

NEWSLETTER

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Top News:

- ◆ Individual part-time employment contracts are not overtaxed in the area of social contributions if, during the course of a month, individuals earn income from wages based on one or more individual labour contracts that, when added up, exceed the level of the country's minimum gross salary in force
- ◆ The Romanian representative offices of foreign companies must use bank accounts opened in Romania
- ◆ Major simplifications introduced in relation to the Trade Register and important changes to companies law

Summary

- Regulation of procedure to apply exception from overtax of social contributions related to part-time individual labour contracts (ILC)
- New regulations on foreign companies and economic organizations that open representative offices in Romania - including the obligation to use bank accounts opened in Romania
- Amendments on paternity leave by incorporating European directives into domestic legislation
- Important changes on the Trade Register and Law on commercial companies, new provisions being applicable starting the 26th of November 2022
- Norms to apply VAT exemption for operations related to armed forces of other Member States
- Complements to the Fiscal Code on generating fact and VAT chargeability for import of goods that are intended to assure the protection of Romania's national defence interests
- List of payment obligations to the State Budget completed with new fiscal liabilities
- New form 179, Statement on fuel compensation
- Other legislative news
- Ongoing draft laws
- August closing exchange rates

Order 1855/2022 on Procedure to apply provisions of art. 146 para. (5) letter e) of Law 227/2015 on the Fiscal Code (Official Gazette 807/2022)

Summary

The Order regulates the procedure to apply the **exception** from overtaxing social contributions related to part-time individual labour contracts (ILC), if, during a month the persons earn income from wages based on several ILCs which exceed the level of the national minimum gross wage in force in the month when they were obtained.

In these situations, the part-time labour contract is not subject to over taxation. Further, pension contribution ("CAS") and health insurance contribution ("CASS") are due at the level of the calculation base related to income obtained, determined according to rules specific to each contribution (and not at the level of the national minimum gross wage), corresponding to the number of working days of the month when the contract was active.

Details

In the case when, during the month, the ILC is only active for a fraction of that month, the level of the national gross minimum wage for the days worked is established as follows:

(National gross minimum wage guaranteed in payment/Number of working days in the respective month) x Number of working days effectively worked during that month

The period when the ILC is active represents the period when the ILC is not suspended, according to the Labour Code.

In order to apply this exception, employees are obliged to submit to each employer/income payer a **declaration on their own responsibility/affidavit**, stating that they obtained income from salaries or similar to salaries on the basis of two or more ILCs, and the cumulative base for monthly calculation related to them is at least equal to the national minimum gross wage guaranteed in payment.

In the case where, at one of the employers/ income payers, the monthly basis for calculating CAS and CASS related to the income obtained from salaries or similar to salaries, corresponding to the number of days worked that month, is **at least equal to the national minimum gross wage** guaranteed in payment, then the **employees do not have the obligation to submit the declaration on their own responsibility** to the respective employer/payer.

Declaration on own responsibility

The declaration represents a supporting document for each employer/income payer, in order to establish CAS and CASS due in accordance with provisions of art. 146 para. (5) and art. 168 para. (5) of the Fiscal Code, during the period when the employee is in the situation provided for by art. 146 para. (5⁷) letter e) of the Fiscal Code.

To prepare the declaration on own responsibility, each employer/income payer issues to the employee, upon request, a document from which the level of the monthly basis for calculation of the CAS and CASS related to income obtained from salaries and similar to salaries results.

To analyse the situation, the employee adds the monthly basis of calculation related to income obtained from salaries and similar to salaries from each employer, and the resulting amount is compared to the level of the national gross minimum wage guaranteed in payment, in force in the month for which the social contributions are due.

The employer/income payer, depending on the case, has the obligation to register and keep records of these declarations, to place the employee in the situation regulated by art. 146 para. (5⁷) letter e) of the Fiscal Code, that is, over the same month, earns income from salaries and similar to salaries on the basis of two or more ILCs, and the monthly cumulative calculation base related to them is at least equal to the gross minimum wage per country.

The declaration on own responsibility should include the employee's identification data, as well as information regarding the employee's classification in the situation provided by art. 146 para. (5⁷) letter e) of the Fiscal Code. A template for the declaration is provided in the annex of Order 1855/2022.

The **declaration on own responsibility** is submitted **monthly**, during the period in which the employee works according to a part-time ILC, by **the 5th of the month following** the one for which the salary rights are established.

What happens if the employees do not submit the declaration?

If employees do not submit the declaration, each employer/income payer sets the CAS and CASS at the level of the national minimum gross wage corresponding to the number of working days in the month in which the contract was active, if the calculation basis related to the obtained income, determined according to the rules specific to each contribution, is below the level of the minimum monthly gross wage per country guaranteed in payment.

In this situation, the employee's contributions are withheld at the level of the calculation base related to income ob-



tained, set according to the rules specific to each contribution, and each employer/income payer bears the difference in contributions calculated at the level of the national minimum gross wage guaranteed in payment, according to art. 146 para. (5[^]6) of the Fiscal Code. The end result is higher CAS and CASS contributions compared to the ILC framework.

Concrete examples regarding the application of provisions of art. 146 para. (5[^]7) letter e) and art. 168 para. (6[^]1) of the Fiscal Code were discussed at the Tax Group meeting held on the 9th of September. - details here:

<https://taxgroup.ro/>

Adjustment from 2022 within the text of GO 16/2022 to amend and complement Law 227/2015 on the Fiscal Code, as well as to repeal certain normative acts and other financial and fiscal measures, published in the Official Gazette of Romania, Part I, 716 dated the 15th of July 2022 (Official Gazette 794/2022)

New provisions regarding determination of CAS and CASS due for part-time labour contracts apply starting with income related to August 2022. Previous wording was that these provisions would only apply *to income related to the month of August 2022*.

Ordinance 18/2022 on authorization and operation of representative offices of foreign companies and economic organisations in Romania (Official Gazette 779/2022)

Summary

The Ordinance introduces new regulations on foreign companies and economic organisations that are opening representative offices in Romania.

Details

The Ordinance specifically introduces the regulation through which all financial and banking operations carried out by representative offices should be performed through accounts opened at **banks legally constituted on the territory of Romania**, abiding by national and European Union legislation in force. Previously, there was no such regulation, and most foreign companies preferred to use their own bank accounts opened at banks from other countries to pay invoices related to expenses of representative offices located in Romania.

Among the amendments we mention:

- authorization is given by the Ministry of Entrepreneurship and Tourism (previously the Ministry of Trade and Tourism);
- application with request to open a representative office and the issuance of operating authorization of a representative office is prepared electronically through the electronic platform, for a period of at least 1 year, with the possibility of extension for the same period.
- for activity carried out in Romania, representative offices are obliged to register for taxation in Romania, and to pay taxes and fees established according to the Fiscal Code (GD 1222/1990 on the regime of taxes and fees applicable to representative offices of foreign companies or economic organisations in Romania, as well as the rights and obligations related to remuneration of Romanian personnel, is repealed).

Extension beyond the authorization expiry date is only upon request by the representative office, addressed to the Ministry of Entrepreneurship and Tourism, within 30 days before the expiration date, by completing the electronic form on the electronic platform.

The representative office of a foreign legal entity, authorized to operate in Romania, according to law, has the obligation to pay an annual tax of RON 18,000, a tax that is declared and paid to the State Budget by the last day of February of taxation year.

In case a representative office is set or dissolved during a fiscal year, the tax due for that year is calculated proportionally to the number of months of existence of the representative office during the respective fiscal year.

Representative offices set up in Romania during a month of the taxation year have the obligation to calculate tax, submit the tax return to the competent fiscal authority and to pay the tax obligation within 30 days from the date when it was set. The tax is calculated starting from the 1st of the month when it was set until the end of the respective year.

Representative offices dissolved in Romania during the taxation year has the obligation to recalculate tax and submit the tax return to the competent fiscal authority within 30 days from the date when it was dissolved. Representative office recalculates annual tax for the period of activity from the beginning of the year by the 1st of the month following the year when it is dissolved.

Representative offices only perform legal acts and activities in accordance with the object of activity on behalf of the foreign company or economic organisation set by the authorization. **The representative office does not carry out economic activities on its own.**

The represented foreign companies and economic organisations are responsible, according to law, for the legal docu-

ments and activity of their representative offices in Romania.

By derogation from provisions of art. 1373 of the Civil Code, foreign companies and economic organisations are jointly and severally liable along with the employees of representative offices for damages resulting from illegal acts committed by them in the exercise of, or in connection with, the activity.

Foreign companies or economic organizations represented in Romania have the obligation to communicate to the Ministry of Entrepreneurship and Tourism any changes that have occurred in relation to data specified on the authorization of the representative office, as well as regarding the legal status, object of activity, share capital or headquarters of the foreign company, within 30 days from the date these changes occur, and to request, if necessary, a change to the authorization.

It should be noted that authorization can be withdrawn by the Ministry of Entrepreneurship and Tourism before the end of the validity period, within 30 days from the request by authorities having competences for inspection, for the following reasons:

- violation by representative office personnel of legal provisions in Romania regarding money laundering and financing of terrorism;
- non-compliance with the object of activity listed on the authorization and conditions to carry out the activity;
- non-compliance with fiscal obligations.

Emergency Ordinance 117/2022 to amend and complement Law on paternity leave 210/1999 (Official Gazette 845/2022)

Summary

The Ordinance amends Law on Paternity Leave 210/1999, by incorporating EU Directive 2019/1158 on the balance between professional and private life of parents and carers into domestic law.

The Ordinance provides grants of paternity leave and the related allowance to all fathers who have the status of worker/employer, having a labour contract or an employment relation concluded according to law, and eliminates the old provisions that referred to their status as insured within the State's social insurance system.

Details

People with sports activity contracts, individual labour agreements (cooperatives), mandate contracts, management contracts concluded according to Law 66/1993 on management contracts, those who carry out activities in public office and persons with management and administration contracts concluded according to Law 95/2006 on health reform are considered workers/employers.

The Ordinance extends the current period of paternity leave from 5 to 10 working days, and in the case of fathers who have obtained a certificate from a childcare course, this is increased by another 5 days, for each child, and not just for the first born, as was the case up until now. In the case of a father in military service, paternity leave is extended from the previous limit of 7 working days to 10 working days.

During the period of paternity leave, the father benefits from an allowance equal to his salary corresponding to that period. Payment of paternity leave rights is borne, as before, from the employer's salary fund.

New regulations are introduced regarding the employer's obligation to approve paternity leave, being complemented with current regulations regarding the ban to fire/dismiss the worker during paternity leave, as well as sanctions in case of non-compliance with legal provisions.

Paternity leave is granted to ensure effective participation of the father in the care of the new-born child and to facilitate reconciliation of professional life with family life.

Within 30 days from when the Emergency Ordinance enters into force (August 29, 2022), the Ministry of Labour and Social Solidarity will amend methodological norms to include provisions of Law 210/1999 on paternity leave.

Law 265/2022 on the Trade Register and to amend and complement other normative acts impacting registration at the Trade Register (Official Gazette 750/2022)

Summary

The Law regulates Trade Register activity, completely replacing the old regulations (Law 26/1990) and also brings important amendments to Law 31/1990 on commercial companies. The new regulations come into force on the 26th of November 2022.

Details

In the area of the Trade Register, the law regulates the following:



- a) registration procedure in the Trade Register based on a control/verification performed by the registrar of the Trade Register or, as the case may be, based on a court decision;
- b) status of the registrar of the Trade Register, hereafter referred to as the registrar;
- c) organization and operation of the National Office of the Trade Register and the trade register offices related to the courts, hereafter referred to as the *trade register offices*.

The registrar is the specialized legal staff within the National Office of the Trade Register who solves applications to register in the Trade Register.

The new regulations simplify procedures to register with the Trade Register. Thus, the application to register, along with documents necessary for registration, may also be submitted to the office of the trade register through **electronic means**, not only at the counter or via post/fast delivery services. This will be resolved by the registrar within one working day from registration of the application, with few exceptions. Registration with the Trade Register will be completed within 24 hours from the date on which it was ordered by the registrar. Verification of fulfilment of conditions stipulated by law will be carried out through communication between authorities and the use of the information/documents already at their disposal.

The constitutive act/articles of incorporation may be prepared online, by compiling a standard form, with predefined options, which will be available on the Trade Register's website. The constitutive act - standard form or individualized - will be signed with a certified electronic signature by the founders or their representatives.

Applications submitted for registration and supporting documents that were prepared by lawyers or public notaries may also be signed by them using a certified electronic signature and may be transmitted through electronic means.

Simplification measures are also introduced in the case of registration of branches of companies having their main headquarters in an EU Member State, eliminating certain required documents and information that may be obtained or verified through BRIS - Business Registers Interconnection System.

Among the amendments brought to Law 31/1990 on commercial companies, we mention:

- Limited liability companies should pay 30% of subscribed share capital within 3 months from registration date, but prior to starting operations in the name of the company. The remaining subscribed share capital balance will be paid:
 - with cash contribution(s), within 12 months of registration date
 - for contribution in kind, within 2 years of registration date
- Submission of proof that company name is reserved and declarations on own responsibility is eliminated, the latter being integrated into the constitutive act;
- Requirement to submit a specimen signature for legal representatives is eliminated;
- The constitutive act will mention identification data of the real beneficiaries and the ways in which control over the company is exercised.



Order 1779/2022 to amend and complement OMPF 4146/2015 to approve Norms to apply VAT exemption provided by art. 294 para. (1) letters j), k), l), m) and n) of Law 227/2015 on the Fiscal Code and by art. X and XI of the Agreement between Romania and the US on the statute of the US forces in Romania, signed in Washington on the 30th of October 2001, ratified by Law 260/2002 (Official Gazette 795/2022)

Summary

The Order regulates norms to apply VAT exemption for operations related to armed forces of other Member States.

Details

The Order regulates norms to apply VAT exemption for the following operations:

- delivery of goods not transported outside Romania and/or provision of services performed in Romania, either intended for use by armed forces of other Member States or by civilian personnel accompanying them, or for the supply of their canteens, when the respective armed forces participate in a defence action carried out to implement an activity of the European Union within the common security and defence policy;
- the delivery of goods and/or the provision of services to a Member State other than Romania, intended for the armed forces of any Member State other than the Member State of destination, for the purpose to be used by the respective armed forces or by the civilian personnel accompanying them or for the supply of their canteens, when the respective armed forces participate in a defence action carried out to implement an activity of the European Union within the common security and defence policy.

Law 266/2022 to amend and complement Law 232/2016 on the national defence industry, as well as to complement certain normative acts (Official Gazette 752/2022)

Summary

The Law complements the Fiscal Code on generating fact and VAT chargeability for import of goods that are intended to assure the protection of Romania's national defence interests.

Details

The Law defines special rules to set the generating fact and VAT chargeability for situations in which goods are imported with the intent to assure the protection of Romania's national defence interests, as follows:

- the generating fact and VAT chargeability related to these operations occur 30 days from the date when the generating fact and chargeability for custom duties occur, if they are subject to customs duties;
- the generating fact and VAT chargeability related to these operations occur 30 days from the date when the generating fact and chargeability for European taxes occur, if the imported goods would be subject to such taxes, in the situation where they are not subject to custom duties.

Order 1542/2022 to amend and complement ANAF Presidential Order 587/2016 to approve template and content of forms used to declare taxes and fees for self-taxation or withholding tax regimes (Official Gazette 829/2022)

The Order adds a new position in the List of payment obligations to the State Budget – Tax on advertisement of gambling activities.

The tax will be declared in form, 100 *Statement on payment obligations towards the State Budget*, by the 25th of the month following the month when the gambling activity organiser or, depending on the case, the supplier of advertising services, have concluded an advertising contract.

The tax is not paid in the sole State Budget bank account.

Order 1341/2022 to amend ANAF Presidential Order 587/2016 to approve template and content of forms used to declare taxes and fees for self-taxation or withholding tax regimes (MO 761/2022)

The Order updates List of payment obligations to the State Budget by adding the following positions:

- Tax on additional revenue owed by holders of oil agreements related to deep sea offshore and onshore perimeters;
- Compensation related to the right of passage in exchange for limitations on the right of use;
- Compensation granted for all damage caused by exercising the right of passage.

These amounts due are declared in form 100 *Statement on payment obligations towards the State Budget*.

Order 1363/2022 to approve template and content of form 179, Statement on fuel compensation (Official Gazette 754/2022)

The Order approves template and content of form 179, *Statement on fuel compensation*.

The form is submitted by economic operators selling fuel and diesel oil to final customers – individuals and legal entities purchasing fuel from warehouses and/or distribution stations for their own consumption – granting a discount from the selling price and benefitting from compensation paid from the State Budget, as provided by GEO 106/2022.

The form is submitted to ANAF by electronic means by the 25th of the month following the month when the discount was granted.

Order 1788/2022 to amend annex of OMPF 3004/2017 to approve procedure to solve appeals provided by 366 para. (2), art. 369 para. (5), art. 374 para. (2), art. 377 para. (4), art. 382 para. (2), art. 385 para. (4), art. 390 para. (2) and art. 393 para. (4) of Law 227/2015 on the Fiscal Code (Official Gazette 787/2022)

The Order amends the procedure to solve appeals submitted by the economic operator which considers itself wronged or its rights harmed in the case when:

- the competent authority rejected the request for authorization of a location as fiscal warehouse/registered consignee/registered consignor/authorized importer;
- a decision was issued to suspend, revoke, or cancel authorization for a fiscal warehouse;
- a revocation decision has been issued for a registered consignee/registered consignor/ authorized importer.

The appeal is submitted at the headquarters of the issuing authority within 30 days from notification date, under penalty of preclusion. The issuing authority, upon receiving the appeal, will prepare an appeal file, as well as a note in

which it will present information on the case under analysis and its point of view regarding that case. This information will be sent, within 7 days from the date when the appeal was received, to the directorate specialized in solving the appeal.

The issuing authority will notify the appellant of the decision to settle the appeal.

Instruction 22/2022 on the level of NBR reference interest rate (Official Gazette 783/2022)

Starting the 8th of August 2022, the NBR reference interest rate is 5.50% per year.

Order 1522/2022 to amend ANAF Presidential Order 63/2017 to approve template of certain forms used in the field of collecting fiscal receivables, as well as to amend ANAF Presidential Order 3454/2016 to approve the Enforcement Procedure for debtors to collect certain amounts, liquid and due from public authorities or institutions (Official Gazette 818/2022)

The Order updates the template for *Report/Minutes on calculation of additional fiscal receivables that were not established in the enforcement title* provided by OMPF 3454/2016 to approve the Enforcement Procedure for debtors to collect certain amounts, liquid and due from public authorities or institutions.

Order 1/2022 to amend and complement NBR Order 27/2010 to approve Accounting Regulations in accordance with IFRS, which apply to credit institutions (Official Gazette 772/2022)

Projects / Draft legislation

- Draft - ANAF Presidential Order to amend and complement ANAF Presidential Order 2809/2016 to approve Procedure to settle VAT reimbursement claims submitted by non-resident taxpayers and also residents of another EU state.
- Draft – ANAF Presidential Order on Procedure to issue VAT certificates in the case of intra-community purchase of means of transportation, as well as to approve certain forms.
- Draft – ANAF Presidential Order to amend and complement ANAF Presidential Order 2117/2018 to approve template and content of forms and documents used to verify personal fiscal situation.
- Draft – ANAF Presidential Order to amend and complement ANAF Presidential Order 587/2016 to approve template and content of forms used to declare taxes and fees in accordance with the self-taxation or withholding tax regimes.
- Draft – ANAF Presidential Order regarding the declaration of cash on delivery (COD) services carried out by postal service providers on the national territory and to approve template, content and submission methods for informative statement on cash on delivery services carried out by postal service providers on the national territory.
- Draft – Order to amend Annex 4 and Annex 5 of ANAF Presidential Order 1783/2021 on the nature of information that the taxpayer should declare through a standard tax audit file, reporting template, the procedure and conditions for transmission, as well as transmission deadlines and date/dates from which categories of taxpayers are required to submit the standard audit tax file.



We wrote a dedicated article about this draft at the beginning of August. Unfortunately, the Order was not approved even by the end of August. The article may be accessed at following link (in Romanian):

<https://nowium.com/proiect-extinderea-dublarea-perioadelor-de-gratie-pentru-depunerea-raportarilor-saf-t/>

INFO – Valuation of monetary items in foreign currency

The August closing NBR exchange rates to use for valuation of monetary items (cash on hand, receivables, payables) denominated in foreign currency, as well as receivables and payables denominated in RON but pegged to a foreign currency for collection/disbursement are:

1 EUR = 4.8605 RON; 1 USD = 4.8707 RON; 1 CHF = 4.9747 RON; 1 GBP = 5.6662 RON

SOCIAL INDICATORS 2022

2022 Contributions for dependent activities	Employer and beneficiary (for activities considered dependent) (% share)	Employee and dependent worker (% share)
Social security contribution (pension)	→ Nothing due for normal working conditions → 4% for special work conditions → 8% for special work conditions	25% (*)
Contribution to health insurance fund (calculated on gross income)	Not due	10% (*)
Income tax		10% (*)
Work insurance contribution	2.25% (*)	
Disability Fund (for employers with more than 50 employees)	4 x minimum wage for every 100 employees	
The amount of a taxable meal ticket in the sense of income tax	Maximum 30 lei (from 1 July 2022)	
Minimum wage (gross) starting 1 January 2022	→ 2.550 lei → 3.000 lei for employees in the construction field → 3.000 lei for employees in agriculture and food industry (from 1 June 2022)	
Per Diem (in the country) For employees of public institutions For private sector employees (* 2.5)	→ 20 lei → 50 lei	
<p>(*) If the employers in the field of construction, agriculture or food industry have a turnover of at least 80% of the activities defined by law, the following facilities apply for gross salaries between 3,000 lei and 30,000 lei:</p> <ul style="list-style-type: none"> → the employee does not owe income tax and health insurance (CASS) → the pension contribution (CAS) due by the employee is reduced to 21.25% → reduction of the employer's insurance contribution (CAM) due from 2.25% to 0.3375% (applicable when the facility is approved as state aid) 		



Growing Business Together



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