



## NEWSLETTER 09/2017

### A summary of recent legislative amendments approved by the Romanian authorities is provided below

#### 1. New mechanism for split VAT payments

The Romanian Government is to introduce a new mechanism for collecting VAT whereby every taxable person registered for VAT purposes is to be obliged to open and use at least one dedicated account (held either at an existing financial institution or one of the branches of the Romanian Treasury) for the collection and payment of VAT.

Taxable persons registered for VAT purposes will collect the amounts corresponding to the VAT on the supply of goods and services in dedicated VAT accounts held in their own name. Moreover, each taxable persons will have the obligation, within a maximum of 7 days from the date when an invoice for the supply of goods and services was settled, to transfer to their own VAT account any VAT not paid into said account by this time.

In terms of VAT payments, each taxable person registered for VAT purposes will have the obligation to transfer the amount representing the VAT for the acquisition of goods and services from its own VAT account to that of the provider. In the case of taxable persons not registered for VAT purposes, the payment of the VAT on goods and services may be made from the taxable person's current account to the corresponding VAT account of the provider.

As an exception to the rules regarding the collection and payment of the VAT on the supply of goods and services, any transactions settled in cash or by debit or credit card will not be subject to the mechanism described above.

The Government Ordinance introducing the new mechanism also stipulates the manner in which a VAT account can be opened and used, as well as how it can be debited and credited. This includes:

- the conditions under which it is possible to transfer amounts from a VAT account to a current account
- the way a VAT account can be debited or credited with amounts resulting from corrections (i.e. errors in the payment process, invoice corrections, adjustments to tax bases)
- the stipulation that cash withdrawals from VAT account are forbidden
- the obligations of financial institutions and branches of the Romanian Treasury in terms of the processing of transactions

The Ordinance provides significant fines for non-compliance with the split VAT payment mechanism.

The provisions of the Ordinance are applicable as of 1 January 2018. During the period 1 October 2017-31 December 2017, taxable persons may opt to apply for the split VAT mechanism. By doing so they will benefit from the following fiscal advantages:

- A reduction of 5% in the corporate income tax/microenterprise income tax due for the fourth quarter of 2017 fiscal year
- the waiving of various penalties for the late payment of VAT

*Source: Government Ordinance regarding the split VAT payment mechanism, published in the Official Gazette no. 706 on 31 August 2017.*



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### 2. Important amendments to the Fiscal Code

A series of amendments have been made to the Fiscal Code, the most important of which include:

- the introduction of a deductibility limitation of 30% for costs representing the value of receivables assigned (starting 1 January 2018)
- a change in the annual tax on representative offices operating in Romania from EUR 4,000 to RON 18,000 (starting 1 January 2018)
- a gradual increase in excise duties on gas and diesel (starting 15 September 2017).

*Source: Government Ordinance for the amendment and supplementation of Law no. 227/2015 regarding the Fiscal Code, published in the Official Gazette no. 706 on 31 August 2017.*

### 3. New important amendments to the Fiscal Procedure Code

A series of amendments have been made to the Fiscal Procedure Code that will enter into force upon approval in law of the corresponding Government Ordinance. The most important of these amendments are as follows:

- changes to and supplementation of the procedures for communication between the tax authorities and taxpayers in respect of administrative fiscal acts, procedures of foreclosure, etc.
- new rules and clarifications with respects to tax audits
- the obligation on taxpayers, where requested by the tax authorities, to submit documents in the Romanian language (failure to do so will result in the tax authorities not taking into account any documents not written in the Romanian language)
- clarifications as regards the confidentiality of information

The Ordinance also includes certain amendments that will enter into force on specific dates, such as:

- the extension of the Virtual Private Space, starting 1 January 2018
- the amendment of the procedure for the rescheduling of fiscal obligations, starting as of the date of publication of the Ordinance in the Official Gazette

*Source: Ordinance for amendment and supplementation of Law no. 207/2015 regarding the Fiscal Procedure Code, published in the Official Gazette no. 708 on 31 August 2017.*

### 4. New obligations and offences for Romanian employers

The Romanian Government has introduced a number of amendments and additions to Law no. 53/2003 (the Labour Code) through the adoption of Emergency Ordinance no. 53 of 4 August 2017.

According to the preamble of Emergency Ordinance no. 53, the purpose of the amendments is to adapt the national legislation to meet the challenges faced by the authorities in their efforts to prevent and combat the phenomenon of undeclared work.

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In view of this, the first article of the Emergency Ordinance contains a definition of the phenomenon of undeclared work, which can mean any of the following:

- a) the employment of a person without the conclusion of a individual labour contract in written form by latest one day before the start of the employment
- b) the employment of a person without communicating the employment status of this person to the General Register of Employees by latest one day before the start of the employment
- c) the allowing of an employee to attend the workplace while his/her individual labour contract has been suspended
- d) the allowing of an employee to attend the workplace outside of the working hours established under the individual part-time labour contracts

Moreover, the text of the Emergency Ordinance amends Article 16 of the Labour Code by introducing the obligation of the employer to keep a copy of individual labour contracts at the workplace where the employees in question perform their work.

Article 17 para. (5) of the Labour Code was also amended such that, in the case of changes to an individual labour contract, the corresponding contract addendum must now be concluded *before the changes take place* – as opposed to within 20 days of the date of the change, as was previously the case.

At the same time, the content of Article 119 of the Labour Code has been clarified and now reads: “The employer has the obligation *to keep records of the daily hours worked by each employee, showing the start and end times of the work programme*, and to present these records to the labour inspectors whenever required.”

Furthermore, the Emergency Ordinance changes the amounts of the fines that can be applied by the control bodies, as follows:

- a) under letter (e) of Article 206, para. 1 of the Labour Code, the minimum fine of RON 10,000 applicable in the case of the employment of up to 5 persons without an individual labour contract has been abolished and replaced with a fine of RON 20,000 for the employment each identified person working without an individual labour contract
- b) Article 206, para. 1 of the Labour Code also introduces new contraventions, with letters e<sup>1)</sup> - e<sup>3)</sup> and q) having the following content:
  - *e<sup>1)</sup> the employment of a person without the conclusion of an individual labour contract in written form, by latest one day before the start of the employment, with a fine of 20,000 lei for each identified person*
  - *e<sup>2)</sup> the allowing of an employee to attend the workplace while his/her individual labour contract has been suspended, with a fine of 20,000 lei for each identified person*
  - *e<sup>3)</sup> the allowing of an employee to attend the workplace outside of the working hours established under the individual part-time labour contracts, with a fine of 10,000 lei for each identified person*
  - *q) violation of the provisions of Article 16, para. 4 (according to which the employer is obliged to keep a copy of the individual labour contracts at the workplace where the employees in question perform their work), with a fine of 10,000 lei.*



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After the amendments introduced by Emergency Ordinance no. 53/2017 come into force, offenders will have the option to pay only half of the amount of the fine(s) stipulated under letters e) -e<sup>3</sup>), provided payment is made within 48 hours of the date of completion of the report by the labour inspector or, where applicable, the date of communication of said report, with the labour inspector being duly obliged to state this possibility in the report.

In respect of the contraventions described in para. 1 (e) to (e<sup>2</sup>), the labour inspector may also choose to apply a supplementary penalty in the form of a cessation of activity at the place of work under investigation. In this case, the employer may resume its activity only after paying the relevant fine and only after remedying the deficiencies that led to the cessation of activity – i.e. by concluding the relevant individual labour contracts, communicating the corresponding employment statuses to the General Register of Employees and, where applicable, terminating any suspension of individual labour contracts and establishing and paying the social security contributions and income tax relating to the salary accrued by any workers during the period in which the undeclared work was performed.

*Source: Emergency Ordinance no. 53 of 4 August 2017 amending and complementing Law no. 53/2003 (the Labour Code), published in the Official Gazette no. 644, part I, of 7 August 2017.*

This newsletter is a service of the TPA Group.

Kind regards,

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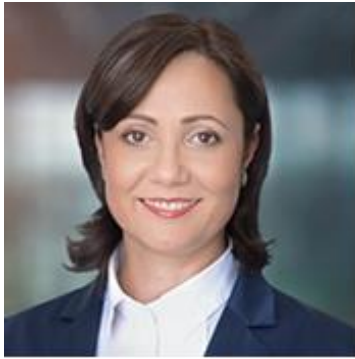
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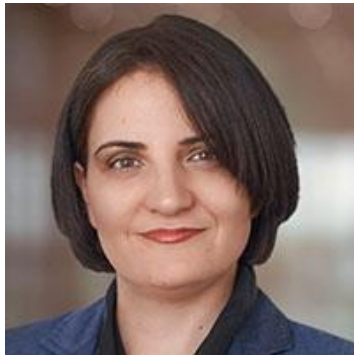


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