Excises conundrum
The overhauled calculation of excises, which is not fully compliant with EU legislation, may have only a limited impact on budget revenues, warn experts

Tax intervention
Experts say the new tax on special constructions needs further clarification and could threaten future investments in the local economy

Increasing the tax take
The modernization of fiscal authority ANAF and the encouragement of compliance should help Romania increase its future tax collection rate

BR tax&law

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Filling the state coffers

Business Review Supplements

EDITORIAL

Ovidiu Posirca
Editor

Seeking a give-and-take balance on taxes


Photo: Mihai Constantineanu

The head of a business association was wondering a couple of weeks ago why the country has adopted new taxes this year, considering the economy grew by 3.5 percent in 2013. In fact, Romania was Europe's high flyer in the fourth quarter of last year, growing by 5.1 percent year-on-year.

Despite the positive advances in the economy, the tax take has fallen by close to 1 percentage point to around 32 percent of GDP and the government swiftly announced new taxes to plug the gap.

You will find in the first Business Review Tax&Law supplement the main fiscal changes made this year, including amendments to the calculation of excises and the controversial tax on special constructions.

The supplement will be published regularly throught the year, aiming to outline the main fiscal and legal changes that impact the local business environment.

We have presented the key measures that could improve Romania's tax collection rate. This has been the mantra of the government, which says it is aiming to create the fiscal room for tax breaks by increasing collection.

So far, though, the only visible result has been the roll out of new taxes, which experts claim are shortsighted measures that generate gains in revenue on the short but will hit employment and the strength of companies on the long run.

Cuts in social contributions for employers and the tax exemption on reinvested profits have been trumpeted as measures that will help firms, but their implementation depends on a higher collection rate for the state budget. The only certainty is the approval of a new excise for fuels worth 7 eurocents next month, which should in theory finance the country's motorway investments.

Friendlier initiatives such as the fiscal regulation of holding companies, the optional VAT cash accounting system and VAT nonpayment on imports for authorized companies were implemented last year. This has been welcomed by companies but the underlining issue of unpredictability is still there. The Fiscal Code was changed 39 times throughout 2013, while the Fiscal Procedure Code was amended 21 times.

According to a World Bank study, it takes local companies 200 hours to comply with their tax obligations, while the number of payments stands at 39. Even ministers have expressed their frustration with Romania's tax payment infrastructure, which is among the main factors hampering any gains in the collection rate, alongside rampant tax evasion.

Razvan Cotovelea, the minister for the information society, recently said he did not understand how tax collection agency ANAF functioned, after he'd queued for 45 minutes to pay some taxes for his family. He went so far as to call the situation at ANAF headquarters "primitive", referring to the tax collection mechanism. A minister enduring this bleak reality may be of cold comfort to the companies and individuals going through this on a regular basis, but it neatly illustrates the rift between policymakers and the economic reality.

Last year, ANAF started a massive modernization program backed by the World Bank, in a bid to make local institutions friendlier to taxpayers. This project should be completed around 2018.

Finance minister Ioana Petrescu said that Romanians will pay more taxes if their confidence in the state is boosted. She also mentioned something about respecting honest taxpayers. They pay their taxes without knowing exactly how this money will be used.

In business - as in modern life - time is always of the essence, and taxpayers will appreciate any future online payment systems. But will the budget actually increase while the accountability of those using this money remains so weak?

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NEWS in brief

Third parties could be forced to pay debts of local companies

The National Agency for Tax Administration (ANAF) issued an order at the beginning of February, describing the procedures under which individuals and legal entities may be held by the Romanian authorities jointly and individually liable for the tax debts of Romanian taxpayers, according to Ioana Hockl, partner at ZRP Tax. If a Romanian company cannot pay its outstanding debts, the tax authorities may oblige third parties, including shareholders or administrators, to pay the debts, provided the tax authority has proved they contributed to the outflow of resources from the company.

Tax incentives for local holding companies

As of January 1, the Fiscal Code includes incentives for Romanian holding companies. Romulus Badea, tax partner at Soter & Partners, says the tax exemption applies to income from dividends, favorable value differences on securities, income from the sale/assignment of securities and income from personal bankruptcy, the last three provisions being new additions to the Fiscal Code.

Changes in taxation of micro-enterprises

As of January 1, companies generating up to 20 percent of total revenues from consultancy and management activities are included in the category of micro-enterprises and will pay income tax of 3 percent. Companies exceeding this threshold enter the profit tax system. In addition, firms in this category need to cover more than 80 percent of their revenues from other sources, according to amendments to the Fiscal Code.

Tax exemption for foreign companies disposing of stakes in local firms

As of March 1, foreign companies' income from the sales or assignment of participation titles held in Romanian companies are not taxable in Romania, under the condition of a minimum 10 percent participation for an uninterrupted period of one year, according to Darian DRS Tax. This can apply where Romania has concluded a double tax avoidance treaty with the country of residence of the foreign legal entity.

Submission of statements concerning residents of other EU member states

According to Darian DRS Tax, payers of labour income, administrators' fees, life insurance products, under certain conditions, and pensions are obliged to submit statements regarding the income paid to each beneficiary that is resident of another EU member state from March 1. In addition, taxpayers that are residents of another EU member state are obliged to declare income derived from Romanian immovable properties by 25 May of the current year for the previous one.

Anti-fraud controls updated

A new title regarding the procedure for carrying out anti-fraud inspections was introduced in the Fiscal Procedure Code as of March 1. It refers to operative and unplanned inspections. Each time such inspections are carried out at the main or secondary headquarters of companies, they are registered in the unique inspections registry. In a separate change, fiscal authorities can use as evidence any means that proves the existence of a fiscal state, including data stored on servers and online, along with audio-video recordings.

Tax audits for VAT refunds below RON 45,000

VAT refunds will be performed only with a subsequent tax audit, where the VAT refund sought is lower than RON 45,000, in a measure that came into force on March 1. The authorities have exempted taxpayers that mentioned in their records acts sanctioned as criminal and cases where, based on the information available, the tax authorities consider that there is a risk of undue reimbursement, according to Darian DRS Tax.

Changes in excise duties

Excisable products that no longer meet trading conditions, owned by economic operators in bankruptcy, may be supplied to authorized production warehouse keepers only for processing purposes, based on an invoice and under fiscal supervision, according to one change in the Fiscal Code that came into force on March 1. In addition, excise duty payers that produce non-harmonized excisable products are those economic operators that own the raw material, irrespective of whether the processing is done by them or by third parties, in Romania or outside Romania, according to Darian DRS Tax

VAT cash accounting system becomes optional

The authorities have decided to make the VAT cash accounting system optional from January 1 and have scrapped the mandatory VAT collections within 90 days for invoices for deliveries of goods and services within this system. The VAT cash accounting system applies for taxpayers registered for VAT purposes, which carry out their activity in Romania,

and have registered a turnover below RON 2.25 million in the previous year.

New tax for special constructions

The Fiscal Code includes a new tax for special constrictions starting January 1. The tax is payable in two tranches and amounts to 1.5 percent of the gross carrying amount of the special construction. The tax is applicable to Romanian legal persons, foreign companies that operate through a permanent headquarters in Romania and to legal persons with headquarters in Romania set up according to EU legislation. The main sectors impacted by this tax are energy and telecom.

Computation mechanism for excises altered

The rule establishing the exchange rate used to determine excise duties was changed on January 1. If the exchange rate established by the ECB on October 1 in the previous year is lower than the one registered one year earlier, than the older one will be taken into account. This will be updated by the price consumer index for September of the previous year, recorded by the National Statistics Institute.

Amendments to place of supply of services for broadcasters

From January 1 2015, for telecom, radio broadcasting and television services and other services provided electronically to non-taxable persons, the place of supply of such services will be the place where the beneficiary is established, where it has its domicile or usual residence, according to Darian DRS Tax. This provision was included in amendments to the Fiscal Code that came into force on March 1.

New VAT regime for broadcasters

The specific regime applicable to electronic services provided by taxable persons not established in the EU to non-taxable persons was extended, being made applicable also to telecommunication, radio broadcasting and television services, from January 1 2014, according to Darian DRS Tax.

Procedure for refund of taxes withheld at source

A procedure was introduced for the reimbursement of tax receivables held at source starting March 1. Specifically, when an income payer withholds more tax than actually due, as a rule, the sums are reimbursed at the taxpayer's request, submitted within the statute of limitation, according to Darian DRS Tax. The sum reimbursed by the payer is regularized with other similar types of tax obligation. Where non-residents submit a tax residence certificate after the tax is withheld by the income payer, the withholding tax will be reimbursed even if the tax period when the refunded tax receivable was due was subject to a tax inspection.

Local companies grapple with new construction tax

Pylon on the pressure: the new tax threatens some companies' survival

The new tax of 1.5 percent enforced on special constructions is cumbersome and may dent Romania's capacity to attract fresh investments in key sectors, caution tax experts.

Daniel Anghel, treasurer of the Foreign Investors' Council, the business advocacy group, outlined a series of negative effects the tax could have, including anti-trust distortions in certain branches of industry and potential increases in prices and tariffs for companies.

"Where market conditions do not allow increases in prices or tariffs, this tax may lead to the scrapping of certain investments or even the closure of some companies, which would have a grave impact on the level of unemployment and the overall economy in Romania," Anghel told BR.

He added that at the level of EU members, there is no practice or tendency to impose a tax on productive assets, similar to the amount established in Romania.

"The excessive costs of this new tax will not be absorbed by the profit margins of impacted companies and their survival will depend on whether they can transfer these costs to final consumers by increasing tariffs, especially for utility services, but elsewhere too. The final outcome will be an increase in prices for final consumers, boosting inflation," said Anghel. He is calling for this tax to be repealed until the authorities carry out an impact study on the business environment, including the level of the tax and the assets to which it applies.

Miruna Enache, partner, fiscal assistance, at professional services firm EY Romania, added that the tax has not been checked against regulation impacting specific services such as electronic communications and the transport and distribution of gas and electricity. She said imposing this tax would generate "additional difficulties" for these businesses, which would feed through into tax collection, especially for profit tax.

According to Dan Badin, partner at Deloitte Tax, the type of construction to which this tax applies is still unclear, for example modernizations or the expansion of existing buildings.

Furthermore, the taxation base has to be clarified to see if the charge applies to the gross or net value of the building. The tax provisions are conflicting because they also apply to constructions in industrial parks, which are exempted from paying local taxes.

"In all probability, to inspect the implementation and to correctly regulate the tax, the authorities will carry out subsequent inspections, which could be seen as a way to clarify its implementation. This clarification method could generate additional debts in connection to the new constructions' tax, as well as potential penalties and interest on delayed payments," said Badin.

Ionut Bohalteanu, partner at Musat & Asociatii, said that financial managers would have to assess the impact of this tax on the operational profits of affected companies. BR

Ovidiu Posirca

Draft bills under debate in March

Hiked excises for cigarettes

Under a draft bill passed by the government and published by the Ministry of Finance, the specific excise is set to grow from EUR 56.61 to EUR 59.77 per 1,000 cigarettes. The ad valorem excise will be reduced from 19 to 18 percent. The total excise will amount to EUR 84.37 per 1,000 cigarettes from EUR 81.78. The increased excise will be applied between April 1 2014 and March 31 2015.

"The percentage of the ad valorem excise has been reduced versus the retail sale price and the level of the specific excise – the fixed component of the total excise – has been increased, in line with the principle of fiscal consolidation, which ensures a higher and fixed collection level of revenues for the state budget, no matter the price," stated the motivation of the draft bill.

Capped interchange fees and limited cash payments

Interbank fees for each transaction carried out at a merchant outlet with a payment card will be capped at 0.2 percent for debit cards and 0.3 percent for credit cards, according to a draft bill published by the Ministry of Finance.

"In Romania the level of interchange fees has remained unchanged for a long period of time despite changes in the market conditions. These levels of interchange fees were common to both types of card systems, Visa and MasterCard, and for both types of cards, although credit cards are more expensive than debit card," stated the motivation of the draft bill.

The bill includes another provision that eases the purchase of houses and cars using cash from a previous version that made cashless payments mandatory for this kind of transaction.

Such transactions would be carried out within the limits imposed on transactions between individuals of RON 10,000 daily. Cash transactions between companies should be limited to RON 5,000 daily for one supplier and not more than RON 10,000 compared to levels in the previous draft bill of RON 2,000 and RON 5,000, respectively. The threshold for cash transactions between individuals has gone up from RON 2,000 to RON 5,000, according to the draft bill.

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Modernized tax agency and higher compliance key for higher tax take

With budgetary revenues having fallen by close to 1 percentage point to 32 percent of GDP last year, according to the Ministry of Finance, tax experts outlined the key measures that could increase the tax take.

BR OVIDIU POSIRCA

They say that keeping the modernization of tax collection agency ANAF on track and increasing the compliance rate, while tackling tax evasion, should see Romania get closer to the average EU collection rate of 40 percent in the coming years.

According to the Ministry of Finance, revenue to the consolidated budget rose 3.6 percentage points in nominal terms, but fell 0.9 percentage points of GDP, while expenses rose 3.8 percentage points in nominal terms but fell 0.9 percentage points as share in GDP to 34.5 percent of GDP.

Ioana Petrescu, the minister of finance, said earlier this month that streamlining the tax collection rate could be done by clamping down on tax evasion, which could pave the way for fiscal easing.

"The fiscal levers, which are the levels of taxes, will be used to encourage economic growth," said the minister during an Aspen Institute event in mid-March, quoted by public radio station Radio Romania. She cited the 5 percentage point reduction of social insurance paid by employers, and the tax exemption of reinvested profit as measures that could reduce the fiscal burden. Petrescu said the reduction of CAS could be passed this July.

Ioana Hockl, partner at ZRP Tax, said that easing labor taxation, such as social insurance and health fund contributions, could help limit black market labor. She called on the tax authorities to be more focused on chasing tax evaders, both individuals and companies, instead of increasing the tax burden on all taxpayers or excessively inspecting good-faith companies.

On tax collection, the minister of finance stressed that the ministry does

not plan to increase collection on the short term, and that if a fiscal amnesty is passed, this will boost individuals' motivation to evade tax.

"The collection rate has never gone above 30-35 percent of GDP, not even in the boom period. Tax evasion must be reduced, and voluntary compliance increased," said the minister last week, quoted by daily Adevarul.

According to a study by Visa Europe, the payments technology business, Romania's informal economy amounted to 28 percent of GDP last year, the second highest level in the EU. This means that close to EUR 40 million was funneled into the informal economy in 2013. "Fiscal evasion could be discouraged by either reducing VAT on more goods, such as meat as well as other basic foodstuffs, or by taking proactive measures to increase compliance, the modernization of the tax administration, as well as the elimination or clarification of provisions which are subject to interpretation," Ramona Jurubita, deputy head of tax at KPMG Romania, the professional services firm, told BR.

Ionut Bohalteanu, partner at law firm Musat & Asociatii, noted that state budget collection rates have come under increased pressure in the recent period.

ANAF to undergo five-year modernization

Last year, Romania's Ministry of Finance inked a USD 92 million loan deal with the World Bank for the modernization of ANAF. The project, which will run through to 2019, aims to increase ANAF's efficiency in collecting taxes and social contributions. At the same time, tax compliance should be improved through the reduction of the burden on taxpayers.

Daniel Anghel, treasurer of the Foreign Investors' Council (FIC), the business advocacy group, commented that reforming the fiscal administration was crucial to increase the tax take.

He suggested fiscal inspection and control structures be overhauled, along with the elimination of overlapping inspections and differences in the application of fiscal legislation.

He added that ANAF's IT infrastructure has to be upgraded to limit the payment time for taxpayers, while fiscal inspections should focus on sectors with high risks of tax evasion.

Neighboring Bulgaria is one of the EU members to have successfully modernized its tax administration with the help of the World Bank. The country has increased its tax take by 5-6 percentage points to 35 percent of GDP and split its tax authority into five regional bodies. Poland has pursued the same reform program. The ANAF cut several hundred jobs last year, as it restructured its operations at a regional level. However, new jobs have been created due to the roll out of a new anti-fraud division in late 2013, which is tasked with tackling serious fiscal crimes.

"In the recent period there has been an increase in the fiscal inspection activity. Starting this year, taxpayers undergoing fiscal inspections will be selected based on a risk analysis," Dan Badin, partner at Deloitte Tax, told BR.

ANAF also has a division tasked with investigating wealthy individuals who have lied in their tax statements. According to media reports, the authorities will impose a 16 percent tax rate on the undeclared income of these people.

Tackling tax evasion through compliance

According to Anghel of the FIC, tax evasion is the root cause of the poor collection rate in Romania. He said it could be tackled either by increasing constraints or by incentivizing voluntary compliance, or through a "well balanced" combination of the two. "Unfortunately, the first option has already shown that it generates unwanted effects, negatively impacting fair-dealing companies," said Anghel. "So we recommend the implementation of a voluntary compliance statement for all taxpayers, to increase voluntary compliance and tax collection for the state budget." He added, "Such a measure, associated with the reduction of sanctions for good taxpayers, or even the granting of bonuses for those meeting their fiscal obligations on time, and an increase of sanctions for tax evasion, could have positive effects on the medium and long term by increasing budgetary revenues, without the need for additional measures adjusting tax rates."

Alexandru Ambrozie, partner at law firm Popovici Nitu & Asociatii, suggested Romania ask for a derogation from the European Commission, the executive arm of the EU, for enforcing reverse taxation in certain sectors, as a means to tackle serious tax evasion. He mentioned the identification of undeclared and bogus transactions, adding that shadow companies committing VAT and excises fraud should be another focus area. He concluded that fewer changes in the fiscal framework along with an intensified effort by ANAF in assisting taxpayers should contribute to Romania's effort to collect more in taxes.

"In the recent period there has been an increase in the fiscal inspection activity. Starting this year, taxpayers undergoing fiscal inspections will be selected based on a risk analysis,"
Dan Badin, partner at Deloitte Tax

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Hike in excises could see informal market expand

The government may benefit from higher budget revenues on the short term, following the 6.5 percent hike in excises this year due to changes in the calculation mechanism and planned increases in excises on tobacco and energy products, but collection may fall on the long run as more companies could be lured into the informal market to survive, say experts.

Ramona Jurubita, deputy head of tax at KPMG Romania, the professional services firm, said the change in the rule establishing the exchange rate used to determine excise duties will see them grow annually, despite the real movement of the exchange rate and relevant provisions of EU directives in the field.

"Last year, the government promised not to raise excise duties, and although the rates themselves have not increased, in reality it has broken its promise because of the change in the way the exchange rate is calculated," Jurubita told BR.

The level of excises will be pegged to the annual inflation rate, replacing the calculation mechanism involving the RON/EUR exchange rate established by the European Central Bank (ECB) on October 1. The exchange rate last year was 4.4485 RON/EUR, almost 2 percent lower than the previous year, which should have led to a decrease in the level of excises this year.

However, the authorities have maintained the exchange rate from the previous year of 4.5223 and updated it with the inflation rate, meaning that excises will be calculated this year at a rate of 4.7380 RON/EUR, which is 6.5 percent higher than expected.

"The use of this new mechanism and the increase of the level of excise duties for fuel will have a snowball effect since they may negatively impact companies acting in many economic fields, discourage potential investors and increase prices for the final consumer," Ioana Hockl, partner at ZRP Tax, told BR.

Experts say higher excises do not mean bigger revenues

Aside from the general excise hike, the excise for motor fuels including gasoline and diesel is set to grow by an average of 20 percent starting April, also taking into account the new fuels excise of 0.7 percent in this category, according to tax specialists. The government expects to collect around EUR 500 million from the new excise this year, which will be funneled towards the construction of new motorways.

"In the first stage, this measure will lead to higher expenses for transport vehicles, but it will shortly have repercussions for the whole economy, with growing prices for all products and services as a result of the increase in transport costs," Dan Badin, partner at Deloitte Tax, told BR.

Furthermore, excise duties for cigarettes are set to go up by 3.1 percent to EUR 84.3 percent per 1,000 cigarettes starting April 1, following a timetable

Playing percentages: short-term gains could cause long-term problems

devised in 2010. Last autumn, the authorities increased the excises on a wide array of luxury products including natural furs and large-engine vehicles.

"It is, however, unlikely that revenue collected from excise duties will increase by 20 percent in 2014 and the total amount collected will probably not even rise by 6.5 percent, which represents only the increase in sums to be paid due to the change in the rule to establish the exchange rate," said Jurubita.

"Statistics over the last few years show that although there have been several increases in the level of excise duties, and also rises in the RON/EUR exchange rate year by year, the hike in revenues collected from excise duties has only just kept pace with the increase in the exchange rate," she added.

Jurubita commented that the European Commission, the executive arm of the EU, may begin infringement procedures against Romania in response to the overhaul of the excise system, after many businesses objected to the move, claiming it breached EU directives.She added that more companies may migrate towards the informal economy and some may go insolvent, resulting in job losses.

Meanwhile, consumption remains at a very low level. Jurubita said the recent apparent increase in domestic consumption was not real, as it was generated solely by a rise in consumer spending and not in volumes.

Ionut Bohalteanu, partner at law firm Musat & Asociatii, said that the contribution of domestic consumption to GDP will remain low this year, following the change in the computation of excises and the new fuel excise.

Overall, the KPMG expert reckoned the overall tax take of 30 percent of GDP could be impacted if the state fails to design measures to increase collection.

"Without improved collection rates, honest taxpayers will continue to pay more than they should," said Jurubita.

She concluded that policymakers are likely to undermine investors' confidence in Romania, by amending the legislation in a non-transparent and unpredictable manner, and by displaying a lack of concern with, and interest in, compliance with relevant EU rules. BR

Ovidiu Posirca

WHO'S NEWS

BR welcomes information for Who's News. Submissions may be edited for length and clarity. Get in touch at simona.bazavan@business-review.ro

Mihai Darie

is the new financial director at state-owned nuclear producer **Nuclearelectrica**, with the appointment effective from February. He was recruited by Quest Advisors as part of a wider program for the appointment of professional boards and managers at state companies. Darie has worked in the financial sector for over 14 years, holding management positions in the private and public sector. He headed the restructuring and loan recovery department at Raiffeisen Bank and was economic director at the Property Fund. He is a graduate of the Faculty of Finance, Insurance Banks and Stock Exchanges at the Bucharest University of Economic Studies (ASE). Darie has an EMBA and is a member of ACCA-UK. He is also a chartered financial analyst (CFA).

Adrian Gheorghe

has been appointed manager of the financial department at **Hidroelectrica**, the state-owned hydroelectricity producer, replacing Georgeta Iosif, who had held the position since September 2013. Gheorghe, who assumed his new role on March 24, has held top management positions over the last 15 years. He worked at professional services firm PwC between 1993 and 1995, then was CFO at ABN Amro Bank Romania between 1995 and 2001, holding the same position at Raiffeisen Bank Romania between 2002 and 2007. Next, Gheorghe moved to Bancpost, where he spent two years as CFO. Prior to his appointment at Hidroelectrica, he was CFO at Mandy Foods International.

Adriana Jankovicova

was appointed CFO of **Banca Comerciala Romana** (BCR) at the end of January. She has previously worked as head of group performance management at Austria's Erste Group. Jankovicova joined Erste in 2002 and later became head of Erste Group Assets & Liabilities Management, in charge of controlling for the group.

Ioana Petrescu

34, was named new **minister of finance** in March, replacing Daniel Chitoiu, as part of a wider government reshuffle. She started working in Romania last September as advisor to Prime Minister Victor Ponta on fiscal and economic matters. Petrescu has a bachelor's degree in mathematics and economics from Wellesley College, and obtained a master's degree in economics from Harvard University. She later got her PhD in economics from the same institution. From 2010 she was assistant professor at University of Maryland, College Park, School of Public Policy.

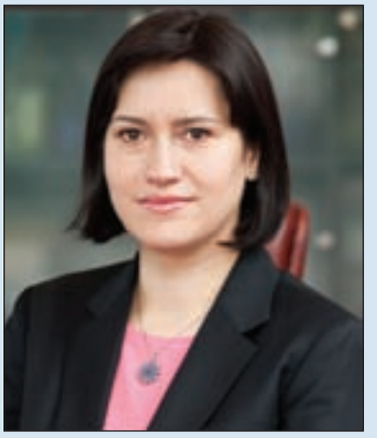
PARTNER CONTENT

The tax rollercoaster

by Mihaela Pohaci, Partner, Popovici Nițu & Asociații TAX
Raluca Rusu, Senior Manager, Popovici Nițu & Asociații TAX

Year 2014 commenced with contradictory new provisions in the tax field: on the up side, the long-awaited "holding regime" has been introduced while the previously mandatory cash-based VAT system has been modified and made optional (just in time to avoid an infringement from the EU Commission). On the down side, additional tax burdens were introduced: increases of the excise duties on fuel but also a new tax, the "pole tax". As covering all changes in the fiscal legislation would be a long story, we will briefly address only the high and the low of the ride.

Mihaela Pohaci, Partner Popovici Nițu & Asociații TAX



Raluca Rusu, Senior Manager Popovici Nițu & Asociații TAX

The high - the holding regime

After years of lobbying, the newly introduced holding provisions offer additional attractiveness to the local investment climate.

Under the new regime, subject to certain conditions, corporate tax exemption is available for certain income (dividends, sale of shares, liquidation of a Romanian entity) derived by investors (except companies not resident in "friendly" jurisdictions, i.e., with no Conventions for the avoidance of double taxation).

While the measure is certainly welcomed and long-awaited, some fine tuning is nevertheless required, as certain inconsistencies and negative effects have been noticed after the initial excitement has subsided.

On one hand, the profit obtained by investors from the alienation of shares in a Romanian company is now tax exempt; on the other hand, another (old) provision of the Fiscal Code qualifies the income obtained by non-residents from the sale of shares in real-estate companies as "real-estate income", not as income from the sale of shares, putting a question mark on the availability of the exemption in such cases. This seems to be rather a case of inconsistent implementation and not one of intentional exclusion, as taxation relief is available anyway under Conventions which do not have a so-called "real-estate clause" for capital gain purposes. As such, a real benefit would be obtained by investors solely if relief is provided under domestic legislation specifically in cases where shares in real-estate companies are alienated. Not to mention that the discrimination of non-resident investors selling shares in real-estate companies versus Romanian investors in the same position would be another infringement just waiting to happen.

The implementation of the holding regime also holds another surprise: while previously, dividend income received by a Romanian company from another Romanian company was not taxable (irrespective of the shareholding participation and/or holding period), starting 2014, such income is tax exempt only if the dividend beneficiary holds at least 10% of the shares for a period of minimum one year. This measure, deemed to encourage long-term, non-speculative investments, actually hits the small investors (companies), especially the stock exchange players, in a period when trading on the stock exchange is anyway anemic.

One can only hope that the required corrections will be made soon, so that the holding regime in Romania is indeed on a good path. Other measures would still be required in order to really make it functional and attractive, but this is a start.

Mihaela Pohaci

The low - the "pole tax"

The biggest surprise of last year has been, by far, the newly introduced tax on constructions, in force as of January 1, 2014. While other measures have been discussed, in greater or lesser details, with the business community prior to implementation, the tax on constructions has appeared virtually "out of the blue", making the hearts of CFO's everywhere skip a beat in the struggle to adjust their financial budgets.

Baptized almost immediately by tax advisors as the "pole tax", in reminiscence of past battles carried out in the early years of the Fiscal Code as to convince tax authorities that telecom poles are not buildings within the meaning of the local tax on building (and should not be subject to local tax), the newly introduced tax does just that: it levies on telecom poles, as well as on other constructions, a tax similar to the local tax. Although the "pole tax" is clearly not a local tax, one cannot help having a "deja-vu" feeling.

The present form of the legislation raises various concerns, starting with the catalogue based on which assets are classified as constructions for the purpose of this tax (catalogue dating back to 2005 and which is obsolete for certain modern day industries such as renewable energy), continuing with the application basis (gross book value of assets, which entails that differences in accounting standards and policies may lead to different results) and ending with the applicable rate (initial estimations prepared by the business community indicate that the 1.5% rate is too high for generating the target budget revenue desired). Add to that the lack of application norms, partial overlaps with local taxes due to inconsistent approaches of local tax authorities, as well as a rapidly approaching reporting and payment deadline of May 25 and you should have a fairly accurate image of the current status.

The business community has tried to bring implementation alternatives on the discussion table, aimed at correcting some of the drawbacks, such as: using fiscal values instead of accounting ones (since fiscal values are defined unitarily and exclude distortions caused by applying different accounting/reporting standards), using net fiscal values instead of gross values (as otherwise values which no longer exist would be taxed), as well as using a tax rate which is calibrated at achieving the desired budget revenues.

While initial reactions from the Ministry of Finance indicated that there may still be room for discussion in order to adjust the tax's effects and ensure a more level playing field among companies, the public declarations of the Minister of Finance seems to indicate that the tax on constructions is here to stay in its present form. At least for a year.

In this context, impacted companies should thoroughly review their accounting asset classification prior to submitting the 2013 financial statements, as any errors would generate undue burden and corrections throughout the year would not impact the tax due.

Raluca Rusu