



Tax & Legal Newsletter November 2022

New amendments and clarifications to the Fiscal Code and the Fiscal Procedure Code. Digitalisation of the Trade Register and the changes to the articles of association

The authorities recently introduced a number of legislative amendments, as follows:

1. Amendments to the Fiscal Code

On 26 November 2022 it was sent for promulgation (and is currently awaiting publication in the Official Gazette), Law no. 628 on the approval of Government Ordinance no. 16/2022 amending and supplementing Law no. 227/2015 regarding the Tax Code was published in the Official Gazette. It is in fact the normative act approving with amendments and additions Government Ordinance no. 16/2022, published in the summer of this year, which introduced a number of new rules to the Romanian tax environment. We present the main amendments introduced by Law no. 628/2022 below.

Corporate income tax

- Research and development activities eligible for the additional deduction when determining taxable income must fall under the categories of applied research and/or experimental development relevant to the activity carried out by the taxpayer.

Micro-enterprise tax

- Income derived from tax consultancy work corresponding to NACE code 6920 ('Accounting and auditing activities; tax consultancy') has been removed from the consultancy income category. In other words, companies which earn tax consultancy income corresponding to NACE code 6920 in excess of 20% of their total income will no longer be obliged to apply the provisions of Title II ('Corporate income tax') of the Tax Code, provided they comply with the remaining conditions imposed by law for the application of micro-enterprise tax.
- The provisions relating to the new threshold of EUR 500,000 will apply starting with income relating to 2023, thus avoiding any retroactive application.
- Companies in the HoReCa sector could, under certain circumstances, end up paying both micro-enterprise tax and corporate income tax from 2023.

Dividend tax

In the case of dividends distributed based on interim financial statements drawn up during 2022, the dividend tax rate is 5%, without further adjusting the tax on the dividends in question.



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Income tax

- To determine the share of actual turnover derived from construction activity in total turnover, the indicator for actual turnover derived from construction activity now only includes revenue derived from construction activity carried out on Romanian territory, while the indicator for total turnover includes revenue derived from all activity carried out on Romanian territory. Previously, the total turnover indicator included revenue derived from activity carried out both on Romanian territory and outside Romania.

Obligation to own a POS terminal

- Legal additions and clarifications are introduced such that legal entities engaged in retail and wholesale trading activities, as well as those engaged in the provision of services generating cash receipts in excess of RON 50,000 a year, will be subject to the obligation to own a POS terminal. The 'provision of services' activity, which is missing from the published form of Government Ordinance no. 16/2022, has also been defined.

Local taxes

- Entry into force of the new provisions on local taxes provided for under Government Ordinance no. 16/2022 is postponed until 2025.

Source: Draft Law no. 628/2022 adopted by the Chamber of Deputies on the approval of Government Ordinance no. 16/2022 amending and supplementing Law no. 227/2015 regarding the Tax Code, revoking some normative acts and other financial-fiscal measures, in the form sent for promulgation on 26.11.2022

2. Amendments to the Fiscal Procedure Code

The list of risk sub-criteria considered by the tax authority when determining a taxpayer's tax risk class has been approved.

The fiscal risk sub-criteria, developed on the basis of the general risk criteria, are as follows:

- For the criterion pertaining to fiscal registration**, sub-criteria have been introduced covering:
 - non-registration for the purpose of the declaration and payment of tax obligations (e.g. for VAT, corporate income tax, micro-enterprise tax, social contributions, etc.)
 - non-registration for tax purposes in the case of the carrying out of activities, the obtaining of income and other situations provided for by law for which tax registration is mandatory.
- For the criterion pertaining to the submission of tax returns**, sub-criteria on late submissions/non-submissions/erroneous submissions of tax returns have been defined.

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- c) **As regards the reporting level**, sub-criteria are introduced covering:
- inconsistencies or discrepancies between the data contained in tax returns and the data contained in other legally required forms submitted by the taxpayer as well as information transmitted by third parties
 - incorrect declarations of the rate and amount of taxes, duties and contributions by the taxpayer
 - the reduction of profitability.

d) For the criterion pertaining to the fulfilment of payment obligations to the general consolidated budget and to other creditors, sub-criteria are established for the late payment/non-payment of tax obligations and the insolvency of taxpayers.

In addition, for each of the general tax risk criteria mentioned above, the risks associated with shareholders/associates/directors/other persons are also taken into account.

Source: Order no. 2017 issued by the president of the National Agency of Fiscal Administration regarding the approval of the sub-risk criteria developed based on the general criteria provided for under art. 7 para. (7) of Law no. 207/2015 regarding the Fiscal Procedure Code, published on 17 November 2022

3. Clarifications regarding the application of the reduced VAT rate in the sale of housing

The amendments adopted introduce the definition of homes which, at the time of sale, can be occupied as such, in the context of the application of the lower 5% VAT rate.

According to the new definition introduced to the Fiscal Code, in order to apply the lower rate residences must meet the following criteria:

- the owners must have free, individual access to the living space, without disturbing the possession and exclusive use of the space owned by another person or family
- they must have access to electricity and potable water, controlled sewage and waste disposal
- they must consist of at least one rest area, a food preparation area and a sanitary unit, irrespective of the existing facilities and the state of completion at the time of delivery.

Source: Law no. 301 on the approval of Government Emergency Ordinance no. 31/2019 regarding the granting of fiscal facilities and on the amendment and supplementation of Law no. 227/2015 regarding the Fiscal Code, supplementing Government Emergency Ordinance no. 11/2018 on the adoption of various budgetary measures and the amendment of Framework Law no. 153/2017 on the remuneration of staff paid from public funds, published on 17 November 2022.

4. Amendments to corporate law: digitalisation of the Trade Register and the changes to the articles of association

The Trade Register is preparing to become part of the digital age with the entry into force of Law no. 265/2022, which introduces important amendments to the Trade Register Law and Companies Law as well as other legislation.



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The mandatory transposition of two European Directives has facilitated the introduction of a procedure for setting up a company in which the submission of articles of association and the process of registration with the Trade Register takes place entirely by electronic means.

The digitalisation process also makes it easier to register branch offices with the Trade Register. Under this new law, the Romanian Trade Register becomes part of the interconnection system linking the trade registers of the EU Member States, meaning that when registering a branch office set up by a company with its headquarter in an EU Member State, the necessary documents and information can be obtained and verified much more easily, without the need for documents to be supplied by the applicants. The trade register interconnection system is also used for cross-border merger procedures.

The digitalisation of the archiving procedures within the Trade Registry offices will be just as, if not more beneficial. Registration applications and all attached documents are also to be archived electronically, making it possible to read and search these documents, thereby ensuring that copies of documents can be provided faster in electronic format.

At the applicant's request, certificates of establishment, certificates of registration and resolutions may be issued in electronic format with a qualified electronic signature.

Law no. 265/2022 also amends the articles of association, which become much more complex:

- companies are now obliged to include in their articles of association details of the ultimate beneficial owners and the ways in which their control over the entity is exercised. Provision of this information is thus no longer optional, but becomes an obligation in respect of all companies set up on or after 26 November 2022.
- It is now mandatory to include a clause whereby shareholders declare that they will fulfil the legal requirements in their capacity as shareholders of the company.
- In the case of joint stock companies (S.A.) and limited partnerships with share capital, the articles of association must specify the type of company (closed or open).
- In the case of limited liability companies, general partnerships and limited partnerships, the articles of association must specify how the resolutions of the general meeting of members are to be adopted, where, because of the parity of shareholdings, an absolute majority or the duration of the term of office of the directors cannot be established and also must specify the arrangements for settling liabilities or for settling them in agreement with creditors in the event of dissolution without liquidation, where the members agree on the distribution and liquidation of the company's assets.

Submitting the articles of association in electronic format via the online service portal is not mandatory, but where applicants do opt to use the online company registration procedure, please note the articles of association must be signed electronically with a qualified electronic signature by all company partners/shareholders or their conventional representatives.

The articles of association will therefore also be available in a format that can be submitted via the Trade Register's online services portal. Order no. 5307 of 21 November 2022 issued by the Ministry of Justice approves the standard format for articles of association, which is a template of the articles of association.



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However, not all situations that may arise in practice are covered by the standard format and the way it is presented will not resolve every potential misunderstanding between partners. The manner in which it has been drafted creates the false impression that the setting up of a company is within everyone's grasp and thus ignores the complexity of this procedure. The Order also approves the format of the new application form to be used when registering a company with the Trade Register.

In ushering in this long-awaited process of digitalisation of the Trade Register, Law no. 265/2022 will help correlate the data between the records of the tax institutions and those of the National Trade Register regarding the actual number of registered companies and those active on the Romanian market.

In conclusion, Law no. 265/2022 seeks to create the legal framework for company registration operations with the Trade Register, namely the digitalisation of the registration process, in accordance with the European Directives in this field. The simplification introduced by the new measures is beneficial and aims to allow all the formalities involved in the setting up of a company (including the submission of articles of association) and the registering of a branch office to be carried out online.

On request, we can provide legal assistance with the formalities of setting up companies and registering them with the Trade Register in compliance with the new legal provisions.

Source: Law no. 265 of 22 July 2022 on the Trade Register and the amendment and supplementation of other acts of law affecting registration with the Trade Register; and Order no. 5307/C of 21 November 2022 approving the format of the standard form of articles of association, the format of the registration application form, the format, security features and structure of the registration certificate, in both printed and electronic form, the template of the standard declaration of responsibility regarding fulfilment of the conditions for the operation/performance of the activity of the company, the template of the certificate of registration of the declaration of responsibility regarding the fulfilment of the conditions for the operation/performance of the activity of the company and the structure of the unique European identifier (EUI).

This newsletter is a service of TPA.

Kind regards,
Your TPA Team

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