

TAX HOT TOPICS

25 March 2020

**Economic measures (not tax related) targeting the small and medium-sized enterprises
adopted through Emergency Ordinance no. 29/2020 regarding some fiscal-budgetary
measures
(Official Gazette no. 230/20.03.2020)**

The measures implemented are intended for companies classified as small and medium-sized enterprises (SMEs) according to Law no. 346/2004 for stimulating the set-up and development of small enterprises.

According to this Law, an **enterprise** is any organized form of economic activity, authorized per the law to carry out production or trade activities or to render services, in view of obtaining income, under competition conditions, namely **companies** regulated by Company Law no. 31/1990, **cooperative companies, authorized freelancers (PFA)**, entrepreneurs carrying out an individual enterprise (**II**) and family businesses (**IF**), authorized, carrying out economic activities.

The provisions of Law no. 346/2004 are applicable also to **associations** and **foundations, agricultural cooperatives** and **agricultural societies** that carry out economic activities.

SMEs are enterprises meeting the following requirements cumulatively:

- ❖ have an average annual number of employees less than 250
- ❖ have a net annual turnover of less than EUR 50 mil. (the RON equivalent) or hold total assets that do not exceed the value of EUR 43 mil. (the RON equivalent).

An enterprise cannot be considered small or medium if at least 25% of its share capital or voting rights are controlled, directly or indirectly, individually or on a consolidated basis, by one or more public organisms or collectivities.

Small and medium-sized enterprises are classified in the following categories:

- ❖ **micro-enterprises:** companies having up to 9 employees which have a net annual turnover or hold total assets which do not exceed the value of EUR 2 mil. (the RON equivalent);
- ❖ **small enterprises:** companies having between 10 and 49 employees which have a net annual turnover or hold total assets which do not exceed the value of EUR 10 mil. (the RON equivalent);

- ❖ **medium enterprises:** companies having between 50 and 250 employees which have a net annual turnover of up to EUR 50 mil. (the RON equivalent) or hold total assets which do not exceed the value of EUR 43 mil. (the RON equivalent).

The measures adopted by the Emergency Ordinance no. 29/2020, applicable starting with **21 March 2020**, target the following main areas related to SMEs (the SMEs category thus includes, beside companies, also the freelancers (PFA), individual enterprises (II) and family businesses (IF). At this stage, it is not clear if the associations and foundations, agricultural cooperatives and agricultural societies may enjoy the following provisions):

i. **Amendments to the Program for supporting small and medium-sized enterprises - IMM INVEST ROMANIA**

- ❖ Increasing the percentage of **the state guarantee for financing consisting of one or more investment loans and/ or one or more loans/ credit lines for working capital** from a maximum level of 50% to **up to maximum 80%** of the financing value, excluding interest, commissions and bank charges related to the guaranteed loan. The maximum cumulative value of state guaranteed financing that can be granted to a beneficiary within this facility is RON 10 mil;
- ❖ **The state guarantee of loans/ credit lines for financing of working capital**, excluding interest, commissions and bank charges, **for up to 90% of the loan value for micro-enterprises and small enterprises**, within the maximum limit of RON 500,000 for micro-enterprises, respectively RON 1 mil. for small enterprises. The maximum value of each financing granted to a beneficiary cannot exceed the average of expenses related to the working capital for the last 2 fiscal years, within the limits of the above-mentioned thresholds. For companies which did not submit financial statements at the time of applying for the guaranteed loan, the maximum value of the financing will be calculated as two times the average of the expenses related to the working capital from the monthly trial balances;
- ❖ **Full subsidization of interest** on loans/ credit lines for financing of working capital and investment loans under a state aid/ *de minimis* scheme;
- ❖ The interest subsidization will be performed from the moment of granting the loans/ credit lines contracted after 21 March 2020 and may last until 31 March 2021; this period can be extended for the next 2 years if the economic growth estimated for this period is below the level recorded in 2020 (the subsidy is approved annually by normative act with power of law);
- ❖ **The state bears the commission for administration of guarantees**, from Ministry of Public Finance's budget during the validity period of the state aid/ *de minimis* scheme;

- ❖ If the beneficiary has outstanding tax liabilities and other budgetary debts administered by the central fiscal body, the beneficiary commits to pay them from the loan/ credit line for the working capital granted under the program;
- ❖ The maximum financing period for loans/ credit lines for working capital was prolonged from 24 months to 36 months. Loans/ credit lines for working capital may be then extended with maximum 36 months – in this case, these loans/ credit lines shall be reimbursed in the last year, according to the methodological norms.

ii. Facilities for SMEs which interrupted their activity

- ❖ During the state of emergency period, **small and medium-size enterprises** which interrupted their activity totally or partially based on decision issued by public authorities, per the law, during the state of emergency period **and which obtain the certificate for state of emergency issued by the Ministry of Economy, Energy and Business environment**, benefit from postponement of payment of utility services – electricity, natural gas, water, telephone and internet services, as well as postponement of payment of rent for the building used as social headquarter and as secondary offices.
- ❖ These provisions apply, accordingly, also for the following professions that perform services in the public interest: notary public, lawyer and court executor whose activity is directly affected by the measures provided by the authorities (in the context of COVID - 19). Of the same provisions may also benefit the cabinets of family doctors and dental cabinets in which the activity of more than 20 persons is carried out and whose activity is directly affected by the measures provided by the authorities, as well as the national sports federations and sports clubs that hold a certificate of sports identity whose activity is directly affected by the measures provided in the same context (COVID - 19).

iii. Invoking force majeure clause by small and medium-sized enterprises

- ❖ In the ongoing contracts (other than those regarding the utilities services - electricity, natural gas, water, telephone and internet services, as well as rental) concluded by the small and medium-sized enterprises mentioned in point ii. above (first bullet), **the force majeure clause may be invoked against them only after the attempt**, evidenced by records communicated between the parties by any means, including by electronic means, **for renegotiation of the contract** in order to adapt the clauses taking into account the exceptional conditions generated by the state of emergency;
- ❖ It is presumed to be a case of force majeure the unpredictable, invincible and inevitable circumstance that results from an action of the authorities in applying measures to prevent

and combat the pandemic caused by the infection with the COVID-19 coronavirus that affected the activity of the SME, **as certified by the certificate of state of emergency**. The presumption of force majeure can be overturned by the interested party by any means of proof. **The unpredictable character is related to the moment when the relevant legal report arose**. The measures taken by the authorities in accordance with the normative act that established the state of emergency will not be considered unpredictable;

- ❖ During the state of emergency, **no penalties will be owed for delays in the execution of the obligations arising from the contracts concluded with the public authorities by the SMEs** as mentioned in pt. ii above (first bullet).

For additional details regarding the above, you can contact any member of the Taxhouse team or you can send us an e-mail at office@taxhouse.ro.