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1. Draft Law on the distribution of dividends on a quarterly basis

A measure long-requested and awaited by investors (shareholders) has finally been approved: on 13th June 2018, the Romanian Chamber of Deputies adopted Draft Law no. 265/2017, which grants the associates or shareholders of companies the possibility to distribute dividends on quarterly as well as an annual basis.

Dividends can thus now be distributed to shareholders on a quarterly basis at a level to commensurate with their participation in the paid-up share capital based on the interim financial statements, and on an annual basis, subsequent to the necessary adjustments being made according to the annual financial statements, unless the articles of association state otherwise.

Adjustment of the amounts distributed during the fiscal year must take place after approval of the annual financial statements, while dividends distributed and paid in excess during the fiscal year must be returned within 60 days of the date of approval of the annual financial statements.

Source: *Draft Law to amend article 19, paragraph 3 of Law no. 82/1991 (Accounting Law), amend and supplement Law no. 31/1990 (Company's Law) and amend Law no. 1/2005 on establishment and functioning of the corporation, published on the Romanian Chamber of Deputies web-site www.cdep.ro and Government Ordinance no. 13/2011 on the legal and penalty interest on financial liabilities, as well as the regulation of financial-fiscal measures in the banking sector.*

2. Additional facilities in public procurement procedure

Emergency Ordinance no. 45/2018, amending and supplementing legislative acts with an impact on the public procurement system was published on 4th June 2018.

As a result, companies may now take part in procedures for the allocation of public procurement contracts even if the amount of owed and residual taxes, charges and contributions to the general government budget is less than RON 10,000.

Similarly, the maximum level of company's liabilities at which they are allowed to participate in tenders has been increased from RON 4,000 to RON 10,000.

A further amendment covers the right of the contracting authority to carry out contracts at the same time as public procurement procedures only in emergency situations, e.g. natural disasters, which require the continuation of the latter.

With the aim of reducing the number of unjustified contestations and to ensure that public procurement procedures are carried out as quickly as possible, the ordinance increases the level of the fees charged for the filing of complaints and contestations, in an attempt to bring matters into line current European practice.

Source: *Emergency Ordinance no. 45/2018 to amend Law no. 98/2016 on public procurement, Law no. 99/2016 on sectorial procurement, Law no. 100/2016 on work concessions and services concessions, Law no. 101/2016 on remedies and appeals concerning the award of public procurement contracts, the sector contracts, works concession contracts and service concession contracts, and on the establishment and functioning of the National Council for Solving Complaints.*



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3. Draft Law: end of bearer shares!

The Romanian Government has adopted a Draft Law for the prevention and combating of money laundering and terrorism financing that eliminates bearer shares and replaces them with registered shares.

According to the Draft Law, should a joint stock companies or limited liability joint stock company not convert its bearer shares into registered shares within 18 days of the law coming into force, the company in question will be dissolved.

Moreover, under the new law, all reporting entities are obliged to inform the National Office for the Prevention and Control of Money Laundering in the event of any suspicious transactions or transactions performed in cash, whether in RON or foreign currency, with a RON equivalent of 10,000 EUR or more.

Source: *Draft Law on the preventing and combating of money laundering and terrorism financing, adopted by the Romanian Government on 31st May, 2018 and yet to be published in the Official Gazette of Romania.*

4. The European Commission has issued a Proposal to amend the VAT Directive as regards taxation of trade between member states

In brief, some of the main topics that are expected to be amended are:

- The concept of an intra-Community acquisition of goods as a transaction subject to VAT will be repealed. It is proposed that a cross-border B2B supply of goods within the Union, from one Member State to another Member State, will give rise to a single transaction for VAT purposes: an intra-Union supply of goods. Exceptions from this rule will include, for example, supplies of goods with assembly or installation, certain supplies of goods that are exempt.
- For intra-Union supplies of goods, the supplier will in principle be liable for the payment of VAT in the Member State of arrival of the goods. The supplier would thus charge VAT at the rate applicable in that Member State. Exceptions from this rule will be available in certain cases, including the case where the customer is a certified taxable person (i.e. fulfils certain criteria). In this case, the customer will pay the VAT due by way of reverse charge in the Member State of arrival of the goods.
- Intra-Union supplies of goods should no longer be included in the recapitulative statements, but in the online reporting system (One Stop Shop). The obligation to submit recapitulative statements is therefore only maintained for services.

The envisaged date of entry into force is 1 July 2022.

Source: *Proposal for a Council Directive amending Directive 2006/112/EC as regards the introduction of the detailed technical measures for the operation of the definitive VAT system for the taxation of trade between Member States, Brussels, 25.5.2018 / COM(2018) 329 final*



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5. Romania has approved the Multilateral Competent Authority Agreement for the exchange of Country-by-Country Reports

The Government Decision approving the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country (CbC) Reports, signed in Bucharest on 19 December 2017, entered into force on 20 June 2018.

Based on this Agreement, the Romanian authorities will exchange annually and on an automatic basis the CbC Reports received from reporting entities resident for tax purposes in Romania with all such other competent authorities of jurisdictions with respect to which it has this Agreement in effect, and in which, on the basis of the information in the CbC Report, one or more constituent entities of the multinational enterprise group of the reporting entity are either resident for tax purposes or are subject to tax with respect to the business carried out through a permanent establishment.

The information received pursuant to the Agreement remains confidential and is used for the purpose of assessing high-level transfer pricing risks and other base erosion and profit shifting related risks, as well as for economic and statistical analysis.

The Agreement will come into effect between two competent authorities under certain conditions. The list of the competent authorities that have signed the Agreement as well as the list of the competent authorities between which the Agreement is in effect are published on the OECD website.

Source: Government Decision no. 387/2018 for the approval of the Multilateral Agreement of the competent authorities for the exchange of reports for each country, signed in Bucharest on 19 December 2017, published in the Official Gazette no. 507/20.06.2018

6. VAT on advance payments for acquisitions that are no longer performed may be deducted under certain conditions

The Court of Justice of the European Union recently ruled in two cases concerning two German individuals, registered as VAT taxable persons, who performed advance payments for the acquisition of goods from two German suppliers. The suppliers have since become subject to insolvency procedures and have neither delivered the goods nor repaid the advance payments.

The individuals in question requested from the German tax authorities the reimbursement of the VAT related to the advance payments, but their requests were denied.

The Court ruled that the potential buyer may not be refused the right to deduct the VAT on advance payments made for purchases which no longer take place, provided that the payment has already been made and received and that, at the time the payment was made, all the relevant information concerning the future supply could be regarded as known to the buyer and the supply of the goods appeared to be certain. Otherwise, if the



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buyer knew or should reasonably have known that the supply was uncertain, the VAT deduction right may be refused.

Source: CJEU judgement in joined cases C-660/16 - Finanzamt Dachau against Achim Kollross and C-661/16 - Finanzamt Goppingen against Erich Wirtl

7. The Court of Justice of the European Union has ruled that input VAT on acquisitions performed during a period subject to a tax audit may be deducted

The case in question related to a Romanian company, Zabus Siret SRL, which was subject to a VAT audit covering the period May-November 2014. After completion of the VAT audit, the company requested the refund of the following amounts:

- an amount recorded as a result of a correction of the VAT return for one of the audited months
- a second amount resulting from the correction, in 2015, of a transaction performed in 2014 for which the company identified supporting documents after the conclusion of the tax audit

The company was then subject to a second VAT audit but the Romanian tax authorities rejected the refund of the aforementioned amounts on the grounds that they related to transactions carried out during an already audited period.

The Court of Justice of the European Union ruling states that as long as the VAT deduction right is exercised (based on correction) during the statute of limitation period it cannot be denied on the sole ground that the correction relates to an already audited period.

Source: CJEU judgement in case C-81/17 - Zabus Siret SRL against the Regional General Direction of Public Finance Iasi – County Administration of Public Finance Suceava

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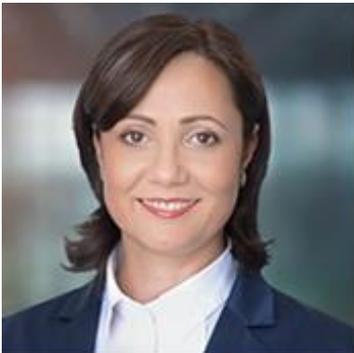
Kind regards
Your TPA Team



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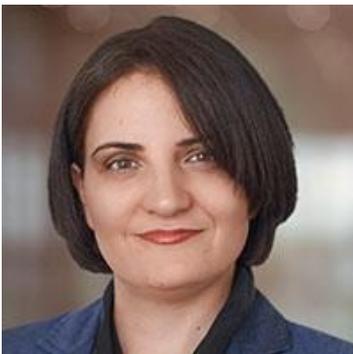
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