

New Amendments to the Romanian Fiscal Code and Other Financial and Fiscal Measures



This update includes the following topics:

- Main amendments to the Fiscal Code as of July 1, 2010
- New measures with financial and fiscal impact

Government Emergency Ordinance no. 58/2010 (the “**GEO**”) containing important amendments to Law no. 571/2003 regarding the Fiscal Code (the “**Fiscal Code**”), as well as other financial and fiscal measures, entered into force on July 1, 2010.

1. Main amendments to the Fiscal Code as of July 1, 2010

Dependent Activities

One of the GEO’s controversial measures amends the Fiscal Code’s definition of dependent activity by setting forth the rule according to which any activity performed by an individual may be requalified as a dependent activity if at least one of the following criteria is met:

- the income beneficiary is in a subordinate relation to the income payer and observes the working conditions imposed by the latter (e.g., attributions, manner of execution of tasks, place of performing the activity, work schedule);
- the beneficiary uses the income payer’s material base for performance of the activity;
- the income beneficiary contributes only the physical performance or intellectual capacity and not his/her own capital;
- the income payer pays the travel expenses of the beneficiary or other similar expenses;
- the income payer pays the vacation remuneration and temporary work incapacity remuneration to the income beneficiary; and
- any other elements reflecting the dependent nature of the activity.

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Prior to this amendment, the Methodological Norms for applying the Fiscal Code set forth certain cumulative conditions the should be met in order to determine requalification of an activity as dependent activity.

The new amendments to the Fiscal Code affect employers in all industries having in place, for example, contracts with authorized individuals (*in Romanian "persoana fizica autorizata (PFA)"*).

In case of requalification of an activity as a dependent activity, the income tax and the payroll contributions will be recomputed and the beneficiary and income payer will be jointly responsible for paying the adjusted amount.

Dividend Tax

The GEO increases the tax on dividends paid / distributed to a Romanian legal entity from 10% to 16%.

The dividend tax is not applicable if the dividend beneficiary is a:

- Romanian legal entity that holds, as of the dividend payment date, at least 10% of the payer's shares for an interrupted 2-year period until the date of their payment;
- optional pension funds and privately managed pension funds; or
- public administration body that exerts, by law the rights and obligations arising from the state's shareholding in the dividend payer.

Value Added Tax ("VAT")

The GEO increased the standard VAT rate from 19% to 24%.

The reduced VAT rates of (i) 9% for specific goods and services (e.g., pharmaceutical products, hotel accommodation, orthopedic products, books, newspapers and periodicals, other than material wholly or predominantly devoted to advertising) and (ii) 5% for supply of dwellings as part of social policy, remained unchanged.

2. New measures with financial and fiscal impact

The GEO provides that any incomes deriving from professional activities, other than salary incomes, are subject to personal income tax and individual payroll contributions (i.e., social security, contribution to the health fund and contribution to unemployment fund). The taxation base for the payroll contributions is limited to 5 (five) average gross salaries used for supporting the social security budget (RON 1,836 in 2010). The income payer is liable



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for declaring, calculating, withholding and paying the relevant payroll contributions.

Pursuant to the GEO, certain employees' benefits that have had a special fiscal regime in the past are now deemed as taxable from a salary tax perspective. However, vacation and meal vouchers granted to employees are only subject to personal income tax and not to the relevant payroll contributions.

Methodological Norms for applying the GEO are expected to be enacted within 30 days as of the GEO's publication date in the Official Gazette.

Source: The Government Emergency Ordinance no. 58/2010 published in the Official Gazette no. 431 of June 28, 2010 that entered into force on July 1, 2010.

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