NEWSLETTER

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Top News:

- Romania is one step away from the expansion of the electronic invoicing system, which seems to take place from 1 January 2024. Are you ready?
- 2023 is the first year to report certain information on corporate tax in annual financial statements of certain enterprises and branches/subsidiaries - new details about CbCR in this edition
- 16 August 2023 is the deadline for submitting half-yearly accounting reports
- Facilities for construction and agri-food sector are to be modified/completed
- Tax Group meetings - don't miss the opportunity to stay informed on the latest tax and accounting news - a continuous professional training programme of Nowium - details on www.taxgroup.ro and taxgroup@taxgroup.ro

Summary

→ Generalized application of electronic invoicing starting 2024
→ Correlations and complements to accounting regulations regarding submission of certain information on corporate tax (CbCR) – (Order 1730/2023)
→ Procedure to cancel fiscal obligations through amnesty, where income from other sources and income from gift vouchers may be reclassified (Order 906/2023)
→ Complements to Classification of positions in Romania (Order 291/892/2023)
→ Extension of caregiver leave (for sick child through age 12) and related allowance (Law 179/2023)
→ Change of the form, Hearing Invitation, used as part of the fiscal inspection process (Order 927/2023)
→ Draft – Accounting Report System as of the 30th of June 2023 for economic operators
→ Draft – Change to VAT Return form
→ Draft – Teleworking for employees having children up to 11 years of age as dependents
→ Draft – Amendments brought to Procedure to grant fiscal facilities in the agriculture and food industry
→ Draft – Change to fiscal facilities in the field of constructions

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- → Draft – Change in procedure to apply measures to restructure outstanding fiscal obligations
- → Closing exchange rates for June 2023
- → Social indicators

INFO – Proposal on the derogation granted to Romania by the European Commission to generally apply RO e-Factura system starting the 1st of January 2024

Summary

On the 23rd of June, the European Commission published a proposal for a Council Implementing Decision authorising Romania to introduce a special measure derogating from art. 218 and 232 of the VAT Directive, a derogation that would allow Romania to generally apply electronic invoicing starting the 1st of January 2024.

Details

The proposal will have to be adopted by the European Council to become applicable and, following this adoption, Romania will be able to extend application of electronic invoicing (through RO e-Factura system) to all B2B transactions (between taxable entities established in Romania), starting the 1st of January 2024 and by the 31st of December 2026 or by the date when Member States are obliged to apply new amendments to the VAT Directive on the digital era of VAT, specifically to art. 218 and 232 of that Directive.

Within 30 days from adoption date, ANAF will prepare an order in which the categories of taxpayers that should switch to mandatory electronic invoicing for B2B transactions and the date from which this obligation applies.

The system will remain optional for taxable entities not established in Romania, i.e., for non-residents that do not have a permanent establishment in Romania.

As a reminder, the RO e-Factura system is currently mandatory for the following categories of transactions: those carried out for B2G matters (Business-to-Government) - i.e. public procurements, those related to B2B matters, for a series of goods that are defined as goods with high fiscal risk and those for which invoices are issued based on holiday vouchers. For B2B matters, there are currently no defined reporting deadlines or fines for not submitting electronic invoices, but the new regulations could also introduce provisions in this regard.

On several occasions, Romanian authorities have stated the intention to extend application of the RO e-Factura system starting the 1st of January, but derogation from the European Commission is mandatory (derogation requested in 2022).

We note that Romanian authorities have also requested derogation from art. 178 of the VAT Directive - the right to deduct VAT is granted based on possession of the electronic invoice. This derogation, however, has been waived by the Government of Romania.

Article 218 requires Member States to accept as invoices all documents and messages both on paper and in electronic format. Article 232 provides that the use of an electronic invoice is subject to acceptance by the recipient. Consequently, following approval of the derogation, electronic invoices would be sent through the RO e-Factura system, and the issuer of the invoice would no longer need to obtain the recipient's consent to issue an electronic invoice.

The European Commission proposal may be accessed here: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52023PC0329

We recommend that you start preparing for implementation of the RO e-Factura system as soon as possible, especially where the degree of complexity and volume of transactions is high, so that on the 1st of January 2024 you will be ready for the transition to the new invoicing system.

Order 1730/2023 to regulate certain accounting aspects (Official Gazette 559/2023)

Summary

The Order brings a series of clarifications and complements to provisions of accounting regulation OMF 2048/2022, which implemented requirements to report certain information on corporate tax in annual financial statements of certain enterprises and branches/subsidiaries. These requirements came from the transposition of provisions of the CbCR (Country-by-Country Reporting) Directive into domestic law.

More information about provisions of OMF 2048/2022 may be accessed here: https://nowium.com/wp-content/uploads/2022/09/Nowium_Newsletter_nr_5_Septembrie_2022_EN.pdf

Details

The new provisions on CbCR were introduced starting the 1st of January 2023 and such information will be reported during 2024, being related to financial statements corresponding to the financial year of 2023.

During 2023, some clarifications regarding application of certain provisions contained in (EU) Directive 2021/2101 of the European Parliament and Council were published on the website of the European Commission, as questions and

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answers. This information led to the necessity of completing the provisions and incorporating (EU) Directive 2021/2101 into domestic law.

In this context, OMF 1730/2023 was developed and promoted. This Order complemented provisions of OMF 2048/2022, bringing certain clarifications which mainly refer to the following aspects:

- clarification of the meaning/method to determine income (and its amount) that generates the obligation to prepare/publish the report with information on corporate tax, in the sense that the financial reporting framework based on which annual financial statements are prepared should be taken into account;
- exemplifying the modality to analyse information corresponding to the income level based on which the obligation to prepare the report with information on corporate tax is determined;
- clarifying that the reference to EU entities should be understood as entities registered in the European Economic Area in order to fulfil reporting obligations provided by the Order;
- clarifying the fact that the obligation to prepare the report with information on corporate tax only covers the current financial year, not two consecutive financial years. Therefore, presenting information related to the previous financial year is not required;
- clarifying the fact that a reporting subsidiary, whose financial year is different from that of the parent company (from a third country), fulfils its reporting obligations based on a report that corresponds to the financial year of the parent company, and not its own financial year;
- clarifying the fact that an entity, which has temporarily omitted the presentation of information in case it would cause serious damage to its commercial position, resumes the presentation of this information corresponding to the current financial year and previous financial years for which it did not publish information;
- exemplifying certain situations related to the fulfilment of reporting obligations, depending on the level of the indicator to be verified (recorded income) and/or reporting date.

The above-mentioned provisions are applicable both in the case of Accounting Regulations on individual annual financial statements and consolidated annual financial statements (OMFP 1802/2014), as well as in the context of Accounting Regulations in accordance with IFRS (OMFP 2844/2016).

Order 906/2023 to approve Procedure to cancel fiscal obligations that may be subject to cancelation as provided by Law 43/2023 to cancel certain fiscal obligations, included on the list prepared and sent by the inspection body, as well as modalities for their restitution (Official Gazette 586/2023)

Summary

The Order approves the Procedure to cancel fiscal obligations provided for by amnesty introduced by Law 43/2023, as well as the modalities for restitution.

As a reminder, Law 43/2023 introduced a new amnesty category for the re-classification of income from other sources as salary income and income from gift vouchers obtained by individuals from persons other than employers. This amnesty applies to periods prior to 31st of December 2020. For more details on this law, access our February Newsletter: https://nowium.com/wp-content/uploads/2023/02/Nowium_Newsletter_no_2_February_2023_EN.pdf

Details

The current Order includes:

- Procedure to prepare and transmit the list of fiscal obligations that may be subject to cancellation as provided by Law 43/2023 (by the fiscal inspection structure);
- Procedure to cancel fiscal obligations that may be subject to cancellation provided by Law 43/2023, as well as modalities for restitution;
- Regulation of necessary forms.

According to these procedures, inspection bodies issuing tax decisions will establish the amounts subject to cancellation according to legal provisions mentioned above. This aforementioned information will be included, along with identification elements of the taxpayers, on a list that will be sent to the specialized department within the fiscal authority, in order to issue the Decision to cancel fiscal obligations, as well as to make restitution.

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Order 291/892/2023 to amend and complement Classification of positions in Romania – occupational level (six characters), approved by Order of the Minister of Labour, Family and Social Protection and of the President of the National Institute of Statistics 1832/856/2011 (Official Gazette 526/2023)

Summary

The Order brings a new update to the Classification of positions in Romania – occupational level (six characters).

Details

The following positions are added:

- Merchant seller of non-food goods - 522102
- Agricultural cooperative executive director - 112040
- Dog trainer - 516404
- Engineer for inspection and technical verification of boilers, lifting installations and pressure vessels - 214960
- President of the agricultural cooperative - 131123
- Foreign language teacher - 235301
- Specialist in working with parents (parenting) - 263515
- Qualification systems specialist - 235925

Also, certain occupations are reclassified:

- the occupation "gardener" is moved from the basic group 6111 - Farmers and skilled workers in field crops and vegetables to the basic group 6113 - Farmers and skilled workers in gardening, horticulture and nurseries to code 611303.
- the occupation "floral designer" is renamed "florist designer" and code 216607 in basic group 2166 - Graphic and multimedia designers does not change.

Law 179/2023 to amend art. 26 para. (1) of GEO 158/2005 on leave and social health insurance allowances (Official Gazette 567/2023)

The Law amends art. 26 para. (1) of GEO 158/2005 on leave and social health insurance allowances, the insured persons having the right to days of leave and social health insurance allowance in order to take care of a sick child (up to 12 years old). For a disabled child, the right applies to taking care of the child up to 18 years old, for intercurrent conditions.

Previously, parents could only benefit from this type of leave and allowance for children younger than 7 years old.

Order 927/2023 to amend Annex 2 of ANAF Presidential Order 3666/2020 to approve template and content of forms and documents used in verification of documentation (Official Gazette 587/2023)

The Order amends the *Hearing Invitation* form provided by Annex 2 to ANAF Presidential Order 3666/2020 to approve template and content of forms and documents used in verification of documentation activity. The update of the form was necessary in order to be aligned with complements made to the Fiscal Procedure Code by GEO 188/2022, more precisely with the new provision according to which the taxpayer has the right to present his/her point of view in writing after five working days from the hearing (this may be extended by another five working days, if necessary).

DRAFT NORMATIVE ACTS

Draft – Accounting Report System as of the 30th of June 2023 for economic operators

The Ministry of Finance published the draft Order to approve Accounting Report System as of the 30th of June 2023 for economic operators.

The Accounting Report system will apply to economic operators that have recorded net turnover of more than the RON equivalent of EUR 1,000,000, for the previous financial year.

For preparation of accounting reports as of the 30th of June 2023, inclusion in the above-mentioned criterion is carried out on the basis of indicators determined from annual financial statements of the previous financial year, specifically the trial balance concluded at the end of the previous financial year, using the exchange rate communicated by the National Bank of Romania, valid at the end of the previous financial year.

According to law, entities that did not carry out activity from establishment date until the 30th of June 2023, those that were temporarily inactive throughout the first half of 2023, those established during 2023, as well as legal entities that are in the process of liquidation do not prepare accounting reports as of the 30th of June 2023.

The deadline to submit accounting reports as of the 30th of June 2023 is the 16th of August 2023.

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The proposed system is similar to that of the 30th of June 2022.

Draft – Change of VAT Return

ANAF has published a draft Order to amend template and content of form D300 – *VAT Return*, the changes being necessary as a result of the new VAT exemptions with deduction right introduced in the Fiscal Code by Law 88/2023. Details may be found here:

https://nowium.com/wp-content/uploads/2023/04/Nowium_Newsletter_no_4_April_2023_EN.pdf

In the context of these changes, the intention is to introduce two new rows to form D300 – *VAT Return*, in which taxable entities should report, separately from other VAT exempted operations, according to the new legal provisions.

Requested changes are to add the phrase *"from which"* to the description on row 14 and, after row 14, insert two new rows:

- row 14.1, for delivery of goods/services exempted with right of deduction, provided for by art. 294 para. (5) letter a) and b) of the Fiscal Code, and
- row 14.2, for delivery of goods exempted with right of deduction, provided for by art. 294 para. (5) letter c) and d) of the Fiscal Code.

The request to change the form aims to ensure an easy identification of these operations, as well as to ensure the possibility of carrying out analyses and evaluations.

Draft – Teleworking for employees having as dependents children up to 11 years old

The purpose of the draft law is to complement the Labour Code with a new article, so that employees who have dependent children up to 11 years of age may benefit, upon request, up to 4 days a month of work from home or in a teleworking regime, except in situations where the nature or type of work does not allow the activity to be carried out under such conditions.

In the situation where both parents or legal representatives are employees, the request will have an attached statement on own responsibility of the other parent or legal representative, declaring that, for the same period, he/she did not simultaneously ask to carry out the activity under the regime of work from home or telework. If the parent or legal representative is in one of the situations provided for by art. 3 of Law 277/2010 on the allowance for family support, the statement of the other parent or legal representative is not necessary.

The draft law has already been approved by Parliament and is to be sent to the President of Romania for promulgation, after which it will be published in the Official Gazette.

Draft – Amendments to fiscal facilities granted for agricultural sector and food industry

The Ministry of Finance has published a draft Order to amend and complement the Procedure to grant fiscal facilities in the agricultural sector and food industry.

The draft Order is imposed as a result of legislative amendments and complements brought to the Fiscal Code by GO 16/2022 and approval Law 370/2022, which mainly concerned the following:

- only granting fiscal facilities to individuals who obtain income from salaries and similar to salaries based on an individual labour contract concluded with employers falling under conditions provided for by art. 60 point 7 of the Fiscal Code, a provision that applies starting with the income related to the month of January 2023;
- change to the threshold representing gross monthly income from salaries or similar, up to which fiscal facilities are granted in the agricultural sector and food industry: from RON 30,000 per month to RON 10,000 per month. Fiscal facilities are not applied to the portion of gross monthly income that exceeds RON 10,000.

Provisions of the draft Order consider the following aspects:

- revision of the regulations on procedure to grant fiscal facilities in the agricultural sector and food industry, in order to correlate them with the provisions of GO 16/2022 approved with amendments and complements of Law 370/2022;
- clarification of and complementing current provisions, as a result of situations arising in the process to apply the provisions of OMF 1525/2022 to establish the Procedure to grant fiscal facilities in the agricultural sector and food industry, including those reported by taxpayers.

Among the targeted correlations we mention:

- clarification of the notion of employer, meaning that it also includes any entity without legal personality, which carries out activities defined by at least one of the NACE codes provided for by art. 60 point 7, letter a) of the Fis-

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cal Code and fulfils cumulatively the conditions to grant fiscal facilities and, according to law, may conclude individual labour contracts;

→ clarifications on the phrase "production made, but not invoiced";

→ clarification on regulations on the method to calculate the turnover in order to apply the fiscal facilities in the agricultural sector and food industry. Thus, it is specified that when determining the turnover actually achieved from the activity in the agricultural sector and food industry, the income from the sale of products, **including through own sale units**, is taken into account. Also, it is regulated that the income obtained from sale of products purchased from their own members, for the purpose to resale, by producer groups and organizations in the agricultural sector, producer organizations and other association forms in the fruit-vegetable sector, recognized by the Ministry of Agriculture and Rural Development, as well as by the agricultural cooperatives organized in accordance with the Agricultural Cooperation Law 566/2004, are taken into account when determining the turnover actually achieved by these entities. The regulation considers the legal framework that establishes the obligation for certain forms of organisation such as producer organizations to purchase the products of their own members and trade them.

Draft – Change in fiscal facilities granted in the field of constructions

The Ministry of Finance has published a draft Order to amend and complement the Procedure to grant fiscal facilities in the field of constructions.

As a reminder, individuals obtaining income from salaries or similar to salaries provided for by art. 76 para. (1) - (3) of the Fiscal Code, for activity carried out in Romania, based on an individual labour contract in the construction sector, benefit from fiscal facilities if conditions stipulated by art. 60 point 5 of the Fiscal Code are cumulatively fulfilled by the 31st of December 2028.

The draft Order was developed following the legislative amendments and complements brought to the Fiscal Code by GO 16/2022, mainly concerning the aspects described below:

→ granting fiscal facilities to individuals who only obtain income from salaries or similar to salaries based on an individual labour contracts concluded with employers falling under the conditions provided for by art. 60 point 5 of the Fiscal Code, a provision that applies starting with income related to the month of January 2023;

→ change to the threshold representing gross monthly income from salaries or similar, up to which fiscal facilities are granted in the field of constructions from RON 30,000 per month to RON 10,000 per month. For the part of the gross monthly income that exceeds RON 10,000, fiscal facilities are not applied;

→ revision of regulation on granting fiscal facilities in the construction sector, on the condition regarding the calculation of turnover, given that reporting only considers information/data from the current year;

→ changing the method to determine the share of turnover actually achieved from construction activity to total turnover, by comparing reported values for both indicators to the activity to that carried out on the territory of Romania.

Also, the measures provided by GEO 168/2022 on certain fiscal and budgetary measures, extension of certain deadlines, as well as amendment and complement of certain normative acts were taken into account:

→ starting the 1st of January 2023, for the field of constructions, the gross minimum base salary per country guaranteed in payment and set in money, without including allowances and other bonuses, is set at the amount of RON 4,000 per month, for a regular schedule - 165,333 hours per month, representing an average of RON 24,194/ hour;

→ gross monthly income from salaries and similar to salaries, obtained by individuals for whom the exemption applies, are calculated at a gross employment wage for 8 hours of work/day of at least RON 4,000 per month.

Thus, this draft Order considers the revision of the regulations on the procedure to grant fiscal facilities in the construction sector, in order to correlate them with the provisions of GO 16/2022 approved with amendments and complements by Law 370/2022 and GEO 168/2022.

The draft also clarifies the situations in which, although gross employment salary is at least equal to the national gross minimum base salary guaranteed in payment and set in monetary value, without including allowances and bonuses, at least RON 4,000 per month, the employee obtains income from salaries equivalent to **less** than RON 4,000 per month.

Such examples where activity is carried out for a fraction of the month may be: the individual labour contract begins/ends during the month or the employee has benefited from unpaid leave, etc. Thus, in situations where gross monthly income obtained based on an individual labour contract is less than RON 4,000 per month, fiscal facilities

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are only granted if the following condition is met:

Income will be calculated at gross employment salary at least equal to the national gross minimum base salary guaranteed in payment and set in monetary value, without including allowances and bonuses, of at least RON 4,000 per month, for an average work schedule of 165,333 hours per month.

Draft – Change in the procedure to apply measures to restructure outstanding fiscal obligations

The Ministry of Finance has published a draft Order to amend and complement the Procedure to apply measures to restructure outstanding fiscal obligations, its purpose being to harmonize provisions of OMFP 2810/2019 with amendments and complements that were brought through a series of subsequent normative acts.

Among the most important changes we mention:

- expanding the scope of obligations for which the restructuring of budget obligations may be granted, from the 31st of December 2020 to the 31st of December 2021, as well as changing the deadline to submit notification regarding the intention to restructure budget obligations and deadline to submit the application to restructure budget obligations;
- expanding the scope of obligations for which the restructuring of budget obligations may be granted and with the payment obligations related to amounts granted, during the recent state of emergency, with the title of loan from revenue resulting from privatization recorded in the general current account of the State Treasury, individualized in an enforcement order issued according to law and sent for recovery to the central fiscal body, which do not concern amounts that are subject to state aid;
- reducing the number of applications from two to one during a calendar year or, as the case may be, fraction of a calendar year;
- change in the deadline to submit the quarterly report during the stage of implementation of measures from the restructuring plan, issued by the independent expert, within the procedure to restructure budgetary obligations regulated by GO 6/2019, in the sense that it is to be sent to both the debtor and to the competent fiscal body by the last day of the first month of the quarter following the quarter being reported. (Currently it is transmitted during the first 10 days of the first month of the quarter following the quarter being reported).

INFO – Valuation of monetary items in foreign currency

The June 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 = 4,9634 RON; 1 USD = 4,5750 RON; 1 CHF = 5,0769 RON; 1 GBP = 5,7822 RON

SOCIAL INDICATORS 2023

2023 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 RON 30	
Minimum wage (gross)	→ RON 3.000 → RON 4.000 for employees in the construction field	
Per Diem (in the country) For employees of public institutions For private sector employees (* 2.5)	 → RON 23 → RON 57,5	

(*) If the employers in the field of construction, agriculture or food industry have turnover of at least 80% of the activities defined by law, the following facilities apply for gross salaries between 4,000 lei and 10,000 lei:

→ 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)

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