

TAX ALERT



NEWSLETTER | No. 3 – 6 January 2011

AMENDMENTS TO THE TAX LEGISLATION IN EARLY 2011

Following the latest legislative amendments, please find enclosed herewith a summary of the major such amendments which become effective as of 1 January 2011. The substantive amendments introduced into the **Tax Code** and the **Methodological Norms for the application of the Tax Code**, into the social security legislation and the Tax Procedure Code have been published in *Monitorul Oficial* in the last days of 2010.

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AMENDMENTS TO THE TAX LEGISLATION IN EARLY 2011

1. Major Amendments to the Tax Code

Monitorul Oficial No. 891 / 30.12.2010 has published **Government Emergency Ordinance No. 117 / 23.12.2010** (“GEO 117”) which amends and supplements **Law No. 571 / 2003**, regarding the Tax Code, and regulates financial and tax measures.

GEO 117 amends not only the Tax Code but also other legislative acts. The main amendments refer to the following:

1.1. Profit Tax

- ▶ Transactions with a taxpayer that has been declared inactive under order of the President of the National Tax Administration Agency shall not be taken into consideration by tax authorities, except for the acquisitions and supplies of goods which are subject of enforcement proceedings.
- ▶ The period during which fuel expenses are deductible contingent upon certain conditions has been extended from 31 December 2010 to 31 December 2011.
- ▶ The period spanning 1 October – 31 December 2010 shall be considered fiscal year in the meaning of the seven (7) consecutive years for the recovery of the tax loss recorded in 2010.

1.2. Tax on Microenterprises Income

GEO 117 introduces a new Title, *i.e.* **Title IV¹ – Tax on Microenterprises Income**, providing, *inter alia*, as follows:

- ▶ A **microenterprise** is defined as a Romanian legal entity which cumulatively meets the following conditions:
 - achieves an annual income amounting to less than the RON equivalent of EUR 100,000;
 - has one (1) to nine (9) (included) employees;
 - the share capital is held by persons other than the State and local authorities.
- ▶ The tax on microenterprises income is optional and is **3%** rated.
- ▶ The fiscal year of microenterprises is the calendar year. When a microenterprise is established or ceases to exist, its fiscal year shall be the period in the calendar year during which this legal entity existed.
- ▶ Romanian legal entities that
 - perform banking activities;
 - carry on activities in areas such as insurance and reinsurance or capital market, except for those acting as intermediaries in these domains;
 - perform gambling activities or provide consultancy and management services;
 - have their share capital held by a shareholder which is a legal entity staffed with more than 250 employees,may not choose the taxation system applicable to microenterprises.
- ▶ Microenterprises paying profit tax may choose to pay the tax on microenterprises income starting the next fiscal year, provided that they meet the abovementioned conditions and that they have not been payers of the tax on microenterprises income.

- ▶▶ A newly established Romanian legal entity may opt to pay the tax on microenterprises income starting its first fiscal year if the condition referring to share capital is fulfilled at the date of its registration with the Trade Registry and the condition regarding the number of employees is met within 60 days of its registration date.
- ▶▶ The tax on microenterprises income applies to the income obtained from any source, from which the specifically mentioned categories of income are subtracted. When a microenterprise purchases cash registers, their purchase value shall be deducted from the taxable base.
- ▶▶ Microenterprises may not apply this taxation system starting the fiscal year following the year in which they no longer meet any of the conditions specified by the Tax Code.
- ▶▶ The Romanian legal entities that are profit tax payers shall inform the territorial tax authorities of their option to pay the tax on microenterprises income by filing a notice of amendment specific of legal entities, family associations and associations without legal personality until 31 January, included, of the year for which the tax on microenterprises income is paid.
- ▶▶ The legal entities established during a fiscal year shall mention their option in the application for registration with the Trade Registry and such option remains final for the respective fiscal year.
- ▶▶ Should the microenterprise no longer meet any of the required conditions during a fiscal year, it shall continue being subject to the aforesaid taxation system. Notwithstanding the foregoing, if the microenterprise achieves income in excess of EUR 100,000 during a fiscal year, it shall pay profit tax also taking into account the expenses made from the beginning of that year, without benefiting in the following period from the provisions applicable to microenterprises.
- ▶▶ The tax on microenterprises income shall be calculated and paid quarterly until the 25th of the month following the quarter for which the tax is calculated. Microenterprises shall submit their income tax returns until the provided payment date.
- ▶▶ In the case of associations without legal personality between a microenterprise and a natural entity, the microenterprise shall calculate, retain, declare and pay the 3% rated tax applied to its income share of the association by the 25th of the month following the quarter for which the tax is calculated.
- ▶▶ Microenterprises shall keep record of tax depreciation in compliance with Art.24 of Title II of the Tax Code.

1.3. VAT

The amendments to **Title VI – Value Added Tax** refer particularly to the following aspects:

- ▶▶ The exception has been abrogated in respect to the establishment of the place of supply of principal and ancillary services, involving two taxable entities, related to cultural, artistic, sporting, scientific, educational, entertainment or other similar activities such as fairs and exhibitions, inclusive of the services provided by the organisers of these activities (Art.133 (4) (c)).
- ▶▶ A new exception has been introduced with regard to the place of supply of principal and ancillary services, involving a taxable entity and a non-taxable entity, in domains covering cultural, artistic, sporting, scientific, educational, entertainment or other similar activities such as fairs and exhibitions, inclusive of the services provided by the organisers of these activities, for which the place of supply shall be where services are effectively carried out.
- ▶▶ The place of supply of services, involving two taxable entities, regarding the access to cultural, artistic, sporting, scientific, educational, entertainment or other similar events such as fairs and exhibition, as well as of ancillary services related to the said access shall be the place where the events actually take place.

- ▶▶ A new exception has been introduced with reference to the place of supply of services, involving two taxable entities, in the sphere of transportation outside the Community, namely that, when such services are rendered by a taxable entity established in Romania, the place of supply shall be outside the Community if the services are effectively used outside the Community.
- ▶▶ A new provision is included with reference to the right to deduct the tax levied on acquisitions from an inactive or temporarily inactive taxpayer that is subject to enforcement proceedings.
- ▶▶ The limitation on the right to deduct the tax on the acquisitions of certain vehicles and fuel shall be extended until 31 December 2011.
- ▶▶ Taxable entities registered for VAT purposes, obtaining a turnover that is lower than the ceiling for which they may apply the special exemption regime, may request deregistration; also, such entities shall request to be registered again with the relevant authorities if later they exceed the exemption ceiling.
- ▶▶ Taxable entities that have or have not registered for VAT purposes, achieving a turnover that is lower than EUR 35,000 shall file a notice with the competent tax authorities, by the 25th of February, evidencing the supplies and acquisitions performed.
- ▶▶ Any taxable entity that is a beneficiary of asset transfer and has not registered for VAT purposes shall file a declaration in consequence of VAT adjustments until the 25th of the month following the month in which the transfer took place.
- ▶▶ Taxable entities changing the type of registration for VAT purposes (as per Art.153 or Art.153¹) shall continue to be recorded in the Register of Intra-Community Operators, having the obligation to update the information contained therein.
- ▶▶ Simplified measures, *i.e.* the reverse charge mechanism, shall also apply, only under the conditions provided by Art.160, to the transfer of permits for greenhouse gas emissions, as well as of other units which may be used by operators.

1.4. Income Tax

The amendments to **Title III – Income Tax** refer, in the main, to the following aspects:

- ▶▶ In order to determine the net income from independent activities, the restriction regarding the deductibility of fuel expenses has been extended until 31 December 2011.
- ▶▶ Art. 49 of the Tax Code, *i.e. Determination of the Annual Net Income from Independent Activities* on the basis of income standards has also been amended.
- ▶▶ Art. 52¹ has been introduced according to which the taxpayers obtaining income from the activities specified at Art. 52 (1) (a) – (e) may choose to establish the income tax as final tax.
- ▶▶ The main amendments to *Income from Investment* can be found in:
 - Art. 66 (5¹) of the Tax Code, referring to the determination of the annual net income / annual net loss from transfers of securities other than shares and securities of closed-end investment companies;
 - Art. 66 (7), according to which the annual net income shall be determined on the basis of the declaration on realised income filed in compliance with Art.83;
 - Art. 67 (3) (a) referring to the determination of the net income by the end of every quarter of the year, obtained from transfers of securities other than shares and securities of closed-end investment companies;
 - Art. 67 (3) (c) referring to the income obtained from foreign currency trading.

- ▶▶ Art. 79¹ – *Definition and Taxation of Income from Unidentified Sources* has been introduced, according to which the income identified by tax authorities without finding its source shall be subject to the 16% - rated tax applicable to the taxable base adjusted through indirect methods and procedures for the reconstitution of income or expenses. Under their decision, the tax authority will establish the tax amount due.
- ▶▶ Another article is introduced, i.e. Art. 80¹ – *Determination of the Taxable Annual Net Income*, according to which:
 - The taxable annual net income obtained from transfers of securities other than shares and securities of closed-end investment companies shall be determined as the difference between the annual net income and the carryovers from the previous fiscal years.
The annual net loss from transfers of securities other than shares and securities of closed-end investment companies, evidenced in the declaration on realised income, shall be recovered from the annual net income obtained in the following seven (7) consecutive years.
 - Annual net losses from transfers of securities other than shares and securities of closed-end investment companies originating abroad shall be carried forward and shall be offset by income of the same category and source achieved abroad in the following seven (7) fiscal years.
- ▶▶ Taxpayers achieving income from independent activities and/or from agricultural activities, ceasing operating during a fiscal year, as well as the taxpayers suspending their activity temporarily shall file a declaration, within 15 days of the date on which the aforesaid events occurred, with the competent tax authority, attaching supporting documents thereto, for the recalculation of anticipatory payments.
- ▶▶ The amendment of Art. 83 refers to the deadline for the submission of the *Declaration on Realised Income* which is the 15th of May of the year following the year in which the income has been realised.
- ▶▶ The annual tax due (as per Art. 84) shall be established by the competent tax authority on the basis of the Declaration on Realised Income by applying the 16% rate to each of the following items:
 - taxable annual net income
 - taxable annual net income obtained from transfers of securities other than shares and securities of closed-end investment companies
 - annual net income achieved from contract-based foreign currency trading and any other operation of the kind.
- ▶▶ In order to levy the tax on the income attributable to a natural entity associated with a Romanian legal entity, a microenterprise which does not generated a legal entity, shall be assimilated to the income achieved from independent activities, from which the mandatory contributions shall be deducted so as to obtain the annual net income.
The income retained by the legal entity on the account of the natural entity in relation to the income achieved from an association with a Romanian legal entity that does not generate a legal entity shall represent anticipatory payment accounting for taxable annual income. The obligation to calculate, retain and pay the tax which is determined in compliance with the methodology established under the legislation regarding the tax on microenterprises income shall devolve on the Romanian legal entity.
- ▶▶ Regarding the income obtained from abroad, the deadline for the submission of the Declaration is the 15th of May of the year following the year in which the income has been realised (Art. 90).

1.5. Tax on Non-residents' Income

- ▶ The amendment to the above-referenced income eliminates the 10% tax on the dividends paid by an undertaking that is a Romanian legal entity or a legal entity based in Romania, established in accordance with the European legislation, to a legal entity that is a resident of a Member State of the European Union or of any of the states belonging to the European Free Trade Association, *i.e.* Iceland, the Principality of Liechtenstein, the Kingdom of Norway, or to a permanent establishment of an undertaking of any of the aforesaid States located in another Member State of the European Union or of EFTA.

1.6. Excise Duties

The major amendments to **Title VII – Excise Duties and Other Special Taxes** refer to the following:

- ▶ publication of the level of harmonised excise duties valid in the 2011 fiscal year;
- ▶ higher excise tax rates for certain energy products and cigarettes;
- ▶ elimination of exemption from the payment of excise duties for the tobacco used in scientific tests and appraisal of product quality;
- ▶ maintenance of excise taxes for coffee and coffee products in the 2011 fiscal year;
- ▶ introduction of new categories of misdemeanours committed during operations with excisable products.

1.7. Social Contributions

According to the provisions of GEO 117, the Tax Code also regulates the following social contributions which are extensively described under the newly introduced **Title IX² – Mandatory Social Contributions**:

- ▶ individual social security contribution and the contribution which should be paid by employer to the Social Security Fund;
- ▶ individual social health insurance contribution and the contribution which should be paid by employer to the National Social Health Insurance Fund;
- ▶ sick leave contribution and social health insurance indemnity payable by employer to the National Social Health Insurance Fund;
- ▶ individual contribution and employer's contribution to the Unemployment Fund;
- ▶ employer's contribution to Occupational Disease and Accident Insurance Fund;
- ▶ contribution to the Fund securing payment of salary debts payable by natural and legal entities in their capacity as employer as per Law No. 200 / 2006, regarding the formation and use of the aforesaid Fund, as amended and supplemented.

The main provisions contained in **Title IX² – Mandatory Social Contributions** refer to the following:

- ▶ definition of tax payers to the social security system;
- ▶ the basis for the calculation of individual social contributions which should be paid by taxpayers in their capacity as employees shall be limited to five (5) times the gross average salary income; the individual social security contribution shall be calculated in consideration of this ceiling by every workplace where income is realised;
- ▶ the basis for the calculation of the social contributions due by employers, by entities assimilated to employers and any payer of salary income or salary-related income may not be higher than the product between the number of the insured for whom the employer should pay such contribution that is differentiated by working conditions and the value corresponding to five (5) times the gross average salary income.

1.8. Amendments to Legislative Acts on Social Contributions

GEO 117 also amends the provisions contained in the social security legislation regarding declarative obligations according to which only one declaration should be submitted on the payment of social contributions, income tax and the nominal record of the insured, introduced by **Government Resolution No. 1397 / 2010**, referred to herein below, as well as provisions regarding the calculation method for social contributions, with a view to harmonising it with the newly introduced **Title IX²** of the Tax Code, namely:

- ▶▶ Law 95 / 2006 regarding the health reform
- ▶▶ Government Emergency Ordinance 158 / 2005 regarding sick leaves and social health insurance indemnity
- ▶▶ Law 76 / 2002 on the unemployment insurance system and stimulation of employment
- ▶▶ Law 200 / 2006 on the formation and use of the Fund securing payment of salary debts
- ▶▶ Law 263 / 2010 regarding the unitary public pension system
- ▶▶ Government Resolution 174 / 2002 on the Methodological Norms for the Application of Law 76 / 2002
- ▶▶ Government Resolution 1850 / 2006 on the Methodological Norms for the Application of Law 200 / 2006
- ▶▶ Law 346 / 2002 on Occupational Disease and Accident Insurance
- ▶▶ Government Emergency Ordinance 58 / 2010 amending and supplementing the Tax Code.

1.9. Amendments to Government Emergency Ordinance No. 77 / 2009 regarding gambling organisation and operation

- ▶▶ Gambling organisers shall allow for people's access to authorised locations only on the basis of an entry ticket valid for 24 hours.
- ▶▶ The entry fee is RON 20 for gambling in casinos and RON 5 for slot-machine gambling.
- ▶▶ Gambling organisers shall monthly transfer the collected entry fee to the State Treasury until the 25th of the following month.

1.10. Amendments to the Tax Procedure Code

- ▶▶ Taxpayers having secondary places of business registered with the tax authorities shall pay all tax obligations related to the activity performed in such places, inclusive of the salary income tax owed by their employees.
- ▶▶ The possibility of tax inspectors to use indirect methods for the reconstitution of the income and expenses which are regulated by law shall extend to the verification of the personal situation of taxpayers that are natural entities.
- ▶▶ Special provisions have been introduced with reference to the verification of natural entities being subject to income tax and of their personal tax situation in this respect, as regulated by Title III of the Tax Code.
- ▶▶ New provisions regulate the minimum level of the differences between the income declared by the taxpayer and his/her tax situation, which trigger the communication of a tax inspection note and request for further information, *i.e.* indirect methods for the establishment of an adjusted taxable base (funding source and expenses method, cash flow method, property valuation method). The procedure for the application of these methods is established under Government resolution.

1.11. Other Amendments

Monitorul Oficial No. 896 / 31.12.2010 has published Government Resolution No. 1355 / 23.12.2010 amending the Methodological Norms for the Application of Law 571 / 2003, regarding the Tax Code, approved under Government Resolution No. 44 / 2004.

This Resolution provides that the applications for VAT refund related to the year 2009 may be filed, as an exception, until 31 March 2011 by taxable entities established in a Member State other than the State from which the refund should be obtained.



Monitorul Oficial No. 887 / 29.12.2010 has published Government Resolution No. 1347 / 23.12.2010 approving the tax rates applicable in 2011 to the transport means specified under Art. 263 (4) and (5) of the Tax Code.

The tax rates have been changed in respect to:

- ▶▶ freight vehicles having an authorised total mass equal to or larger than 12 tons;
- ▶▶ freight vehicle combinations (articulated vehicle or lorry-trailer combination) having an authorised total mass equal to or larger than 12 tons.



Monitorul Oficial No. 862 / 22.12.2010 has published Government Emergency Ordinance No. 115 / 15.12.2010 amending and completing Government Emergency Ordinance No. 196 / 2005 regarding the Environmental Fund.

The main amendments brought by this Ordinance refer to:

- ▶▶ higher value, *i.e.* from RON 1/kg to RON 2/kg, of the contribution owed by economic operators introducing packaging and packed goods into the national market for the difference between the annual targets of reusing the packaging waste by recycling or of incinerating such waste in energy recovery refuse incineration plants and the packaging waste quantities which have been effectively used by recycling or incinerated in the aforesaid plants;
- ▶▶ specific mention of the fact that the contributions, taxes, penalties and any other amounts representing revenues of the Environmental Fund, including, the declaration, establishment, verification, collection, handling of objections and the implementation of security measures, as well as enforcement proceedings in relation thereto shall be managed by the Environmental Fund Management;
- ▶▶ introduction of a new category of revenues of the Environmental Fund, consisting of the amounts collected from the application of the penalty amounting to the RON equivalent of EUR 100, according to the RON/EUR rate of exchange established by the National Bank of Romania on the 1st of May of the respective year, paid by the operator or airplane operator that has not returned the permit for greenhouse gas emissions corresponding to the greenhouse gas emissions generated in the past year.



Monitorul Oficial No. 888 / 30.12.2010 has published Government Emergency Ordinance No. 118 / 23.12.2010 amending and completing Government Emergency Ordinance No. 50 / 2008 which has instituted the tax on vehicle pollution.

The major amendments refer to the following:

- ▶ higher pollution tax shall be levied starting 1 January 2011, subject to the age and engine capacity of the vehicle;
- ▶ for the vehicles which have been purchased with a view to register them in Romania before 31 December 2010 and have not been registered in Romania until the entry into force of the present Government Emergency Ordinance, the pollution tax rate shall be applied as provided under Government Emergency Ordinance No. 50 / 2008, as amended and completed, which was in effect until 1 January 2011.

2. Other Legislative Acts Regulating Social Contributions

Monitorul Oficial No. 79 / 28.12.2010 has published Law No. 286 / 2010 - “State Budget Law for 2011”.

In 2011, the health insurance contribution rates set out in Law No. 95 / 2006, as amended and completed, shall be the following:

- a) **5.2% payable by employers**, stipulated under Art.258 of Law No. 95 / 2006, as amended and completed;
- b) **10.7% payable by the persons having facultative insurance**, referred to under Art.259 (6) of Law No.95 / 2006, as amended and completed;
- c) **5.5%** payable by the other categories of persons (**including employees**) having the obligation to directly pay the contribution or to pay it from other sources.



Monitorul Oficial No. 880 / 28.12.2010 has published Law No. 287 / 2010 - “State Social Security Budget Law for 2011”.

The social contribution rates being applicable to the income achieved from January 2011 on are the following:

- ▶ Social security contribution: normal conditions – **31.3%**, of which 20.8% is employer’s contribution and 10.5% represents employee’s contribution;
- ▶ Social security contribution: special conditions – **36.3%**, of which 25.8 is employer’s contribution and 10.5% represents employee’s contribution;
- ▶ Social security contribution: extraordinary conditions – **41.3%**, of which 30.8% is employer’s contribution and 10.5% represents employee’s contribution.

The individual social security contribution specified hereinabove also includes the 3% contribution rate payable to the private pension funds provided under Law No. 411 / 2004 regarding these funds (as republished and amended).

- ▶ Employer’s contribution to the unemployment fund: **0.5%**
- ▶ Individual contribution to the unemployment insurance fund: **0.5%**
- ▶ Employer’s contribution to the Fund securing payment of salary debts: **0.25%**
- ▶ Employer’s contribution to the Occupational Disease and Accident Insurance Fund: **between 0.15% and 0.85%** applied to the monthly gross income.

Other useful information items:

- ▶▶ The **average gross** salary income used for the substantiation of the State Social Security Budget for 2011 is **RON 2,022**.
- ▶▶ The allowance in the event of the insured's or pensioner's death amounts to RON 2,022, while in the event of death of a family member of the insured or pensioner is in value of RON 1,011.



Monitorul Oficial No. 897 / 31.12.2010 has published Government Resolution No.1397 / 28.12.2010 regarding the model, content, submission and handling of the "Declaration on payment of social contributions and income tax and the nominal record of the insured."

The Resolution enters into force on **1 January 2011**, and its major provisions refer to the following:

- ▶▶ Starting with the payment obligations related to January 2011, which should be declared and fulfilled by 25 February 2011, natural and legal entities in their capacity as employer shall submit the Declaration on payment of social contributions and income tax and the nominal record of the insured, just as the appendices thereto, *i.e.* Appendix 1.1 – "Employer's Annex" and Appendix 1.2 – "Insured's Annex."
- ▶▶ The Declaration shall be submitted by remote-control electronic means using the portal e-Romania.
- ▶▶ As an exception, until 1 July 2011, the Declaration may be submitted to the competent authority (*i.e.* the authority with which the taxpayer has registered as a payer of taxes, duties and contributions), or to the offices accredited by the Ministry of Public Finance on diskettes, to which the hard copy thereof, signed and stamped, should be attached, or may be communicated by registered mail.
- ▶▶ The Declaration shall be filled in by means of the assistance programmes made available for free by the tax authorities or by the National Tax Administration Agency (ANAF) on its site.
- ▶▶ The Declaration shall be submitted monthly until the 25th of the month following the month for which the income tax and social contributions are due.



Monitorul Oficial No. 852 / 20.12.2010 has published Law No. 263 / 16.12.2010 regarding the unitary public pension system.

This Law enters into full force and effect on **1 January 2011** and abrogates the provisions of Law No. 19 / 2000 regarding the public pension system and other social security rights.

One of the major amendments to this Law is the introduction of the minimum monthly insured income in value of RON 708, representing 35% of the gross average salary income, which should be mentioned in the individual declaration on insurance or in the insurance contract. This amendment impacts on the calculation of the social security contribution for several categories of income, such as the income of natural entities authorised to perform economic activities or of the persons who have voluntarily get insured in the public pension system.



Monitorul Oficial No. 888 / 28.12.2010 has published Government Emergency Ordinance No. 123 / 28.12.2010 which abrogates Law No. 130 / 1999 on measures for the protection of employees.

As a result of the abrogation of Law No. 130 / 1999, employers no longer have the obligation to register the employment contracts with the territorial labour inspectorates and to pay a commission to such inspectorates in value of 0.75% and 0.25%, respectively, of the salary fund.

Tax Alert contains a selection of the latest major issues occurred in the Romanian legislative framework, is intended only to provide information and, hence, shall not be deemed to provide professional advice or consultancy. Therefore, we assume no responsibility in this respect.

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