

TAX HOT TOPICS

23 March 2020

Emergency Ordinance no. 30/2020 amending and completing of certain normative acts, as well as for establishing measures in the field of social protection in the context of the epidemiological situation determined by the spread of the SARS-CoV-2 coronavirus (Official Gazette no. 231/20.03.2020)

Among the measures adopted, we listed below the key ones given their economic/ fiscal impact, applicable starting **21 March 2020**:

- ❖ **Technical unemployment** - during the state of emergency, for the period during which the individual labor agreements are temporary suspended, per the employer's initiative, according to art. 52 paragraph (1) letter c) of Law no. 53/2003 - The Labor Code, following the effects of the coronavirus SARS-CoV-2, **the compensations** that the employees may benefit from are set at 75% of the gross salary of the corresponding job occupied and **are borne from the unemployment insurance budget, but not more than 75% of the average gross salary** provided by Law no. 6/2020 regarding the social insurance budget for 2020. Thus, the gross compensation borne by the state would be of **maximum RON 4.072 a month per employee**.
- ❖ **These provisions apply for:**
 - Employers **interrupting totally or partially their activity** based on authorities' decision and which **hold the certificate for emergency situations**;
 - Employers **reducing their activity** following the epidemic effects of COVID 19 and **do not have the financial capacity to pay all salaries of the employees**. At this moment, the legislation does not specify how employers should prove the lack of financial capacity. These employers would be able to benefit from the compensation mentioned above for **maximum 75% of their employees** with individual labor agreements **which are active at the date of 23 March 2020**. In view of reimbursement, these employers should provide an affidavit (the model would be approved by Ministerial Order) which should document **a reduction of amounts cashed in during previous month by at least 25%** compared to the average amount for the period January-February 2020.
- ❖ **Taxation – the compensation is subject to tax and social security contributions** based on the Tax Code, save for the work insurance contribution (CAM). Computation, withholding and payment of the tax and social contributions should be made by the employer from the

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compensations received from the public unemployment budget. The declaration is made by the employer by filing the D112 return. The term for declaration and payment is the date of 25th, inclusively, of the month following the one when the payment from the public unemployment budget was made. According to Emergency Ordinance 29/2020, in case of tax obligations falling due starting 21 March 2020 and not paid until the time when the measures are terminated (i.e. 30 days after the state of emergency ends), no late payment penalties and interest established as per the Tax Procedural Code are imposed or due.

- ❖ **Reimbursement requests** - the employers file, **via e-mail**, with the relevant employment agency (AOFM) depending on their headquarter, **a request signed by the legal representative**, drawn-up per the templates provided by the Emergency Ordinance, together with the **list of persons that will benefit from the compensation**, assumed by the legal representative of the employer, also drawn-up per the model provided by the Emergency Ordinance. These documents should be filed in the current month for the payment of the compensation for the previous month. The documents to be filed according to the Emergency Ordinance do not make reference to documents concerning the payment of taxes.
- ❖ **Payment of compensation by the state** – the payment of the compensations from the public unemployment fund is to be made in **maximum 30 days since the documents were filed**.
- ❖ **Provisions for other professionals (e.g. freelancers – PFA)** – other professionals, as regulated by the Civil code, which do not have the quality of employers and interrupt their activity totally or partially based on decisions issued by public authorities according to the law, during the state of emergency period introduced by Decree no. 195/2020, benefit from the general consolidated budget from a **compensation equal to the minimum gross salary** established for 2020 (i.e. RON 2,230 per month). The compensation is subject to tax and social security contributions based on the Tax Code.

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**Emergency Ordinance no. 29/2020 regarding some fiscal-budgetary measures
(Official Gazette no. 230/20.03.2020)**

We note the following tax relevant provisions applicable starting **21 March 2020**:

i. Regarding the amendments brought to the Fiscal Code, and payment of tax obligations:

- ❖ The following two measures apply starting 21 March 2020 until 30 days after the state of emergency ends:
 - **Non-application of late payment charges** - in case of tax obligations falling due starting 21 March 2020 and not paid until the time when the measures are terminated (as indicated above), **no late payment penalties and interest** established as per the Tax Procedure Code **are imposed or due**. Such amounts will **not** be considered as outstanding tax obligations during this period. Declaration of taxes will continue to be made within the general deadlines, applicable also before the enactment of the present Emergency Ordinance, namely by 25th of the following month.
 - **Forced executions by garnishment in case of budgetary receivables are suspended/ will not be started**, except for the forced execution applicable for recovering budgetary receivables established by Court decisions issued in the criminal field. Suspension of the forced execution by garnishment aimed at amounts representing income and cash are applied, by virtue of law, by credit institutions or third party seized, without other formalities from the tax authorities.
- ❖ **Extension of payment deadline for local taxes** - the deadline of 31 March 2020 for the payment of local tax on buildings, land and vehicles as well as for granting the allowance established by the Local Council is extended until **30 June 2020**;
- ❖ **Quarterly prepaid Corporate income tax** - taxpayers applying the system of quarterly prepaid declaration and payment of corporate income tax, **can** make the quarterly advance payments for 2020 at the level resulting from the computation of the current quarterly corporate income tax. The computation method is maintained for all quarters of the 2020 tax year. Also, for those who have opted for a financial year different from the calendar year, these provisions apply for the advance payments due for the remaining quarters of the modified year ending in 2020, as well as for the computation of those related to the quarters of the modified fiscal year that starts in 2020 and is included in the calendar year 2020.

ii. **Extension of terms from Government Ordinance no. 6/2019 on tax incentives**

- ❖ The deadline for the submission of the notification for the purpose of restructuring the tax liabilities equal or above EUR 1 million, outstanding as at December 31, 2018 is extended to **31 July 2020**. The deadline for the submission of the request for restructuring of debts is also extended until **30 October 2020**.
- ❖ In this respect, we note that debtors who meet certain conditions may request the tax authorities to proceed with the restructuring of their tax liabilities in order to avoid insolvency procedure and revitalizing their activity.

iii. **Postponement of payment of utilities and rent for economic operators which interrupted their activity**

- ❖ During the state of emergency period, **small and medium-size enterprises**, as defined by Law. No. 346/2004, 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.

iv. **Extension of the term for filing the statement regarding the real beneficiary**

- ❖ The term for filing the statement regarding the real beneficiary applicable to companies registered with the Trade Register (within 12 months since Law no. 129/2019 entered into force, as well as within 15 days since the approval of annual financial statements) is extended with 3 months since the date when the state of emergency situation ceases; during the state of emergency, the filing of this statement is suspended. Similarly, the Emergency Ordinance sets the prolongation (also with 3 months) of the term regarding the statement concerning the real beneficiary applicable to associations and foundations (per art. 344 para. (4) of Government Ordinance 26/2000) as well as the term provided at art. 63 of law no. 129/2019 for completing certain documents.

Law no. 19/2020 regarding the approval of days off for parents taking care of their children, during the temporary closing of educational units (Official Monitor no. 209 / 14.03.2020, amended by Emergency Ordinance 30/2020)

Decision no. 217/2020 for the application of the provisions of Law no. 19/2020 (Official Monitor no. 230 / 21.03.2020)

- ❖ **Paid days-off** are granted to one parent taking care of his/ her children, during the period when the courses are suspended or during the temporary closing of educational units where children are enrolled to, as a result of adverse weather conditions or **other extreme situations as stated by the competent authorities** having responsibilities in the field. In order to benefit from the specific legislation, parents must meet the following conditions:
 - **have children of up to 12 years old**, enrolled in an educational unit or have **children with disabilities of up to 18 years old**, enrolled in an educational unit;
 - the current workplace **does not allow working from home or remote**.

- ❖ Such provisions do not apply to parents who/ in situations where
 - they are on maternity leave;
 - they are the personal assistant of one dependent children;
 - are on vacation leave/ unpaid leave;
 - persons whose jobs are suspended due to the temporary interruption of the activity of the employer or in case of that of the spouse, in accordance with the conditions provided under art. 52 pra. (1) letter c) of Law no. 53/2003 – Labour Code;
 - if the other parent does not obtain income form salary or income assimilated to salary, income from independent activites, intellectual property rights, agricultural activities, forestry and fishing, subject to income tax according to the provisions of Law no. 227/2015 regarding the Fiscal Code.

- ❖ **Request for the approval of days-off** – days-off are granted at the **request** of one parent, submitted with the employer of the person who will take care of the child. The request will be accompanied by an affidavit of the other parent stating that he/ she has not requested for days-off at his/ her work place and does not find himself/ herself in one of the situations provided under the previous paragraph, as well as a copy of the birth certificate(s) of the child/ children (the model for such declaration can be found in the annex to the Government Ordinance no. 217/2020).

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- ❖ **Days-off are granted only with the consent of the employer** for employees working in:
 - the units of the national energy sector,
 - operational units from the nuclear sectors,
 - units with continuous activity (Rom “*unitati cu foc continuu*”),
 - units related to social security,
 - telecommunications,
 - public radio and television,
 - rail transport,
 - the units that ensure public transportation and sanitation of counties,
 - the units supplying population with gas, electricity, heat and water, food trade, production and distribution of medicines and sanitary equipment, fuel distribution,
 - personnel within the pharmaceutical units.
- ❖ Employers from the above sectors grant days-off to their employees **only after all options provided by the regulations in force** in respect of carrying out such activity **are exhausted** and with the obligation to continue their activity, respectively through individualized work programs, shifts, work at home and remote work.
- ❖ **Level of allowance** – the allowance for each day off **is payable from the employer’s budget** and is in amount of **75% of the gross salary** corresponding to one working day, but **not higher than the correspondent per day of 75% of the average gross salary** available in respect of the national social security budget (75% of the average monthly gross salary represents RON 4,072 per month).
- ❖ **Taxation** – the allowance is **subject to salary income tax and social security contributions**, according to the Fiscal Code. The **salary income tax and social security contributions are borne from employer’s budget.**
- ❖ **Settlement procedure with the State** – the amounts paid as allowance can be claimed from the Fund for guaranteeing the payment of salaries. Employers can only claim the settlement of **the net amounts** actually received by the parent. As such, the amounts paid by the employer representing salary income tax and social security contributions cannot be recovered by the employers. Until the end of the fiscal year, the amounts claimed according to the above will be paid to the Fund for guaranteeing the payment of

salaries from the State Budget, as the case may be, according to a procedure established through a Government decision.

- ❖ **Documentation for the settlement procedure** – for the settlement, the employer will submit a request with the employment agencies of each county, respectively with the agency for the municipality of Bucharest (AOFM), in the territorial area where the employer carries out its activity or where its branch/ work point operate, as the case may be. The request will be dated and signed by the legal representative and will mandatorily contain: (i) the identification data of the employer, including the e-mail address, (ii) the bank account; (iii) the name of the legal representative of the employer (iv) the total amount requested, (v) the number of employees for which the amount was requested. The application will be accompanied by the following documents:
 - a) the list of employees who have benefited from days off, as well as the amount related to the allowance granted during this period;
 - b) copies of the payroll documentation showing the allowance was granted;
 - c) an affidavit from the legal representative of the employer, stating that the list provided under letter a) only includes the persons who fulfil the conditions regulated under art. 2 para. (2) of Law no. 19/2020; the model of the declaration is approved by Order of the president of the National Agency for Employment, which is published in the Official Gazette of Romania, Part I;
 - d) proof of payment of the salary income tax and the social security contributions related to the month when the allowance was paid;
- ❖ **Submission of the documentation** – the request and the justifying documents **are submitted by electronic mail** to the electronic address communicated by the employment agencies of each county, respectively of the municipality of Bucharest, **within a period of not more than 30 days from the date of the payment of the salary income tax and social security contributions computed for the payment of the allowance**. If such documentation cannot be submitted by electronic mail, they will be provided by any other means of communication. Within 24 hours since receiving the documents, **the authorities must notify the employer of the registration number assigned to the request**.
- ❖ **Deadline for settlement** – the settlement of the amounts paid by the employer as allowance according to law is made **within 60 calendar days** from the date of registration of the documents.

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**MILITARY Ordinance no. 1/2020 regarding first emergency measures on groups of persons and cross-border movement of certain goods
(Official Gazette no. 219/ 18.03.2020)**

Within 24 hours from the publishing of this Ordinance in the Official Gazette (18 March 2020), the following shall apply;

- ❖ Activities consisting in serving and consuming food, alcoholic and non-alcoholic beverages, carried out by restaurants, hotels, coffee shops or other public units, in locations specially designed for such purpose, whether inside or outside the respective location, are suspended. Sales activities which do not require clients remaining in those spaces are allowed (such as "drive-in", "room-service", or delivery to the customer's place).
- ❖ All cultural, scientific, artistic, religious, sports, entertainment or gambling activities, spa treatment and personal care related activities, held indoors, are suspended. Also, organization and running of any event outdoors involving more than 100 participants is forbidden.

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MILITARY Ordinance no. 2 regarding introduction of certain new measures to prevent the spread of COVID-19 was published in Official Gazette no. 232/21.03.2020.

Amongst the most important measures with economic impact we note the following:

Starting with **22 March 2020, 22.00 p.m.** local time

- ❖ Retail sale of products/ services taking place in commercial centers where several economic agents operate (such as malls and other commercial centers as mentioned in the appendix to Law 296/2004), except for retail sale of food items, veterinary or pharmaceutical products and cleaning services, are temporarily suspended.
- ❖ Activities of dental offices, except for emergency dental interventions, are temporarily suspended.
- ❖ Foreign citizens and stateless individuals are denied entry into Romania; transit via transit corridors agreed with the neighboring countries is allowed; other exceptions are also specifically provided in the Ordinance.

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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.