NEWSLETTER

Nowium - Seemless Tax, Finance & Legal

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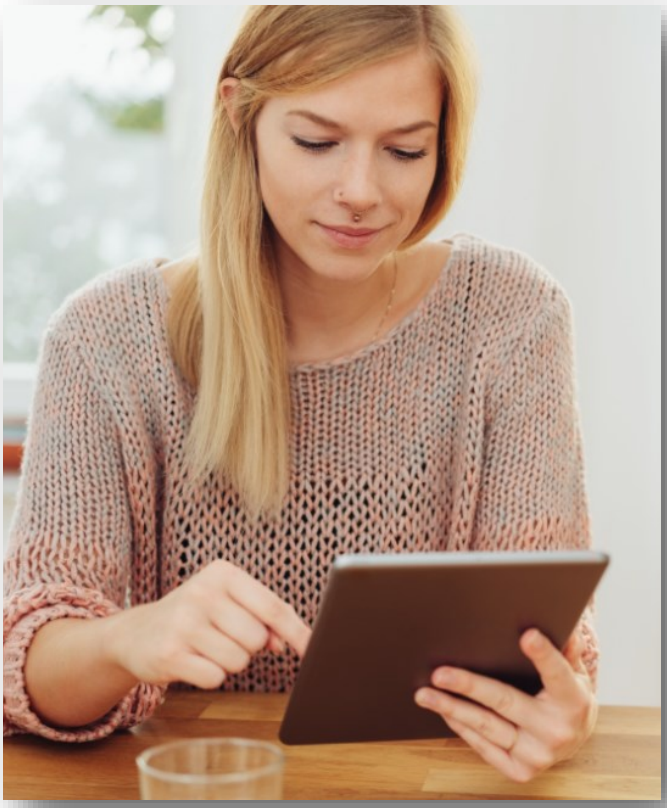

Top News:

- A draft amendment to the Fiscal Code, which aligns the VAT provisions with those in the CJEU Decision C717/19 Boehringer Ingelheim, will allow an important change regarding granting of price discounts and their impact on VAT. We hope that the amendment to be published by the end of 2023.
- New levels of minimum wages in the field of construction and agri-food
- Restrictions on cash transactions have been partially lifted, reverting to the old ceilings
- 7 December - the next Tax Group meeting - don't miss it! Join Tax Group to get the latest tax information and for continuous professional development - details on www.taxgroup.ro and taxgroup@taxgroup.ro

Summary

→ Draft law to amend the Fiscal Code
→ New minimum salary levels in the fields of construction, agriculture and food industries
→ Updated measures on maximum values for cash operations
→ Presentation of documents in a foreign language when verifying personal fiscal situation
→ INTRASTAT thresholds for 2024
→ Complementing provisions regulating legal and fiscal regime applicable to professional cultural workers
→ Complements on granting leave for maternity risk
→ Updated list of payment obligations towards State Budget
→ Amendments on Convention to avoid double taxation concluded between Romania and Luxembourg
→ Closing exchange rates for November 2023
→ Social indicators

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DRAFT LAW to amend and complement Law 227/2015 on the Fiscal Code

Summary

The Government has adopted a draft law to amend and complement the Fiscal Code, by transposing certain provisions of the EU VAT Directive into domestic law. The amendments and complements should be applicable starting the 1st of January 2024.

It is a draft law long-awaited by the business environment, specifically for measures that will expand the possibility to grant price discounts, other than directly to customers. This measure comes from the implementation of ECJ decision C-717/19 - Boehringer Ingelheim.

The draft law was adopted by the Government on the 23rd of November and will be subject to Parliament's approval and presidential promulgation prior to being published in the Official Gazette and entering into force.

Details

The primary measures brought around VAT by the draft law are presented below:

Expected changes in the area of VAT

1. For compatibility with provisions of art. 90 para. (1) of the VAT Directive, as interpreted by ECJ in case C – 717/19, it is necessary to amend art. 287 letter c) of the Fiscal Code, by eliminating the reference to provisions of art. 286 para. (4) letter a) of the Fiscal Code, which conditions the adjustment of VAT tax base for price discounts granted after delivery of goods/provision of services on the fact that they are granted *directly to customers*. Thus, it will be possible to adjust VAT initially collected by taxable entities for all price discounts subsequently granted, regardless of whether they are granted directly to customers or through other price discount mechanisms. It is also necessary to introduce a provision at art. 330 to establish a centralized document based on which taxable entities may adjust VAT tax base for discounts that are not directly granted to customers.

2. Taking into account the European Commission's recommendations regarding Single-Entry Point defined in the VAT Guide, clarification of the deadline to submit declarations/tax returns related to special regimes provided by art. 314, 315 and 315² of the Fiscal Code, with express reference to the last calendar day of the month, even if this is a non-working day, is proposed.

This should help avoid situations where, although declarations related to special regimes provided by art. 314, 315 and 315² of the Fiscal Code, were submitted within the deadline according to Romanian legislation, the taxable entity applying the special regimes in Romania would have been assessed interest and penalties for exceeding the deposit and payment deadlines by the consumer Member States, due to the fact that according to their legislation the deadlines were not observed.

3. The draft law includes a proposal to repeal provisions of art. 316 para. (61) and (62) of the Fiscal Code on the possibility to appoint an authorized fiscal representative for operations provided by art. 293 para. (1) letter m) of the Fiscal Code, considering that the obligations of taxable entities that are not established and not registered under the scope of VAT in Romania, including these operations, may be fulfilled through the fiscal representative provided by art. 316 para. (7) of the Fiscal Code

4. In order to transpose the provisions of (EU) Council Directive 2020/284 amending Directive 2006/112/EC regarding introduction of certain requirements for payment service providers into domestic law, the following amendments are proposed:

- → defining notions such as "payment service," "payment," "payer," "payee," "home Member State," "host Member State," "payment account" by reference to provisions of Law 209/2019 on payment services and to amend certain normative acts, (EU) Directive 2015/2366 of the European Parliament and the Council dated 25 November 2015 on payment services within the internal market, which amended Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and (EU) Regulation No 1093/2010, and repealing Directive 2007/64/EC, were transposed into Romanian law;
- → defining notions such as "IBAN" and "BIC" by referring to provisions of (EU) Regulation 260/2012 of the European Parliament and the Council dated 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in Euro and amending (EC) Regulation No 924/2009;
- → obligation introduced for payment service providers (for which Romania is home Member State, that is, host Member State, as per Law 209/2019) to keep records of payments and payees, in order to allow competent authorities to carry out inspections to combat VAT fraud, in the situation where two conditions are met:
  - o payments are cross-border,
  - o during a calendar quarter, the limit of 25 cross-border payments to the same payee, is exceeded.

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- a payment will be considered cross-border if the payer is located in a Member State and the payee is located in another Member State, in a third territory or a third country;
- in the situation where, for a certain payment, at least one of the payee's payment service providers is located in a Member State, obligation to keep records related to cross-border payments rests with the payee's payment service provider;
- in the situation where, for a certain payment, none of the payee's payment service providers is located in a Member State, the obligation to keep records related to cross-border payments rests with the payer's payment service provider;
- clarifying that the obligation to keep records related to cross-border payments applies for a period of three calendar years, starting the end of the calendar year when payment was performed;
- obligation introduced to make all records available to competent authorities, in accordance with art. 24b of (EU) Council Regulation No 904/2010 dated 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax (VAT), specifically, through a standard electronic form, by the end of the month following the calendar quarter to which the information refers;
- clarification on the method to determine the payer's/payee's location by correlation to IBAN code of payment account or any other element that identifies the location, or in the absence of such elements, by BIC code or any other commercial identification code that identifies the location of the payment service provider acting on behalf of the payer/payee;
- specifying what information the records kept by payment service providers should contain regarding information on payments and payees.

Emergency Ordinance 93/2023 to set minimum national gross salary per month for construction, agriculture and food industry sectors (Official Gazette 993/2023)

Summary

The Ordinance amends the level of the minimum monthly national gross salary for construction, agriculture and food industry sectors.

Details

Starting with income related to the month of November 2023:

- for **construction sector,** minimum national gross salary increases from RON 4,000 per month to **RON 4,582 per month,** excluding bonuses and other similar gains, for a regular work schedule with an average of 165.333 hours/month, representing RON 27.714 per hour;
- for **agriculture and food industry sectors,** minimum national gross salary increases from RON 3,000 per month to **RON 3,436 per month,** excluding bonuses and other similar gains, for a regular work schedule with an average of 165.333 hours/month, representing RON 20.782 per hour.

Emergency Ordinance 98/2023 to amend art. LXIV of Law 296/2023 on certain fiscal and budgetary measures to assure long-term financial sustainability of Romania (Official Gazette 1026/2023)

Summary

The Ordinance was issued last minute, prior to new provisions on the limitation of cash transactions introduced by Law 296/2023 (presented in October edition of the Nowium Newsletter) coming into force. This happens following numerous reactions in the public space given the fact that the new limitations would have strongly affected the activity of many economic sectors.

An updated status of all cash transaction thresholds and limitations is presented below (applicable starting the 11th of November 2023).

Details

Limitation of cash transactions

Thresholds for cash operations (receipts and payments) made by legal entities, authorized self-employed persons, individual or family enterprises, freelancers, individuals carrying out activities independently, associations, and other entities with or without legal personality, are as follows:

- **payments** related to travel advances, within a **daily ceiling of RON 1,000 per person** (previously RON 5,000);
- **receipts** from any of these entities/persons, within the limit of a **daily ceiling of RON 5,000 per person/entity** *(eliminating the limit of RON 1,000 per person/entity)*;
- **receipts** at cash and carry stores, which are organized and operate based on legislation in force, from any of these persons/entities, within the limit of a **daily ceiling of RON 10,000 per person/entity** *(eliminating the limit of RON 2,000 per person/entity)*;

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- **payments** to any of these persons/entities, within the limit of a **daily ceiling of RON 5,000 per person/ entity**, but no more than a **total ceiling of RON 10,000 per day** *(eliminating the limit of RON 1,000 per person/entity, but no more than RON 2,000 per day)*;
- **payments** to cash and carry stores, which are organized and operate based on legislation in force, within the limit of a **total daily ceiling of RON 10,000** *(eliminating the limit of RON 2,000 per person/entity)*;
- **receipts/payments from/to individuals,** representing value of certain deliveries or purchases of goods or services, dividends, assignments of claims or other rights and receipt or reimbursement of loans or other financing, within the limit of a **daily ceiling of RON 10,000 per person**.

Fragmented cash receipts/payments whose aggregate value is higher than the previously specified ceilings are prohibited. This also applies to **fragmenting transactions representing, assignments of claims or other rights and receipt or reimbursement of loans or other financing, dividends, meaning multiple delivery or purchase of goods or services for the contract**, exceeding the provided threshold. As an exception, daily ceiling does not apply for delivery of goods and services for which payment is made in instalments if the purchase contracts are concluded providing for **instalment payments**, according to law.

Collection and payment operations carried out with individuals who hold the capacity of associates/shareholders/directors/individuals/other creditors and only institutional creditors carrying out financial intermediary activities representing **loans**, regardless of their nature and destination, **may only be carried out through non-cash payment instruments** (previous daily ceiling was RON 10,000 cash).

Transactions **between individuals**, other than cash receipts and payments made through institutions providing payment services authorized by NBR or authorized in another EU Member State and where NBR is notified, according to law, as a result of lease of certain goods or rights, provision of services, as well as those representing receipt or reimbursement of loans, are carried out within a daily limit of RON 50,000 per transaction (remains unchanged).

Decrease in cash register ceiling

A ceiling of **RON 50,000 is introduced for cash amounts allowed in the cash register** of legal entities, authorized self-employed persons, individual or family enterprises, freelancers, individuals carrying out independent activities, associations, and other entities with or without legal personality, at the end of each day.
Cash amounts exceeding RON 50,000 are deposited into bank accounts of these individuals/entities within 2 business days.

Surpassing this ceiling is only allowed for amounts earmarked for salary payment and other personnel rights, as well as other operations with individuals, for a period of 3 business days from payment date.

Sanctions

Failure to comply with provisions regarding **cash receipts, payments and maximum amount to be held in cash register** represents a contravention. If cash is not earmarked as described above, then according to criminal law, this represents a crime. It is sanctioned with a fine representing **25% of amount received/paid or held in the cash register**, which exceeds the ceiling set for each type of operation, **but no less than RON 500**.
Granting advantages to customers who make payment in cash is to be sanctioned with a fine amounting to between RON 15,000 and RON 20,000.

Order 1882/2023 to complement Annex no. 1.a to ANAF Presidential Order 2117/2018 to approve template and content of forms and documents used to verify personal fiscal situations (Official Gazette 1044/2023)

Summary

The Order complements existing provisions, specifically mentioning that when verifying personal fiscal situations, documents in a foreign language should be accompanied by Romanian translations, certified by translators authorized by the Ministry of Justice only.

Details

In the situation where documents presented are in a foreign language, for which there are no translators authorized by the Ministry of Justice, the fiscal authority requests that they be accompanied by translations into Romanian made or certified by an embassy/consular office of the State having as its official language the language in which the document was issued.

According to the Fiscal Procedure Code, supporting documents, certificates or documents prepared in a foreign language are not taken into account by fiscal authorities if a translation into Romanian is requested and the taxpayer/payer did not comply with the request.

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Order 1539/2023 on INTRASTAT thresholds to collect statistical information regarding intra-community trade of goods for 2024 (Official Gazette 1041/2023)

Summary

The Order approves Intrastat thresholds to collect information regarding intra-community trade of goods for 2024 (thresholds for 2023 are kept):

- RON 1,000,000 for intra-community supply of goods (delivery).
- RON 1,000,000 for intra-community purchase of goods (acquisition).

Details

Economic operators which, during 2023, carried out trade of goods with EU Member States with a total value of each separate flow (supply and purchase) exceeding the thresholds listed above should prepare and submit an INTRASTAT return to the National Institute of Statistics starting January 2024.

In 2024, other economic operators may become providers of INTRASTAT data if they carry out the supply or purchase of goods having an accumulated value from the beginning of year which exceeds the applicable 2024 thresholds. These economic operators should prepare and submit statistical INTRASTAT returns starting the month when the cumulative value from the beginning of 2024 regarding supply to or purchase from the EU exceeds the INTRASTAT threshold for each separate threshold.

The Order comes into force on the 1st of February, 2024.

Law 346/2023 to approve GEO 21/2023 on Status of professional cultural worker (Official Gazette 1021/2023)

The Law complements provisions regulating legal and fiscal regime applicable to professional cultural workers. According to this, contracts concluded by professional cultural workers are assimilated to individual employment contracts in terms of assigning public procurement contracts or framework service agreements.

Law 342/2023 to complement art. 10 and 31 of GEO 158/2005 on medical leave and social health insurance indemnities (Official Gazette 1029/2023)

The Law complements GEO 158/2005 regarding calculation basis for granting leave for maternity risk, other than employees, such as:

a) associates, limited partners or shareholders;

b) directors or managers who have signed an administration or management contract;

c) members of family enterprise/association;

d) persons authorized to carry out independent activities.

In their case, the calculation basis for social insurance indemnities is the average monthly income of the insured, mentioned in the insurance contract.

Order 1857/2023 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 and withholding tax regimes (Official Gazette 1021/2023)

The Order amends list of payment obligations towards State Budget, as follows:

- Specific tax for certain activities – position 72 is eliminated;
- Tax related to authorization to operate gambling activities for which the obligation to declare and pay is annual/ integral – position 92 is introduced.

The Instructions to fill form 100, *Statement on payment obligations towards the State Budget* are also updated.

Law 330/2023 to ratify second Protocol, signed in Brussels on the 6th of December 2022, to amend Convention between Romania and the Grand Duchy of Luxembourg to avoid double taxation and prevent tax evasion related to income tax and wealth, signed in Luxembourg on the 14th of December 1993, with its subsequent amendments through Protocol and additional Protocol signed in Luxembourg on the 4th of October 2011 (Official Gazette 1020/2023)

Summary

The Law ratifies the second Protocol, signed in Brussels on the 6th of December 2022, to amend Convention between Romania and the Grand Duchy of Luxembourg to avoid double taxation and prevent tax evasion related to income tax and wealth.

Details

The purpose of the Protocol is to amend art. 25 of the Convention between Romania and Luxembourg referring to methods to eliminate double taxation. Therefore, in Romania, double taxation will be eliminated using the fiscal cred-

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it method (regardless of the type of income). Previously, the exemption method for certain types of income was applied.

Thus, when a resident of Romania earns income or owns wealth which, in accordance with the provisions of the convention, is taxed in Luxembourg, Romania will grant:

a) as a deduction from income tax of that resident, in an amount equal to income tax paid in Luxembourg;

b) as a deduction from wealth tax of that resident, in an amount equal to wealth tax paid in Luxembourg.

However, this deduction will not exceed that part of income or wealth tax, as calculated prior to granting the deduction, which is attributable, as the case may be, to income or wealth taxed in Luxembourg.

The Protocol will enter into force on the 1st of January 1, 2024.

Order 4705/2023 to amend Procedure to set information exchange between ANAF, the National Union of Public Notaries of Romania and the National Agency for Cadastre and Real Estate Publicity, approved by Order of the Minister of Public Finance 1489/2018 (Official Gazette 1032/2023)

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TAX GROUP

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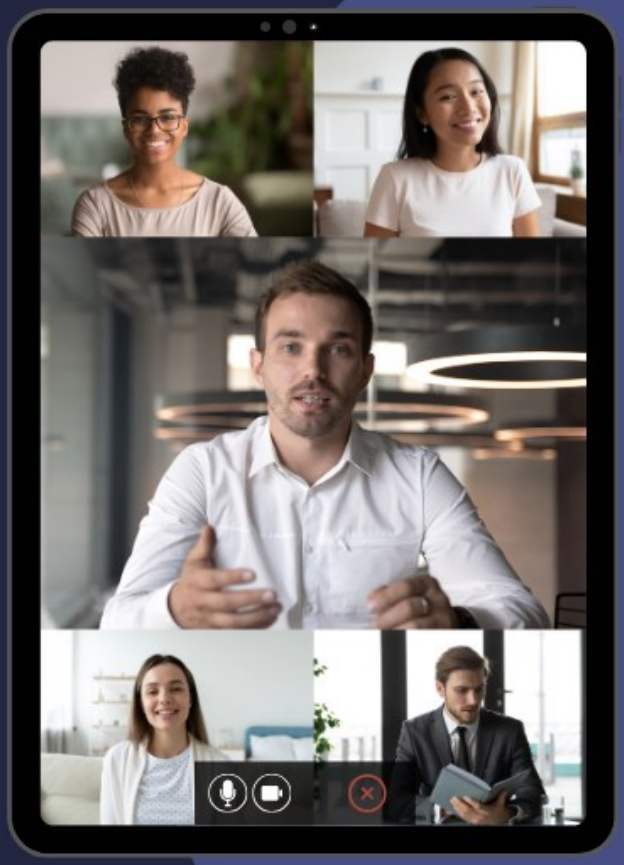
- Important changes of tax legislation



Thursday,
7 December, 10 a.m.

www.taxgroup.ro

Sign-up

INFO – Valuation of monetary items in foreign currency

The November 2023 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 = 4,9726 RON; 1 USD = 4,5313 RON; 1 CHF = 5,1634 RON; 1 GBP = 5,7463 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	→ mMaximum RON 30 → max. RON 35 (1st of August 2023-31st of December 2023) → max. RON 40 (starting the 1st of January 2024)	
Minimum wage (gross)	→ RON 3,300 (starting the 1st of October 2023) → RON 4,582 (starting the 1st of November 2023) for employees in the construction field → RON 3,436 (starting the 1st of November 2023) for employees in agriculture and food	
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 industries have turnover of at least 80% of activities defined by law, the following facilities apply for gross salaries between RON 4,000 and RON 10,000:

→ for income up to RON 10,000, the default CAS rate is reduced to 21.25% (20.25% starting 01.01.2024), and for income that exceeds the ceiling of RON 10,000, the 25% rate is applied

→ by option, the employee may also choose to contribute to pillar II of pensions, i.e. 25% standard rate will be withheld from total income

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Growing Business Together

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Nowium is the One-Stop-Shop solution for integrated accounting, taxation, consulting, legal, payroll and transfer pricing services, founded by a team of experts with over 20 years of experience.

Nowium is a new business concept that defines its values in ambition, creativity, quality, excellence, trust and responsibility. We are a brand new, but of an experienced, strong team, formed over 20 years of activity together.
Many of you already know us!

Why Nowium?
Because we have a strong team of professionals, we have the necessary expertise and a mix of skills that allow us to address the most challenging requests from our clients. In addition, we know very well what each customer expects from us. We know how to adapt to each type of client and deliver them more than expected from a professional in the field.

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