



Tax & Legal Newsletter August 2021

1. New procedures on fiscal group for corporate tax purposes, SAF-T reporting, and the simplified tax return.

The authorities recently introduced a series of legislative amendments and clarifications, as outlined below:

Profit tax

The procedure and corresponding forms for the implementation and administration of fiscal groups for corporate tax purposes have been approved.

Source: Order no. 1,191/2021 of the President of the National Agency for Fiscal Administration approving the Procedure for the implementation and administration of fiscal groups for corporate tax purposes, as well as the template and content of various forms, in the format published on 6 August 2021.

Income tax

The procedure has been approved for establishing ex officio the annual tax liabilities due by individuals who have obtained income in the form of allowances pursuant to GEO no. 30/2020 and GEO no. 132/2020, in the context of the Covid-19 pandemic.

Individuals who fall into this category include professionals, or persons who have concluded individual employment agreements and whose activity was interrupted during the state of emergency. The procedure also applies to lawyers who received allowances as a consequence of a decrease in their activity as a result of the Covid-19 pandemic.

For the aforementioned allowances the submission of a tax return is obligatory according to the law.

Source: Order no. 1,251/2021 of the President of the National Agency for Fiscal Administration on the amendment and supplementation of Order of the President of the National Agency for Fiscal Administration no. 2,862/2019 approving the Procedure for the ex officio establishment of annual personal income tax, as well as the template and content of various forms, in the format published on 20 August 2021.

Value added tax

The option to submit a simplified VAT declaration has been introduced for taxable persons who only carry out operations within the country.

Taxpayers can opt to fill out the simplified VAT return by ticking the corresponding box on the form.

The simplified VAT return can be used starting with declarations of tax obligations relating to the month of July 2021.

Source: Order no. 1,253/2021 of the President of the National Agency for Fiscal Administration approving the template and content of Form 300 ("Value Added Tax Return"), in the format published on 17 August 2021

Other tax incentives

The Taxpayer's Guide for the preparation and submission of informative statement D406 regarding the standard fiscal control file (SAF-T) has been published. This is a draft document and may be subject to change prior to its legal implementation.

This document provides several clarifications regarding reporting deadlines, taxpayer obligations and potential fines for non/incorrect reporting, as well as various technical specifications applicable to mandatory items.



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Informative statement D406 is to be submitted electronically, either monthly or quarterly, following the fiscal period for which the VAT is due. Taxpayers not registered for VAT purposes will submit the SAF-T file on a quarterly basis. Submissions of XML files will happen in the same way as submissions of tax returns.

The authorities are introducing a grace period of 3 months for the first reporting obligation, starting with the date on which the submission obligation becomes effective for the taxpayer in question.

SAF-T reporting will become mandatory as of 1 January 2022 for large taxpayers, while other categories of taxpayer will be enrolled in the reporting system at a later date, i.e. in 2022, respectively in 2023.

Source: Draft issued by the National Agency for Fiscal Administration, published on 9 August 2021

2. New opportunities for investors from the autumn: crowdfunding

Regulation (EU) 2020/1503 of the European Parliament and of the Council of 7 October 2020 on European providers of crowdfunding services and amending Regulation (EU) 1129/2017 and Directive (EU) 2019/1937 ("European Regulation 2020/1503", hereafter the "Regulation") will be applied directly in all Member States of the European Union, including Romania, from 10 November 2021.

Consequently, as of November companies seeking to attract financing will be able to use the crowdfunding system, which will allow them to obtain funds from any natural or legal person looking to invest.

According to the new Europe-wide regulations, crowdfunding platforms have been removed from the scope of Directive 2014/65/EU on markets in financial instruments, meaning they are not subject to capital market and investment service rules.

A. Types of crowdfunding

The Regulation regulates the following types of crowdfunding:

- the granting of loans (debt crowdfunding);
- investments in the share capital of the project company (equity crowdfunding).

According to the new regulations, only financing offers with a value of up to EUR 5 million for a period of 12 months per project fall under the scope of the Regulation.

The Regulation further stipulates that crowdfunding based on rewards and donations is not available to project developers who are consumers within the meaning of art. 3 letter (a) of Directive 2008/48, where a 'consumer' is defined as a natural person who while undertaking operations covered by this Directive acts for purposes unrelated to his/her trade, business or profession.

B. Operating conditions

Crowdfunding platforms may be provided only by legal entities established in the European Union that have been authorised as providers of crowdfunding services (in Romania, by the Financial Supervision Authority, ASF) and fulfil the obligations established by the Regulation with respect to the following:

- due diligence requirements (lack of criminal record for all individuals involved in the administration of the potential provider of crowdfunding services and shareholders holding 20% or more of the share capital or voting rights);



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- the establishment of guarantees (suppliers always have prudential guarantees that are at least equal in value to the largest of the following: EUR 25,000 or a quarter of the previous year's fixed overheads, revised annually, which will include the cost of administering the loans for a period of three months, where the crowdfunding service provider also facilitates the granting of loans);
- investor information (a file containing essential information relating to the investment will be made available to potential investors);
- testing investor knowledge to ensure that potential unsophisticated investors understand the level of risk associated with crowdfunding;
- reporting to the competent authority (in Romania, the ASF), etc.

Moreover, crowdfunding service providers must demonstrate that the company seeking to obtain financing has not infringed any commercial, insolvency, financial services, anti-money laundering, anti-fraud or anti-liability legislation.

For a period of 24 months beginning on 10 November 2021, if in a Member State the threshold for the total cost of the publication of a prospectus in accordance with Regulation (EU) 2017/1129 is less than EUR 5,000,000 then said Regulation shall apply in that Member State only in respect of crowdfunding tenders for which the total value exceeds the value of the aforementioned threshold.

Source: Regulation (EU) 2020/153 of the European Parliament and of the Council of 7 October 2020 on European providers of crowdfunding and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937 and Directive (EU) 2020/1504 of the European Parliament and of the Council of 7 October 2020 amending Directive (EU) 2014/65 on markets in financial instruments, both published in the Official Journal of the European Union no. L 347/20.10.2020.

3. Amendments to fire safety permit

On 30 June 2021, the legislative framework regarding fire safety approvals was amended. The most important changes are as follows:

- commencing works for new constructions and refits or the modification and/or change of intended use of existing buildings is to take place only after first obtaining a fire safety approval;
- it will be necessary to obtain a fire safety approval in the following situations:
 - a) modifications to non-structural, demountable partitioning made of light materials;
 - b) changes of intended use in situations where there is no need for construction/demolition works for which the law requires the issuing of construction/demolition permits in keeping with the provisions of the approved urban planning regulations;
 - c) intervention works to implement measures required under current fire prevention and fire fighting legislation, namely: the execution of specific fire prevention and fire fighting installations with a view to obtaining a fire safety approval; and temporary non-structural partitioning works, as well changes to the intended use of the buildings, where these works can legally be carried out without a building permit.
- the commissioning of new and existing structures and refits for which a modification and/or change of intended use has been made is to take place only after obtaining the fire safety authorisation, with failure to respect with this requirement being punishable with a fine of between RON 20,000 and RON 50,000;
- a fire safety permit remains valid in the event of a change to the intended use of a building or space within a building with mixed functions for which no building permit is legally required under certain conditions.



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The categories of buildings and refits subject to fire safety approvals and authorisation is to be approved by Government Decision, followed by the drawing up of the methodological norms for the procedure for fire safety approval and authorisation.

Source: Emergency Ordinance no. 80/2021 amending and supplementing various normative acts in the field of emergency management and fire protection, as published in the Official Gazette no. 647 of 30 June 2021

This newsletter is a service of TPA.

Kind regards,
Your TPA Team

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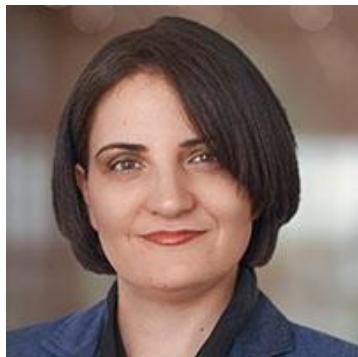
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