

Fiscal Policies to Diminish the Deficit in Romania

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Abstract

On 27.10.2023, Law no. 296/2023 on some fiscal-budgetary measures to ensure long-term sustainability was published in the Official Gazette no. 977. This law introduced substantial amendments to the Tax Code and introduced many new elements from a tax perspective, with an impact on both individuals and legal entities, including the liberal professions, not only in terms of an increase in the level of taxes and contributions, but also in terms of an increase in their administrative burden. Following the negative reaction expressed in particular by the business sector, taking into account the recommendations issued at European level for Romania, on 15.12.2023, Government Emergency Ordinance No. 115/2023 was published in the Official Gazette No. 1139 on some fiscal-budgetary measures in the field of public expenditure, for fiscal consolidation and combating tax evasion, for amending and supplementing some normative acts, as well as for extending some deadlines. This paper aims to analyse the possible impact of the new fiscal-budgetary measures at macroeconomic level, determining the positive and negative sides with regard to the fulfilment of their intended purpose.

Key words: budget deficit, economic crisis, fiscal-budgetary measures, macroeconomic impact, fiscal news

J.E.L. classification: K29

1. Introduction

Law no. 296/2023 (published in the Official Gazette of Romania, no. 977 of 27.10.2023) amending Law no. 227/2015 on the Tax Code (published in the Official Gazette of Romania, no. 688 of 10.09.2015), is structured in 5 chapters, each of which deals with tax and accounting measures, which became applicable as of 01.01.2024. The main issues covered by the new amendments relate to (1) the taxation regime for micro-enterprises, as well as certain accounting and tax measures in relation to them; (2) the increase in VAT rates for certain products and services; (3) the introduction of the mandatory use of the digital invoicing system e-Invoice, for products and services categorised as having a tax risk, as well as for the invoicing of products and services in B2B and B2G relations; (4) the introduction of the payment of a minimum corporate income tax for companies whose turnover in the previous financial year exceeded the amount of 50,000.000, if they do not apply certain special regimes provided for in the Tax Code; (5) the abolition of the ceilings of 6, 12 and 24 minimum wages per economy respectively established up to and including 2023 for the payment of social contributions to the public health system, followed by the introduction of a new single ceiling set at the level of 60 minimum wages per economy, these provisions being applicable both to natural persons and to owners of unincorporated enterprises who are required to report certain types of income annually; (6) the introduction of a 70% tax rate applicable to income whose source cannot be identified, i.e. income which has either not been

declared although the individual or legal entity is obliged to declare it, or which has been duly declared but whose source cannot be identified by the tax authorities; (7) the abolition of tax relief in the IT, construction and agriculture sectors; (8) the amendment of the ceilings for cash payments and the introduction of a maximum amount of EUR 50 per person per year; (9) the introduction of a new tax rate of EUR 50 per person per year for the taxable person who is not a taxpayer.000 lei that can remain in the cashier of companies, with the exception of cash-and-carry stores and hypermarkets, for which the amount of 500,000 lei has been set; (9) prohibition of crediting companies through cashier, which will be possible only through bank transactions from the personal accounts of company owners; (10) limitation of the deductibility of certain categories of expenses.

Since the fiscal-budgetary changes introduced by Law no. 296/2023 are numerous and the deadlines for their application were set shortly after its entry into force, by Government Emergency Ordinance no. 115/2023 (published in the Official Gazette of Romania no. 1139 of 15.12.2023), the regulation of some of the measures introduced by Law no. 296/2023 has been revised. 296/2023, but, on the other hand, new legal provisions on public expenditure, fiscal consolidation and the fight against tax evasion were introduced, mainly concerning the following : (1) limiting the deductibility of certain categories of expenses; (2) reducing the tax loss recovery period from 7 years to 5 years, as well as limiting the tax loss recovery to the level of 70% of it; (3) limiting the applicability of the income tax rate on microenterprises, with reference to the direct or indirect holding, by the holder(s) of enterprises, of securities of more than 25% in other enterprises; (4) the introduction of the flat rate of 20% applicable to income from the transfer of the use of goods when determining the net taxable income; (5) the introduction of the obligation for the legal entity lessee to calculate, withhold, report and pay the net income tax due by the natural person lessor.

This legislative act was based on the Recommendation of the Council of the European Union of 03.04.2020 with a view to bringing an end to the situation of an excessive government deficit in Romania (published in the Official Journal of the European Union, C116/1, Brussels, 08.04.2020), according to which it was established that an excessive budget deficit exists in Romania, which, according to Article 126 of the Treaty on the Functioning of the European Union (published in the Official Journal of the European Union C 326/47, 26.10.2012), must be avoided. The EU Council recommendation was issued following the Fiscal-Budgetary Strategy for the period 2024-2026 (Romanian Government, "Fiscal-Budgetary Strategy for the period 2024-2026", December 2023), according to which the public deficit exceeds the reference value set at 3% of gross domestic product. Thus, the recommendation of the EU Council was based, in concrete terms, on the progressive reduction of the budget deficit by 0.2% of gross domestic product from one budget year to the next, as well as on the adoption of measures to correct the budget deficit in a sustainable manner, favourable to the consolidation of the national economy in the long term.

2. Theoretical background

The high level of public debt of the Member States of the European Union is governed by Article 126 of the Treaty on the Functioning of the European Union, according to which excessive levels of public debt must be avoided and, if they cannot be avoided, they must be managed in an efficient and sustainable manner, with the ultimate aim of ensuring the stability of the fiscal policies pursued by the Member States. Article 126 (2) (2) of the TFEU regulates the way in which the European Commission monitors budgetary developments in the Member States and the level of public debt, which is based mainly on the following criteria: (1) the ratio of the planned or actual government deficit to the gross domestic product of the Member State concerned, and (2) the ratio of public debt to the gross domestic product of the Member State concerned. The reference values of the two criteria are governed by Article 1 of Protocol No 12 on the excessive deficit procedure (published in the Official Journal of the European Union, C 115/279, 09.05.2008), which set the following maximum reference values: (1) in the case of the ratio of the planned/realised government deficit to gross domestic product, the reference level was set at 3%; (2) in the case of the ratio of government debt to gross domestic product, the reference level was set at 60%. Romania is committed to respect the obligation not to exceed the two reference values and to ensure economic sustainability in the medium and long term by maintaining fiscal-budgetary

discipline, respecting the principles, objectives and rules of fiscal-budgetary policy set out in Law No 69/2010 on fiscal-budgetary responsibility (republished in the Official Gazette of Romania No 472 of 04.06.2020).

For the year 2023, by Law no. 360/2022 on the approval of the ceilings of some indicators specified in the fiscal-budgetary framework for the year 2023 (published in the Official Gazette of Romania, no. 1212 of 16.12.2022), the ceiling of the consolidated budget balance as a percentage of gross domestic product was set at -4.40%, while the ceiling for public debt was set at 49.80% of gross domestic product.

In view of the fact that Romania has exceeded, in previous years, at least one of the criteria established at EU level for the surveillance of fiscal-budgetary developments, the European Commission has implemented the procedure for correcting the budget deficit, following the steps regulated by Article 126 of the Treaty on the Functioning of the European Union. Thus, the European Commission issued a report, which has the favourable opinion of the Economic and Financial Committee, addressed to Romania, with the information of the Council of the European Union. Noting the existence of a real budget deficit, the Council adopted, on a recommendation from the European Commission, a set of general recommendations on the limitation of the excessive deficit, with the simultaneous imposition of a deadline for this purpose. According to Council Regulation (EC) No 1467/97 of 7.7.1994 on speeding up and clarifying the implementation of the excessive deficit procedure (OJ L 209, 2.8.1997), the package of recommended measures aims at reducing the annual deficit by at least 0.5% of GDP.

The package of recommendations was not made public beforehand, but addressed directly to Romania for implementation. However, in view of the deadline for the limitation of the excessive deficit, the deficit limitation package was made public through the publication in the Official Journal of the European Union of the European Council Recommendation of 3 April 2020 with a view to bringing an end to the situation of an excessive government deficit in Romania (2020/C 116/01). In addition, if Romania had not complied with the objectives imposed by the package of measures issued by the EU Council, the consequences provided for in Article 126(2) of the Treaty would have been applied. (9) and (11) of the Treaty on the Functioning of the EU, namely: (1) the obligation to submit regular reports according to a fixed timetable, so that the efforts to adjust the excessive budget deficit can be analysed at European level; (2) the obligation to publish information required by the EU Council. prior to the issuance of government bonds or other securities; (3) notification to the European Investment Bank of the revision of the borrowing policy towards Romania; (4) obligation to establish an interest-free deposit of 0.2% of the gross domestic product of the previous budget year until the date on which the excessive deficit is deemed to have been corrected by the E.U. Council; (5) fines of a fixed amount of 0.2% of GDP and of a variable amount, but not more than 0.5% of GDP.

In order to avoid the consequences of an increase in the budget deficit, on the one hand, and to strengthen consumer and investor confidence in the sustainability of the economy, the latter having in turn an impact on the internal market, Romania has adopted an extensive package of fiscal-budgetary and fiscal-accounting measures, materialised in the amendment of the Tax Code and other legislation, through Law 296/2023 and Government Emergency Ordinance 115/2023.

3. Research methodology

The measures adopted by Romania to limit the budget deficit and its annual correction to the minimum level set by European legislation led to the need to adopt an extensive package of tax measures, with a direct impact on both individuals and legal entities. Practically all taxpayers in Romania will directly feel the impact of these tax measures, which will take the form of an increase in taxes and contributions due from 2024, taking into account that the tax measures were implemented in the last quarter of 2023. It can be said that the tax changes made possible by the adoption of the two pieces of legislation constitute a genuine tax reform, the main objective of which is macroeconomic stability and the limitation of the general level of indebtedness, the latter making a direct contribution to the macroeconomic stability of the internal market at EU level.

In the context of the tax reform, it was considered necessary to analyse the most relevant legal acts that were the basis of the reform, applying for this purpose the theoretical research method,

since the effects start to be produced as from 01.01.2024. Given that the tax changes are numerous and have a high degree of impact on all taxpayers, and taking into account the level of inflation which affects purchasing power, we considered it useful to analyse the possible effects that will be produced in particular on micro-enterprises, as they are the most vulnerable and have the lowest degree of short-term adaptability to the increases in taxes and contributions that will be due to the state budget from 2024.

4. Findings

4.1. Modification of the micro-enterprise tax regime

Law No 296/2023 amended Article 51 of the Tax Code, concerning the tax rates on the income of micro-enterprises, as follows : (1) in the case of micro-enterprises whose turnover is less than 60.1) In the case of micro-enterprises with a turnover of more than 60,000 euros, the tax rate is set at 1%, provided that the enterprise has employees working full-time (8 hours per day); (2) In the case of micro-enterprises with a turnover of more than 60,000 euros but less than 500,000 euros, the tax rate is set at 3%, provided that the employees work at least 8 hours per day. The exception to the rule of taxation at 1% of turnover, even if all the conditions are met, applies to businesses carrying out certain activities listed in the CAEN nomenclature, i.e. businesses operating in the medical, HoReCa and I.T. sectors, which will be obliged to apply the tax rate of 3% of annual turnover, up to the ceiling of €500,000 laid down for the change of tax vector to the corporation tax regime. If companies carry out these activities in the form of a secondary CAEN code, the tax rate is applied to all the company's income from other CAEN codes not covered by these exceptions, and not only to income from the CAEN codes covered by the exception. With regard to the switch from one tax rate to the other, the Tax Code, as amended by Law 296/2023, allows both the switch from the 1% rate to the 3% rate when the €60,000 threshold is exceeded during the financial year and vice versa, i.e. the switch from the 3% rate to the 1% rate when the company's income falls below the €60,000 threshold during the financial year. An exception to this rule is made for companies operating in the above-mentioned fields, which, regardless of the level of income recorded and up to the €500,000 threshold, will apply the 3% tax rate on all income earned. In the case of other businesses, the change in the tax rate will start from the quarter following the quarter in which the threshold of €60,000 is exceeded or fallen below.

4.2. Increase in tax on income whose source cannot be identified

Law No 296/2023 amends Article 117 of the Tax Code to increase the tax rate on income without identifiable source from the current 16% to 70%. According to Article VII of Law No 296/2023, these provisions will enter into force on 01.07.2024 and will apply to tax decisions issued by the competent tax authorities from the same date. The solution given is natural, since income obtained in a financial year is declared in the first 5 months of the following financial year, in the case of income obtained by natural persons and by natural persons who are owners of enterprises without legal personality. A number of important points need to be made in this respect. Firstly, there is currently a 16% tax rate for income without an identifiable source, so the measure is not new. What is new, however, is that there is not such a high tax rate on any type of income. Secondly, it should be pointed out that if the taxpayer has a justification for the taxable income, the tax authorities cannot apply the 70% tax rate, but the general 10% rate. Any document concluded in compliance with the provisions of the Civil Code (Law no. 287/2009 on the Civil Code, republished in the Official Gazette of Romania no. 505 of 15.07.2011), such as a donation contract, loan/credit contract, deposit contract, and similar, but also certain operations such as the recovery of sums borrowed, obtaining income from lawful sources, obtaining income from carrying out economic activities of an occasional nature, etc. may constitute a justification of taxable income. Thirdly, it should be pointed out that, according to the interpretation of Article VII of the above-mentioned legislative act, the 70% tax rate is to be applied exclusively on the initiative of the competent tax authorities which, following a tax inspection, issue tax decisions.

It is also extremely important to note that the tax authorities will additionally determine the amount of additional charges due for non-declaration and/or declaration of taxable income without an identifiable source. Therefore, according to Article 176 of Law No. 207/2015 on the Tax Procedure Code (published in the Official Gazette No. 547 of 23.07.2015), the level of late payment penalties is set at 0.1% for each day of delay and is calculated from the due date until the date of actual payment of the entire amount due. Also, in our opinion, if the taxable income has not been declared by the taxpayer, or has been declared incorrectly, the provisions of Art. 181 concerning the establishment of penalties for non-declaration apply, which, under the current rules, amount to 0.8% per day of delay, starting from the day following the due date until the actual payment of the entire debt, except in the limited cases provided for in Art. 181 para. (2), according to which the amount of the non-declaration penalties may be reduced by 75% by decision of the competent tax authorities. If the tax authorities establish that the income whose source could not be identified was obtained as a result of the commission of the offence of tax evasion established by the competent judicial bodies, the level of the non-declaration penalties shall be doubled and their amount may exceed the principal tax liability on which they were calculated. In other cases not involving economic offences, the level of non-disclosure penalties may not exceed the principal tax liability on which they were calculated.

4.3. Amendment of the system of taxation of self-employed income

Income from self-employed activities is subject to the following tax obligations: (1) tax on net income, set at a rate of 10%; (2) insurance contributions to the public health system, set at a rate of 10% of net income, not exceeding certain ceilings; (3) insurance contributions to the public pension system, set at a rate of 25% of net income, not exceeding certain ceilings. Until 2023, the ceilings for limiting CAS and CASS contributions were set at 12 gross minimum wages per economy, so that self-employment income above this level was subject to CAS and CASS contributions at the maximum ceiling of 12 gross minimum wages per economy. Optionally, if income was below the level of 6 minimum wages per economy, the taxpayer had the option to pay CAS and CASS contributions at the level of at least 6 minimum wages per economy in order to be insured in the public health and pension system. In 2023, Government Ordinance No 16/2022 amending and supplementing Law No 227/2015 on the Tax Code, repealing certain regulatory acts and other financial and fiscal measures (published in the Official Gazette of Romania No 716 of 15.07.2022), doubled the tax burden of these contributions by introducing a new ceiling for income earned in 2023, set at the level of 24 minimum wages per economy, resulting in a doubling of the ceiling and, implicitly, a doubling of the social contributions payable by self-employed persons. From 2024 income, to be reported in 2025, self-employed persons will be subject to social contributions to the public health system on the basis of their net income, without exceeding a ceiling of 60 minimum wages per economy. As regards social contributions to the public pension system, the three ceilings set by O.G. No 16/2022 are maintained, namely 6, 12 and 24 minimum wages per economy. As a further novelty in this respect, both contributions will be deductible when calculating net taxable income, so that the 10% tax will be applied to a tax base from which both types of contributions will have been deducted. However, the change from the maximum ceiling of 24 gross minimum wages per economy to 60 implies a higher tax burden on this category of taxpayers. Moreover, under the new provisions, if income is below the level of 6 minimum wages per economy, self-employed persons will be obliged to pay CASS at the minimum level set by the 3 ceilings, i.e. 6 minimum wages per economy. As a final novelty in this respect, it is worth mentioning that income from self-employment will no longer be cumulated with other income for the purposes of setting the ceilings of 60 minimum wages per economy for CASS and 6, 12 or 24 minimum wages per economy for CAS, and that these contributions will be applied separately for each category of income.

4.4. Increase in VAT rates for certain goods and services

Certain taxable transactions for VAT purposes will be subject to the reduced rate of 9%, up from the reduced rate of 5% : (1) the supply of housing classified as part of social policy; (2) the supply and installation of high-efficiency, low-carbon heating systems, such as photovoltaic panels, heat pumps, for housing but also for local or central government buildings or units under their management, excluding companies, whether supplied as a whole or as separate components; the increased rate of VAT also covers the supply and installation of components for the repair, maintenance or extension of these networks; (3) services covered by the CAEN nomenclature for codes 9321 and 9329 relating to admission to fairgrounds and amusement or recreational parks; (4) services relating to admission to sporting events.

Law No 296/2023 also repealed lit. c) to k) inclusive of Art. 291 para. (3) concerning the application of the reduced VAT rate for certain categories of goods and services, so that they are, as from 01.01.2024, subject to the standard VAT rate of 19%.

4.5. National e-Invoice and e-Invoice system in Romania

By Government Emergency Ordinance 120/2021 on the administration, functioning and implementation of the national system on electronic invoicing in Romania (...), published in the Official Gazette of Romania no. 960 of 07.10.2021, the legal framework was created for the development and administration by the Ministry of Finance of the national system on electronic invoicing RO e-Invoice. This system is based on a computer application through which the issuer of an invoice sends the invoice to the purchaser, stores it for archiving purposes and the recipient of the invoice uses the same system for receiving, downloading and storing the invoice. (1) of GEO No 120/2021 and, if the Ministry of Public Finance certifies compliance, it must apply the electronic seal and immediately send the invoice to the recipient. Failure to comply with the technical specifications will display a message detailing the errors, and the issuer will then proceed to rectify them. The technical specifications of the e-invoice are laid down in the Order of the Minister of Finance No 1366/2021 (published in the Official Gazette No 1148/29.11.2022).

The recipient can refuse payment of the invoice received in the electronic system, having the possibility to upload a message detailing the reasons for the refusal. Electronic invoicing is mandatory in the following situations: (1) in the case of B2B (Business to Business) commercial relations; (2) in the case of B2G (Business to Government) commercial relations, which apply in the field of public procurement, with the exception of the execution of classified contracts; (3) in B2C (Business to Consumer) commercial relations, when the invoicing concerns the delivery of goods or services classified as high tax risk. The use of the electronic system RO e-Invoice is mandatory, and penalties are regulated for non-compliance with the provisions of the regulations referring to it. For example, in B2B relations, non-compliance with the legal provisions is classified as a contravention, and is sanctioned by the amount of VAT related to the invoice/invoices not registered in the electronic system. The procedure for registering users in the RO e-Invoice electronic system was regulated by Order of the Minister of Finance No. 1713 / 2021 (published in the Official Gazette No. 1040 of 01.11.2021).

Law no. 296/2023 amends Article 319 of the Tax Code on invoicing, which, in the content of the paragraph. (1), states that "invoice" means any document or even messages on paper, provided that they contain the minimum elements regarding the information that makes up an invoice. By way of exception to the above rules, for transactions between taxable persons, only those issued via the electronic Ro e-Invoice system will be considered invoices, which means that documents issued in accordance with the provisions of Article 319(1)(b) and (c) of Directive 77/388/EEC will be regarded as invoices. (1) of the Tax Code will no longer be able to be accounted for in the financial statements of either entity (the issuer and the recipient). According to Article VII of Law No 296/2023, the provisions in question are to enter into force from 1 July 2024.

The same law also sets a deadline for the submission of electronic invoices via the IT system, so that invoices must be submitted within a maximum of 5 working days from the date of issue, but no later than 5 working days from the deadline set by the Tax Code for issuing the invoice, under penalty of fines of between RON 1,000 and RON 10,000, depending on the category of taxpayer to which the offender belongs, in relation to the size of his business from a tax perspective.

5. Conclusions

In the last fiscal quarter of 2023, Romania adopted an extensive package of fiscal-budgetary measures aimed at helping to cover the budget deficit within the limits regulated at European level. However, these measures have a direct impact on all categories of taxpayers, individuals and legal entities, which will inevitably lead to financial bottlenecks in the internal market and hinder the delivery of goods and services in the trade chain. As a direct effect, we estimate that both the number of professionals who will fall under the scope of Law No. 85/2014 on insolvency prevention and insolvency proceedings and the number of individuals with consumer status who may be subject to insolvency proceedings under Law No. 151/2015 will increase significantly. This is also due to the loss of purchasing power, generated by the increased level of inflation, to which is added a new fiscal burden, translated by the increase in the level of taxes and contributions due to the state budget following the entry into force of the two legislative acts analysed in this paper.

Directly, in the short term, we can estimate that it will increase the level of collections to the state budget, but given the short implementation deadlines and, implicitly, the inability of taxpayers to adapt their tax situation to the new requirements, we can say that, in the long term, the level of collections will decrease dramatically and the ultimate goal of the tax reform will not be achieved.

We conclude by stressing that macroeconomic sustainability must be based on certain principles such as transparency, predictability and reasonable deadlines for all categories of taxpayers concerned to adapt to the new fiscal reality.

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