Baker Tilly in South East Europe

Cyprus, Bulgaria, Greece, Romania, Moldova

Main fiscal aspects from January 2017

March 9th, 2017

Agenda

- Changes and amendments in the Romanian Fiscal Code as from 1 January 2017:
  - ***VAT***
  - Micro-Enterprises
  - Profit Tax
  - Income tax and social security contributions
  - Transfer Pricing

VAT

1. New VAT rate and treatment of transitional provisions;
2. Measures applicable to taxpayers who regain VAT code after it was cancelled by the tax authorities;
3. Changes of the rules for VAT adjustment in capital goods;
4. The introduction of VAT flat-rate scheme for farmers;
5. Obtaining VAT Code /Re-applying for VAT

1. New standard rate and transitional provisions

Starting with 1 January 2017, the **standard VAT rate** changed to 

Transitional measures:

- In case of discounts, reduction of the selling price, contract cancelation, returns of stock, etc, the VAT rate and the exchange rate are the same as the **main transaction that generated these events;**
- Exempt EU transactions - rate in force at date of the invoice
- For services the VAT rate is the one in force when the service **was accepted by the beneficiary** or as per **contract clauses**.
- In case of **continuously services** the VAT rate is the one in force at the **date provided in the contract for payment, or the date of issue of the invoice**

2. Measures applicable to taxpayers who regain VAT code after it was cancelled by tax authorities

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VAT code cancelled by tax authorities

Impact on VAT payers		Impact on beneficiaries	
Until December 31st, 2016	**Starting with January 1st, 2017 as date of regain of code**	**Until December 31st, 2016**	**Starting with January 1st, 2017 as date of regain of code**
Recorded in the **Register of entities with cancelled VAT Code**	**Collectible VAT** for **all sales** made during the **cancellation period**	They had no right to deduct VAT, if the invoice was issued by a VAT payer with cancelled code	Will be able to deduct VAT after re-registration of the VAT payer with cancelled code
VAT adjustment for capital goods (land, buildings, equipment, etc)	Adjusted VAT based on a fiscal remained use- full life (negative/ positive adjustment)		
No deductibility of VAT on goods and services in the **cancellation period**	**After** VAT re-registration, the entities adjust the VAT related to **existing stock / capital goods in it's favor**		
The **obligation to collect and pay VAT** for sales	VAT deductible related to the acquisitions during the VAT cancellation period after regain date		
Deductibility of the VAT just for existing stocks and capital goods at the date of regaining the VAT code,			

2. Aspects related to invoices to be issued after re-registration

It is a must to collect VAT for the sales performed during the period of VAT cancellation. Depending on how the entities acted during the period the VAT code was cancelled, the following cases could be:

- The entity collected VAT for taxable transactions, **but did not issue invoices -** after re-registration issue invoices with related collected VAT, not to declare in VAT Return, beneficiaries are allowed to deduct the VAT
- The entity collected VAT for taxable transactions, and **issued invoices -** after re-registration issues corrected invoices, i.e. reversed the initial ones issued during the period in which it had no VAT code and issues new VAT invoices in respect of the delivery/performance during same period (date of new invoice is the date of VAT deductibility)

2. Aspects related to invoices to be issued after re-registration (cont')

- The entity did not collect VAT for taxable transactions but issued invoices - after re-registration it issues corrected invoices – same as above
- The entity did not collect VAT for taxable transactions and did not issue invoices - after re-registration it issues invoices with related collected VAT, not to declare in VAT Return, beneficiaries are allowed to deduct VAT

3. Changes of the rules for VAT adjustment in capital goods

Until December 31st, 2016	Starting with January 1st, 2017
The adjustment of VAT irrespective of the circumstances giving rise to the adjustment is carried out for the entire VAT value in respect of the remaining period of adjustment	When the adjustment will not be generated by a definitive case (such as the sale of a building/ land under exemption), the adjustment will be made only for 1/5 or 1/20th of every year in which persists case that generated the adjustment (e.g. renting under an exemption to a building, or the cancellation of the VAT code to a taxable person)

4. The introduction of VAT flat-rate scheme for farmers - 1

- the flat-rate is 1% for year 2017, 4% for year 2018 and 8% in year 2019

- as example, the following activities will be included:
  - general agriculture, including viticulture;
  - tree fruit (including olives) and of vegetables,
  - flowers and ornamental plants, both outdoors and in greenhouses;
  - production of mushrooms, spices, seeds and propagating materials;
  - operation of nurseries;
  - livestock farm next to the soil cultivation, beekeeping;
  - heliciculture; forestry; fishing (activities referred to in annex VII of Directive 2006/112/EC, which must be transposed into national law)

4. The introduction of VAT flat-rate scheme for farmers - 2

- There are some conditions, such as:
  - ✓ Can **opt** for the application of the **normal VAT regime by notification** to the territorial tax bodies between the 1st and 10th of every month
  - ✓ The beneficiaries will have the obligation to mention purchases **in a separate record;**
  - ✓ Farmers do not deduct VAT on purchases, but neither does not collect VAT on sales of agricultural products/services farm, regardless of turnover from agricultural activities
  - ✓ Does not maintain any sort of records for VAT purposes (excluding intra-Community transactions or economic activities that are not part of the VAT flat-rate system)

5. Obtaining VAT Code / Re-applying for VAT

- Simplified procedure, consisting mainly in the following:
  - submission of the statement "fiscal vector" (010) either upon submission of the incorporation file with the Trade Register for **start-up business** or any time during the year
  - **affidavit** indicating whether the Company conducts economic activities at its head office or outside its head office (to 3rd parties);
  - **affidavit** provided by the shareholders (majority) / administrators of the Company that they have not performed fraudulent acts or have tax record (if fiscal residents in Romania).

5. Obtaining VAT Code / Re-applying for VAT (cont')

- Fiscal authorities will evaluate the risks on the provided information/ additional information will be cross-checked with authorities; if the risks is considered medium / high → interview with authorities

- Registration procedure under intercommunity operators register is canceled with January 1st, 2017; the payers will be recorded by authorities by default

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Micro-enterprises

- Increasing the limit of income for previous year from euro 100.000 to 500.000.
- Notification to authorities of **changing the taxation system** until **25 February 2017** together with the Profit Tax form for the taxable profit obtained in the period 1-31 January 2017.
- **Rate 1%** for micro-enterprises with one or more employees.
- If obtaining income ***more than 500.000 euro or over 20% of income from consultancy and management activities***, the entity is becoming profit tax payer starting with the quarter in which one of these limits was exceeded.
- Existing micro-enterprises with share capital not less than RON 45,000 may **choose to apply profit tax** with 1 January 2017, or with **the quarter** in which that condition is met.

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Profit Tax

- Expanding incentives on reinvested profits in technological equipment, computers and other IT equipment to ***the software*** (acquisition/ production) and ***to the right to use the software***

- Taxpayers who perform exclusively activities of innovation, research and development and connected activities are exempt from profit tax in the first 10 years of activities. For the existing taxpayers , the exemption applies for a period of 10 years from 6 January 2017.

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Income tax and social security contributions

- Starting 1 February 2017, the **minimum gross salary** is RON **1.450** per month

- The **gross average income** for the year 2017 is RON **3,131**

- Health insurance and **medical services subscription** paid by employees are deductible for income tax in an amount of 400 euro annually

- Elimination of **ceiling of 5 times average gross salary for the calculation of** social security for persons having income from salary or wages assimilated

Income tax and social security contributions (cont')

- **Exemption for income tax on wages** for employees hired for a period of 12 months for employers with **seasonal activities in NACE classifications**

- **No additional contribution for health fund** due on investment income (**dividends, interest, transfer of shares and shares**), for the individuals which are already subject to contribution.

- **Meal tickets value** was increased to RON 15

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The obligation of preparation of Transfer Pricing File (TPF)

At ***authorities requests:***

For small and medium-size taxpayers and for large taxpayers not exceeding the threshold value of transactions:

- EUR 50,000 in case of interest costs incurred for financial services;
- EUR 50,000 in case of provisions of services;
- EUR 100,000 in case of transaction involving purchases/sales of tangible or intangible assets.

Preparation deadline: at the request of the tax authorities during a fiscal inspection.

Submission deadline: a period between 30 - 60 days with the possibility to extend only once, with a maximum of 30 days.

As ***mandatory***

For large taxpayers exceeding a certain threshold value of transactions:

- EUR 200,000 in case of interest costs incurred for financial services;
- EUR 250,000 in case of provisions of services;
- EUR 350,000 in case of transaction involving purchases/sales of tangible or intangible assets.

Preparation deadline: at disposal: once with the annual corporate income tax declaration, for every fiscal year.

Submission deadline: in maximum 10 days from the request, but no sooner than 10 days from the expiry of the deadline for preparation.

The exceeded thresholds may result in examination of transfer prices to the other contributors

Fines, penalties and adjustments

- **Failure to submit** or submission of **incomplete documentation** of TP to fiscal authorities may lead to the application of a contravention:

Request during a fiscal audit

Large/ medium size: RON 12.000 – 14.000

Other payers: RON 2.000 - 3.500

Request outside a fiscal audit

Large/ medium size: RON 25.000 – 27.000 (annual required mandatory documentation)

- Estimation of transfer price by fiscal authorities for transactions for which the taxpayer has not justified the principle of market value (in the case of an un-existing TP/presentation of an incomplete documentation)

- Adjustments done be FA at the price of one at the level of the central tendency of the market (median/arithmetic mean), additional obligations that may result from paying profit tax (16%) and accessory obligations

Contact us

CERASELA DRAGOS
Director Tax & Accounting
Baker Tilly, Romania

Tel. +40 21 3156100, Fax. +40 21 3156102
Email: c.dragos@bakertilly.ro