



## THE ROMANIAN CORPORATE INCOME TAX GROUPING – NOW UP AND RUNNING

Starting this August, the fiscal unity system concerning the corporate income tax becomes functional in Romania, further to the enactment of the procedure for the implementation and management of such system through Order no. 1191 issued on August 6, 2021 by the National Agency for Fiscal Administration.

Tax consolidation for corporate income tax purposes has been a constant focal point for the past years on the agenda of the business environment during interactions with tax regulators. Such facility allows losses of one company to be offset against profits of another company part of that fiscal unity.

The system was finally regulated end of December 2020, it entered into force in January 2021, but it was pending procedure enabling enforcement thereof. Once the procedure in place, the facility may be applied starting January 1, 2022 or as of the commencement of the next fiscal year, in case such varies from the calendar year.

### 1. Who may request it?

The fiscal unity system for corporate income tax purposes (the “**CIT Group**”) may be implemented solely between Romanian legal entities and/or legal entities incorporated according to the European legislation and having their registered office in Romania and may include, in certain cases, the Romanian permanent establishment of a non-resident.

An ownership condition of minimum 75 percent of the value/number of the participation titles or voting rights in the relevant entities applies. The ownership condition must be met for an uninterrupted period of at least one year prior to the beginning of the consolidation.

The implementation of the CIT Group is also conditional upon the following requirements to be cumulatively met by its members:

- (i) they are subject solely to corporate income tax, and not to micro-company tax regime and apply the same tax payment system;
- (ii) all of them have the same fiscal year;
- (iii) neither of them is part of another corporate taxpayer group;
- (iv) they do not obtain revenue from night bar, night club, discos or casino activities;
- (v) they are not undergoing dissolution or liquidation.

Both the minimum ownership condition, and the CIT Group participation criteria have to be met throughout the consolidation. Failure to do so triggers forced exit from the CIT Group.

## **2. When can it be requested?**

The request for the approval by the competent tax authority of the implementation of the fiscal unity system must be submitted no later than 60 days before the commencement of the relevant fiscal year. Hence, in case this is intended for 2022 and the fiscal year corresponds to the calendar year, the request and all necessary documents must be submitted by November 1, 2021.

Out of precaution, an earlier filing should be considered to enable swift implementation of the facility, considering that the procedure is new for the tax authorities as well, which may lead to the extension of the deadline for solving the request.

## **3. How it may be requested?**

The fiscal unity system is optional, but once approved it must be maintained for 5 years.

The option must be made by the group through a joint request to be submitted by the member designated to manage the group's corporate income tax obligations. Solely a Romanian legal entity or a legal entity incorporated according to the European legislation and having its registered office in Romania may be designated to such effect.

## **4. Can the CIT Group be modified?**

The CIT Group may be joined by other members, conditional upon meeting all criteria

mentioned above, and may be exited voluntarily, such option by a member to become effective starting the succeeding fiscal year.

The current legal provisions do not regulate the possibility of changing the designated entity, which might happen in practice either based on members' choice, or due to the relevant entity no longer meeting the ownership or participation criteria. This matter is however important, since the designated entity is the one entitled to carry-forward post-consolidation the tax losses that could not be offset during the CIT Group.

## **5. What is the impact of the fiscal unity system?**

Preparation of the transfer pricing file is mandatory for each member of the CIT Group and shall include transaction performed within the group, as well as transactions with other affiliated parties.

Pre-consolidation tax losses shall be set off by the relevant member solely against its own profits, while tax losses during CIT Group shall be considered for consolidated results.

Forced exit or the early dissolution of the CIT Group triggers readjustment of corporate income tax on individual basis, which may lead to tax accessories being computed for the period the relevant entity was member of the CIT Group.

Forced or voluntary exit from the fiscal unity system triggers tax assessment by the competent tax authority.

During its participation to the consolidation, each CIT Group member is severally and jointly liable for the corporate income tax due by the group.

## **6. Final remarks**

In addition to existing tax facilities such as the non-taxation of distributed dividends or of capital gains, as well as the tax grouping for VAT purposes, the newly implemented fiscal unity system contributes to the Romanian tax jurisdiction becoming increasingly appealing for holdings and groups of companies facing various development stages and profitability, especially due to the lower ownership quota required for set up of the CIT Group than compared to other tax jurisdictions implementing the same.

Nonetheless, the opportunity of creating or joining a CIT Group should be carefully considered bearing in mind the impact summarized above and the balance between benefits and drawbacks of such system.

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This article contains general information and should not be considered as legal advice.



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