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Emergency Ordinance on some fiscal-budgetary measures, the extension of certain deadlines, as well as for the modification and supplementation of some normative acts no. 130/2021 (hereinafter referred to as “GEO 130/2021”)

On December 18, 2021, GEO 130/2021 was published in the Official Gazette no. 1202. The Emergency Ordinance introduces a series of amendments to the Fiscal Code and other normative acts (such as tax evasion law, regulation of the tax amnesty, law on value tickets granting, Labour Code).

Law no. 301/2021 on the approval of Government Ordinance no. 8/2021 regarding the amendment and supplementation of Law no. 227/2015 on the Fiscal Code (hereinafter referred to as “Law 301/2021”)

On December 17, 2021, Law no. 301/2021 was published in the Official Gazette no. 1195, introducing a series of amendments to the Fiscal Code (tax consolidation regime in the field of corporate income tax, income from the transfer of real estate from personal patrimony).

I. Provisions of the GEO 130/2021

Amendments to the Fiscal Code

✓ Corporate income tax

- The tax credit related to the expenses for early education is **suspended starting with January 1, 2022 and until December 31, 2022.**
- During the suspension period, the expenses incurred with the functioning of nurseries and kindergartens, managed by the taxpayers, are considered social expenses with limited deductibility and fall under the 5% limit applied on the value of expenses with staff salaries.

✓ Personal income tax

- Amendment under **article 76 paragraph (4), letter a)** of the non-taxable ceiling, from **150 lei to 300 lei/** person, applied in the case of gifts in cash and / or in kind, including under the form of gift vouchers, offered by employers to their employees on special occasions (i.e., Easter, Christmas, March 8, June 1).
- Application of the provisions **of Article 76 paragraph (4) letter x)** (related to the amounts paid by employers for the early education of the employees' children) of the Tax Code shall be **suspended, starting with January 1, 2022 and until December 31, 2022.**
- Amendments are brought to Article **100 paragraph (1)** with respect to the calculation of taxable income derived from pensions. Thus, the taxable income from pensions will be calculated by deducting from the monthly pension income the non-taxable monthly amount of 2,000 lei **and, where applicable, the health insurance contribution.**
- Value tickets in the form of gift vouchers granted to other categories of beneficiaries than employees, as part of marketing campaigns, market studies, promotions on existing or new markets, for protocol, for advertising, other than those provided for in Article 76 paragraph (3) point (h) and paragraph (4) letter a) of the Tax Code, **have been removed from the category of income from other sources.**

✓ Social security contributions

- **Gift vouchers** provided by employers to their employees as per conditions regulated under Article 76 paragraph (3) point (h), were included in the category of taxable income from the perspective of mandatory social security contributions (both at the level of the employee and employer).
- Under **article 142, letter b)** the non-taxable threshold in the case of gifts in cash and/or in kind, including under the form of gift vouchers, offered by employers on special occasions (i.e., Easter, Christmas, March 8, June 1) was increased from **150 lei to 300 lei/person.**
- The application of the provisions **of article 142 letter z)** (related to the amounts paid by employers for the early education of the employees' children) of the Tax Code is **suspended, starting with January 1, 2022 and until December 31, 2022.**
- New categories of taxpayers / income payers to the health insurance system were introduced, as follows:
 - The National House of Public Pensions, through the territorial pension houses as well as the sectorial pension houses of Bucharest, for the individuals who earn income from pensions;
 - Entities that pay pension income other than those referred to above.
- The exemption from paying the health insurance contribution applicable for individuals who derive pension income was eliminated. Thus, **health insurance contribution will be**

due for income derived from pensions, but only for the part of the monthly income that exceeds 4,000 lei.

- A new article, **Article 169 ^2**, is added, according to which individuals who derive pensions from abroad, for which the social health insurance contribution is due, will be required to submit the annual tax return. In the same time, the provisions of the European legislation applicable in the field of social security, as well as the agreements on social security systems to which Romania is a party, will apply, where the case.

✓ VAT

- Starting 1 January 2022, **the 5% VAT reduced rate applies for the supplies of households** with a maximum usable area of 120 sqm, excluding household annexes, **whose value, including the land on which they are built, does not exceed the amount of 450,000 lei (excluding VAT), purchased by individuals** - the provision that was extended in December last year until 1 January 2022.
- In addition, starting 1 January 2022, **the 5% VAT reduced rate applies for the supplies of households** with a maximum usable area of 120 sqm, excluding household annexes, **whose value, including the land on which they are build, exceeds the amount of 450,000 lei, but does not exceed the amount of 700,000 lei (excluding VAT), purchased by individuals, alone or together with other individual/individuals.** The application of the VAT reduced rate is limited to one household per individual.
- **The fulfillment of the condition** regarding the purchase of a single household whose value exceeds the amount of 450,000 lei, but does not exceed the amount of 700,000 lei (excluding VAT) will be verified by registering and consulting the contracts concluded by the public notaries in the **“Register with the acquisitions for which the 5% reduced VAT rate applied”**, organized in this respect. Until the date on which the register becomes operational, the VAT reduced rate will be applied based on the affidavit of customer authenticated by a notary.
- Starting with the supplies made from 1 January 2022, **the 5% VAT reduced rate applies for the supply of thermal energy in the cold season** (the period between 1 November of the current year and 31 March of the following year) to the population, public and private hospitals, public and private educational institutions, non-governmental organizations, religious units, public and private providers of social services, as defined and regulated by the relevant laws in force.
- Starting 1 July 2022, **the obligation to issue electronic invoices through the RO e-invoice system by suppliers who sell under B2B transactions products with high tax risk**, irrespective if the beneficiaries are registered in the RO e-invoice register, **is introduced**. For supplies made between 1 April to 30 June 2022, the transmission of the invoices issued though the RO e-invoice register is optional.

By product with a high tax risk, it should be understood the product for which there is a high risk of tax fraud and tax evasion. The list of products will be established by ANAF, which should justify the classification in this category.

RO e-Transport system for monitoring national transport of goods

- The Ministry of Finance will implement, through ANAF, the national system for monitoring the transport of goods on the national territory, called RO e-Transport. The application procedure will be established later through Ministry of Finance ‘order.

Amendments of some normative acts specific to the energy sector

- The term until which the tax imposed by **Government Ordinance no. 5/2013** regarding the taxation of natural monopoly activities in the electricity and natural gas sector is **prolonged to December 31, 2025**.

- The term until which the tax imposed by **Government Ordinance no. 6/2013** regarding the taxation of the exploitation of natural resources, other than natural gas, is **prolonged to December 31, 2025**.
- GEO 130/2021 brings certain clarifications on how to declare and pay the **80% tax on additional revenues** obtained by electricity producers (computed as the difference between the average monthly selling price of electricity and the fixed tariff of 450 lei / MWh), as regulated by Law 259/2021 for the cold season 2021/2022, related to the period November 1, 2021 - March 31, 2022:
 - the tax return will be filed monthly, until the 25th of the following month, while the payment should be made to the state budget, in a separate budget revenue account;
 - the tax due for the period November 1st - December 31st, 2021 will be declared and paid until January 25, 2022.

Amendments to Law no. 165/2018 on the granting of value tickets

- According to Article 1, paragraph (2), the value tickets shall be issued exclusively **electronically**.
- Value tickets in the form of gift vouchers, issued by the units authorized by the Ministry of Public Finance, will be allowed to be **granted only to** employees. Thus, granting of gift vouchers to other categories of beneficiaries than those mentioned above will be forbidden.
- Meal vouchers, nursery vouchers, cultural vouchers and gift vouchers **issued on paper** according to Law no. 165/2018 on the granting of value tickets, with subsequent amendments and completions, **until January 31, 2022**, are and will remain valid until the expiration of the validity date written on them.
- As of **February 1, 2022**, the authorizations provided to units issuing value tickets on paper format, granted by the Ministry of Finance according to the law, lose their **validity**.

Amendments to normative acts regarding the tax amnesty

- The term provided by the Government Emergency Ordinance no. 69/2020 on the submission of the annulment request is extended until **June 30, 2022**.
- The term provided by the Government Emergency Ordinance no. 19/2021 on the submission of the annulment request is extended until **June 30, 2022**.
- The term provided by the Government Ordinance no. 11/2021 on the submission of the annulment request is extended until **June 30, 2022**.

Amendments to Law no. 241/2005 on for preventing and combating tax evasion

- **Starting with March 1, 2022**, the withholding and non-payment, collection and non-payment, within 60 days from the due date provided by law, of the taxes and / or contributions provided in the attached annex GEO 130/2021 (such as dividend tax, salary tax, etc.) is a felony and is sanctioned with imprisonment from 1 year to 5 years or with a fine.
- If during the criminal investigation or trial the damage caused is fully covered and its value does not exceed EUR 100,000, in the equivalent of the national currency, the penalty with a fine may be applied. If the damage caused and recovered under the same conditions is up to EUR 50,000, in the equivalent of the national currency, the penalty with a fine is applied. Moreover, if the damage caused does not exceed the value of EUR 100,000, in the equivalent of the national currency, and during the criminal investigation or during the trial until a final judgment is pronounced, it, increased by 20% of the calculation basis, at which adds interest and penalties, is fully covered, the deed is not punished.

Amendments to Law no. 53/2003 – Labour Code

- The minimum gross base salary guaranteed in Romania may be paid to an employee only for up to 24 months as of concluding the employment agreement. After expiry of this period, during which the employee shall be qualified or not, the employer is under obligation to pay the employee a higher salary than the minimum gross base salary.
- Such obligation to pay a higher salary than the minimum gross base salary also apply to employees already under an employment agreement of more than 24 months, for a salary equal to the minimum gross base salary.

II. Amendments brought-in by Law 301/2021

Corporate income tax consolidation regime

- Law 301/2021 brings several clarifications on how to determine the corporate tax due by the corporate tax consolidation group, such as:
 - ✓ how to compute the tax exemption for reinvested profits and the share that is allocated to each member; how the correspondent reserve should be constituted by each member;
 - ✓ the way the tax exemption provided by GEO 153/2020 for the incentive of the increased equity should be computed.

Calculation of income from the transfer of real estate from personal patrimony

- Under Article 111, paragraphs (4) and (5) were amended in what regards the declaration for taxation of the minimum value of income from transfer of real estate. Thus, in case the declared value as per the act transferring the right of the ownership is lower than the minimum market value, the aforementioned taxable values will be calculated and established by the public notary chambers, **together with authorized expert evaluators** as per the law, **at the level of the market value, not at the level of the declared value.**

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