the new Fiscal Code, is exactly the opposite.

The new Fiscal Code and the new Code of Fiscal Procedure should be a legislative package to help create an efficient taxation, responsible, credible, and transparent as well as open in the relationship with its service users – citizens and businesses. It requires a stable and predictable tax system, able to promote and sustain balanced socio-economic development at national and local level. The role of taxes in a state is both, to finance quality public services and to create conditions favorable to business environment development, namely a motivating and unbiased/non discriminatory environment.

Taxation should not be the instrument of public aggression against all the citizens. Being a taxpayer means, above all, to have rights and to benefit of the innocence presumption, even in the fiscal domain.

The paper highlights the main changes introduced by the Law 227/2015 Fiscal Code and makes a comparison with the provisions of the old Fiscal Code. It is estimated for every change, its impact on taxpayers' activity. It is also estimated the impact on budget revenues and other macroeconomic indicators. Obviously these are only estimations and assumptions, any calculation cannot be performed accurately due to the multitude of factors influencing the macro and microeconomic fiscal domain.

Up to review these changes we should note that the new Fiscal Code has introduced the principle of taxation predictability that ensures stability of taxes and mandatory contributions for a period of at least one year, when cannot intervene changes, meaning increase or the introduction of new taxes or mandatory contributions. In this regard the third article, letter e), points/shows that any increase, reduction or introduction of new taxes will take effect only on 1st January of each year, without the possibility to be modified. About the amendment of the new Fiscal Code, it shall be amended and supplemented by the law, which takes effect in minimum six months after its publication in the Romanian Official Gazette. It quit, so, the phrase "*usually/ordinarily*". This should bring greater stability for taxpayers, who will have 6 months to devise any changes introduced by law.

II. AMENDMENTS REGARDING THE PROFIT TAX

A first change concerns the definition of deductible expenses that at article 25 states that "*for determining the fiscal result are considered deductible expenses, only the expenses incurred for business purposes, including those covered by legislation in force, as well as the registration fees, fees and contributions owed to the chambers of commerce and industry, employers association and trade unions.*"

The Old Fiscal Code stated that in determining taxable profit are treated as deductible expenses only expenses incurred in order to achieve taxable income, including those covered by legislation in force (L 571/2003/art. 21). In the category of contributors obliged to pay the profit tax are included as well the foreign legal entities that have the place of effective management in Romania, no matter where they operate.

In the regard of expenses of sponsorship, the limit of 3 to thousand of the turnover was increased to 5 to thousands of it. The amounts that are not deducted from the income tax are reported in the following 7 years, being recovered in the order of their registration, at every payment deadline of profit tax.

Social expenses are deductible in the limit of 5% (in the old fiscal code the limit was 2%), applied to the amount of costs with staff salaries.

It has changed the establishment of indebtedness calculated in order to deduct interest expenses and foreign exchange differences related to certain loans, taking into account the interest-free loans, while interest rate used for long-term loans from entities, other than financial ones, is reduced from 6% to 4%.

In the case of vehicles (3500 kg and 9 seats), for expenses representing the currency exchange differences recorded due to the execution of a lease contract, the limit of 50% is applied to the unfavorable currency exchange loss and not on the recorded expenses.

Expenses incurred, on behalf of an employee, to voluntary pension schemes and with the voluntary health insurance premiums are fully deductible for the company no matter the amount (but if it exceeds the limit of 400 euro/person for each of the two types of expenses, then the amounts exceeding those limits are considered incomes from wages and are taxed at the employee).

It has been removed from the category of entities, subject to the special tax rate of 5%, the entities performing activities of sports betting nature.

Fiscal deductions provide for research and development expenses are not recalculated in the case of not achieving the objectives of the research-development project.

In the case of tax exemption for the reinvested profit, it is introduced a new category of assets that can be purchased (computers and peripheral equipment, machines and cash registers, control and billing as well as software programs, Class 2.2.9 from the Catalog).

Dividends received from a Romanian legal entity are taxable, thereby eliminating the condition that the entity receiving the dividends must have at the date of their registration, for a continuous period of 1 year, 10% of the social capital of the legal entity that distributes the dividends.

All the religious cults, accredited private schools and those authorized and owners associations are removed from the category of entities exempted from the profit tax, for the income earned by these entities, used in the current year or in the future years.

III. AMENDMENTS REGARDING THE TAX ON THE INCOMES OF MICRO-ENTERPRISES

They are not considered micro-enterprises the entities engaged in activities of exploration, development, exploitation of oil and natural gas deposits. It has been increased the ceiling (turnover) for the classification to micro-enterprises, from 65,000 EUR to 100,000 EUR. This change will result in increasing the number of companies required to pay income tax, which by default will increase the government's revenue taking into account the fact that many of them was recording loss and they was not owning profit tax.

When passing, during the year from income tax to profit tax, it is owned starting with that quarter, taking into account the revenues and expenses from that quarter and not from the beginning of the fiscal year as was done previously. Another amendment consist in introducing differential tax rate of 1%, 2% and respectively 3%, with the fulfillment of certain conditions regarding the number of employees and the period of employment, comparing to a single rate of 3%, as it was in the old Fiscal Code. This could encourage economic operators to create new jobs.

IV. AMENDMENTS REGARDING THE INCOME TAX

First of all was completed the list related to non taxable income. Now are included the gift vouchers and the gifts offered to all the employees and not only their minor children.

It has been more clearly defined incomes from wages in order to correctly identify items of income covered by it.

It has increased the limits to which the taxpayer/contributor must notify the tax authority commencement or cessation of an activity, from 15 days to 30 days.

An important change relates to the tax rate on dividends which decreases from 16% to 5% from 1 January 2016. Apparently this measure seems to be revolutionary, but actually from 1 January 2017, individuals will pay for these dividends the health insurance contribution in a percent of 5.5%, but applying to the ceiling monthly basis of 5 gross average incomes.

It was noted that the deduction of the cost/expenses representing mandatory social contributions shall be made by the competent tax authority to the recalculation of the annual net income/annual net loss.

It has increased the ceiling referring to social expenses up to 5% of payroll (compared to 2%). This measure allows operators to provide humanitarian and social help to a larger number of people in need.

Contributions paid to professional associations are deductible up to 4,000 Euro annually compared to 2% rate applied to the revenues.

In calculating net income from intellectual property rights, including the creation of monumental art, the rate of standard expenses is 40% (comparing to 20%, respectively 25%). Both, net income from the lease of goods and the land rent is determined by deducting from the gross income the determined expenses by applying 40% to the gross income, comparing to 25% as it was before.

A big problem is represented by the unclear manner in which the law is interpreted considering the liberal professions, self-employment activities and copyrights. It becomes necessary to stipulate in law the details that now, are at the discretion of tax inspectors, who decide subjectively, or on the orders of Ministry (that changes the methodology depending on the budgetary needs) what, essentially, involves liberal profession and what not.

Under the new fiscal code is likely to grant the allowance to administrators, not just to employees.

It has been increased the amounts awarded in personal deductions, which will reduce the tax on incomes from wages. For 11 years these deductions were not indexed. The intention of the legislator, at that time, was that the employees with the minimum wage, to be practically exempt from the taxation of the income received. Given that the minimum gross salary declared by state on the economy and the deductions increased continuously, even the grant conditions remained unchanged, the legislator has not reached the initial purpose/objective.

For completing this measure, the minor children of the contributor, are considered supported by definition. In this case, the amount of personal deduction is awarded to each taxpayer depending to whom they are located, means that from the deduction benefits the both parents.

It has been increased the non taxable ceiling in the case of pensions from 1,000 RON to 1,050 RON and over the next three years to increase by 50 RON/year until it reaches the ceiling of 1,200 RON.

An important measure is the increase of recovering the tax loss, from 5 to 7 years, in the case of incomes from self-employment activities, rental, agricultural, forestry and fishery.

V. AMENDMENTS REGARDING THE SOCIAL CONTRIBUTIONS

An important change concerns the inclusion of income from self-employment activities in the category to which the individual contribution to social security is mandatory applied (10.5% CAS – social insurance contribution), even if the taxpayers receives incomes from salary. This will lead to an alarming increase for the taxation of income from independent activities, namely 32% (16% + 5.5% + 10.5%) as a result many Self-employed person (PFA) will close their activity and the micro-enterprise becomes more profitable.

From 1st January 2017, in the case of pension revenues, if monthly total wages is higher than 5 times the average gross salary, individual contribution to the health fund (CASS) is calculate within that limit.

For individuals with incomes from pensions, monthly calculation basis of CASS (social health insurance contribution) is represented by that part of income that exceeds the value of a pension point established for that fiscal year, eliminating the previous ceiling of 740 RON. Starting 1st January 2017, when the pension exceeds 5 times the average gross salary, individual CASS (social health insurance contribution) is calculate within that limit.

Starting with 1st January 2017 are included the revenues from intellectual property rights in the base of CASS (social health insurance contribution), even if the beneficiary receives income from wages, pensions or from other independent activities.

Individuals who do not have income from salary or assimilated, or which realize monthly incomes exclusive from investments and/or from other sources, whose monthly basis for calculation is below the value of the basic minimum gross national salary and not fall into the categories of persons exempted from the contribution or in the category of persons for which the payment of contribution shall be covered from other sources, owes the social health insurance contribution as follows:

- a) monthly, by applying individual contribution rate to the calculation base representing the minimum gross national salary and must pay health insurance contribution for a period of at least 12 consecutive months
- b) at the date of accessing the services provided by the public health insurance according to the law, applying the individual contribution rate to the calculation base which represents the amount of 7 times the gross national minimum salary.

From 1st January 2017 the annual adjustment of CASS (social health insurance contribution) is made as follows: the annual contribution to the social health insurance is calculated by applying the individual rate of 5.5% on the annual base calculation, determined as the sum of monthly bases calculation, which cannot be less than the value of 12 gross national minimum salaries and no higher than 5 times the average gross salary multiplied with 12 months.

VI. AMENDMENTS REGARDING THE VAT

From 1st January 2016, the standard VAT rate, decreased from 24% to 20%, and starting with 1st January 2017 will be reduced to 19%. The reduced VAT rates are 9% and 5%. The reduced VAT rate of 9% it is applied to the supply of drinking/potable water and for water used for irrigation in agriculture.

There are introduced new types of transactions to which is applied the reduced rate of 5%:

- Delivery of textbooks, books, newspapers and magazines, excepting those used solely or principally for advertising;
- Services consisting in accession to castles, museums etc, for which previously was used the reduced VAT rate of 9%;
- Sporting events.

Is increased the maximum ceiling for applying the reduced VAT rate of 5%, for social housing, from 380,000 RON to 450,000 RON (about 100,000 euro).

The introduction of the reverse taxation to buildings, parts of buildings and land of any kind, for the delivery of which the taxation regime is applicable by law or by choice. The measure was taken in order to reduce tax evasion, knowing that in Romania the efficiency of VAT collection is under 55% and for encouraging investment.

The introduction of the reverse taxation until 31 December 2018 as well for:

- mobile phones, PC tablets, laptops, game consoles and integrated circuit devices only if the value of the goods supplied, excluding VAT, (entered in an invoice) is greater than or equal to 22.500 RON.
- supplies of cereals and technical plantation.
- transfer of certificates for gas emissions with greenhouse effect and transfer of green certificates
- supply of electricity to a taxable dealer.

Broadening, to the maximum possible extent, of the reverse taxation measure has the effect on increasing the collection of VAT. Therefore we believe was necessary to provide other products and transactions in this category.

Removing the provision according to which, from 1st January 2017 the actual payment of VAT is not made at customs organ by taxable persons registered for VAT purposes, which means that VAT on imports will be further paid at the customs institution.

VII. AMENDMENTS REGARDING THE LOCAL TAXES

It has been introduced new buildings in the category of tax-exempt (buildings related/associated to public railway infrastructure or underground infrastructure, buildings of Romanian Academy, excepting those used for economic activities, buildings owned or used by social insertion enterprises). It has been removed the hotel tax.

Local councils may decide to grant exemptions or tax cuts.

The buildings will no longer be taxed according to the ownership (natural person or legal person), but according to its destination: residential, non-residential. For this purpose the buildings were classified in: residential, non-residential and mixed destination.

In the case of residential buildings owned by individuals and legal entities, the building tax is calculated by applying a rate between 0.08% -0.2% to the taxable value of the building.

The initial percentage was 0.1%, now it may be lower, but has increased the taxable value of the building with values between 7% and 30%, depending on the type of building and amenities.

In the case of non-residential buildings owned by individuals and legal entities, the building tax is calculated by applying a rate between 0.2% - 1.3% on the value of the building. The taxable value shall be determined by evaluation report if it has not been built or acquired over the past 5 years.

If the value of a non-residential building owned by a natural person cannot be calculated, the tax is determined by applying the rate of 2% on the taxable value determined as if the building was residential.

For buildings with mixed destination owned by natural person, the tax is calculated by adding the tax calculated for the area used for residential purpose with the tax determined for the area used for non-residential purposes.

The new fiscal code will greatly affect businesses that have the headquarters at home or at relatives. The tax on the homes of those families who gave free (bailment) to the firms owned or to Self-employed person, an area of their home to headquarters will increase ten times. In addition, this tax will be supported by the shareholder and not by the company that has the headquartered in the associate home.

They were removed provisions according to which individuals who own two or more buildings have to pay a building progressive tax.

For non-residential buildings owned both, by natural persona and legal entities, used for activities in the agriculture domain, building tax is calculated by applying a rate of 0.4% on the taxable value of the building.

If the building owner is a legal entity and has not updated the taxable value of the building in the last 3 years preceding the reference year, the building tax rate is 5% comparing to 20% - 40% as it was the last year.

A step forward was made by removing distortions aimed/regarding natural person and legal entities, but keeping the tax system for non-residential buildings, which is the value of inventory, does not stimulate quality investment nor provide predictability.

Local authorities may decide to increase local taxes up to 50% over the level established by the Fiscal Code, until this point the increases could be made up to 20%.

The land area covered by a building will no longer be exempt from a land tax.

Electric or second-hand vehicles registered as stock of goods and which are not used in the economic operator's own benefit are tax exempt,

Local councils may decide to grant the exemption or tax reduction for the agricultural vehicles actually used in agricultural domain.

For agricultural land uncultivated for 2 consecutive years, the local council can increase the tax up to 500% from the third year.

Local councils can increase the building tax and land tax up to 500% for land and buildings, unkempt, located in town, the assignment criteria will be adopted by the decision of the Local Councils.

VIII. THE EFFECTS OF THE NEW FISCAL CODE APPLICATION

For 2016, as a result of fiscal relaxation are estimated reductions between 2.2% and 2.3% of GDP in the collected revenues of the State Budget, which would send us below the threshold of 30% of revenues to the state general consolidated budget, while the UE28 average is 45.3% of GDP.

The highest negative impact on budget revenues is by far the VAT reduction and by extending the field application of the reduced VAT rate.

However from the budget execution analysis of 2015 results several interesting conclusions:

- increases of the percentage in GDP has registered the VAT collection (+ 0.44%) even considering the fact that occurred the extend of the reduced VAT rate of 9% to food and restaurant services from 1st June 2015.
- Collection from wages and income taxes has increased with 0.19%, those from profit tax with 0.11% and those from excise with 0.04%.
- Instead, CAS - social insurance contribution, registered a decrease of 0.53% as percentage of GDP, in the context of the decision to reduce them by 5% since October 1st, 2014 as well as the increase of the rate transferred to the Pillar II of pension by 0.5%, to 5%, while property taxes has decreased their percentage in GDP with 0.12% due to reducing the special construction tax from 1.5% in 2014 to 1% in 2015.
- Compared to the initial budget projection, the budget revenues were with 0.98% of GDP higher, as a result of an economic development higher than was expected compared to initial projections, a composition of economic growth favorable to budget revenues and an improvement in efficiency collection, particularly at the level of VAT collection.
- It can be concluded that the fiscal relaxation measures had effects on economic growth, growth that has reduced the negative effects on revenues.

IX. CONCLUSIONS

The new Fiscal Code brings several important changes. First, we are referring to the sharp decrease of the standard VAT rate and extending the area of the reduced VAT rate. This, given that consumption grows faster than domestic supply, already inducing a medium-term risk of recurring macroeconomic imbalances (current account deficit and inflation).

Reducing the average rate of VAT is one of great breadth and without precedent in Europe (-8% compared to 2010). Almost half of the CPI basket has reduced or zero VAT rate, compared to about one-third if the case of EU average. The very high weight of products with reduced or zero rate will increase the administration cost and will create competition distortions. A more well-thought income tax deductions will have more targeted effects on vulnerable social groups than, for example, the reduced rate of VAT on food.

As a proof of the assertions, consolidated budget revenues at 05.31.2016, amounted to 91.2 billion RON, representing 12.0% of GDP, were 2.1% lower, in nominal terms, compared to the same period of the previous year.

There have been increases over the same period of the previous year in the collection of: income tax (+ 11.3%), excise (+ 7.4%), social security contributions (+ 6.1%), tax on wage and income (+ 1.7%) and the tax on use of goods (+ 13.3%) and mainly from taxes on gambling.

Regarding VAT collections, they had decreased with 7.9% compared to the same period of 2015, in the conditions in which have been affected by the reduction of the standard VAT rate from 24% to 20% starting with 1st January 2016 which was reflected in the collections from February, and by the introduction of a reduced VAT rate of 9% to food, applied from 1st June 2015.

Private investment is evolving very weak since 2012 and public investment declined continuously (as a percentage of GDP) starting from 2009, in 2014 they reach the minimum of the last nine years. It occurs a

relative fiscal relaxation by the calculation method of profit tax, the definition of deductible expenses and the tax reduction on dividends.

Due to the introduction of provisions regarding the holding companies (which operates/develop their activity under CAEN code 6420), non taxable income becomes a very important fiscal concept. The analysis of non taxable income is absolutely necessary in terms of total fiscal result.

All these measures are aimed to attract foreign investors, the impact being in the future and may be null if other elements of the economy does not contributes to its achieving. We are referring here to the infrastructure, respecting legislation, friendly economic environment or labor regulations.

An affected domain is the one referring to self employment activities, because they have introduced new rules by which a Self-employed person (PFA) can be reclassified in terms of employment activity. For example, if ANAF will consider the activity of a Self-employed person (PFA) as employment activity, outstanding debts and penalties will be calculated. ANAF will require debt collection jointly by the individual and the paying company.

So, an individual responds with its own patrimony in the case in which ANAF or any third party's seeking damages to the Self-employed person.

Despite some fiscal relaxation (standard expenses grow to 40% comparing to 20% and 25%). Overall, results a tax increase of income resulted from self-employment activity, namely 32% (16% + 5.5% + 10.5%) as a result many Self-employed person (PFA) will close.

Fiscal Procedure Code legislates ANAF's free will, here, lacking a pro - business orientation.

The principle *"In dubio against fiscum"* required by business environment, namely that any vagueness of the law is interpreted in the favor of the taxpayer, it was taken in its contrary meaning, in other words uncertainties are only in the spirit and manner required by the legislator and it is unequivocal: the state must collect money from taxpayers.

ANAF deadlines, for responding to the requests come from its operators, were increased. There are no penalties for situations when ANAF does not respond in the limit to these solicitations.

In addition to penalties and interest owed to the FISC, Tax Procedure Code introduces the concept of penalty for failure to declare which is applied "non-discriminatory" to those who do so intentionally and those who err.

In the situation when a economic operator wins court action against ANAF, the FISC is required to repay the withheld amounts, but is not obliged to pay interest unless they are required in court.

Contesting an imposing decision does not bring, as well, suspending the enforcement.

Debt rescheduling that would give the state more chances to recover debts, it is made very difficult. A viable solution would be that the debtors have the opportunity to endorse the payment of these debts with its heritage/patrimony.

The new rules according the Tax Code amending are seen by traders as a clear improvement to the old provisions, with the condition to be respected.

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