Construction ruction
The new construction tax impacts various sectors including agriculture and real estate, threatening investments, warn pundits

Tax ax
The scrapping of a range of charges will have only a limited impact on companies' fiscal burden, say pundits

Social problem
Individuals performing independent activities while in receipt of other income could pay social contributions twice

Profit at work
Companies planning long-term investments may not reap too much benefit from the tax exemption on reinvested profit

BR tax&law

www.business-review.eu

May 2014, Number 2

Clash of the creditors

The newly approved Insolvency Code provides additional instruments for private creditors to recover receivables, while state creditors are still favored despite leeway in approving reorganization plans, say experts
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Business Review Supplements

EDITORIAL

Ovidiu Posirca
Editor

Romania's failed war on undeclared work


Photo: Mihai Constantineanu

Around 1.5 million people are working "under the table" in Romania, some because they cannot find an official job and others because companies do not want to pay the full taxes.

In rural areas, people have even fewer opportunities and often either work in the agricultural sector, where tax evasion remains high, or flee abroad in search of a job.

The government has failed to ease labor taxation in the past two years and will make another attempt this June to lower the social insurance contributions paid by employers by 5 percentage points.

Ioana Petrescu, minister of finance, will have to get this approved by the International Monetary Fund, which is tasked with vetting all the major fiscal changes that shrink the revenue to the state budget.

It remains to be seen if the small savings made by companies on social insurance contributions will help the depressed labor market, which once boomed due to the massive influx of foreign direct investments that dried up following the crisis. Nowadays, any company hiring more than a dozen people makes headlines.

Close to half of the respondents of a Eurobarometer survey on undeclared work published this March who admitted they were being paid cash in hand said they did it because both parties benefited from the arrangement. The respondents were working in Central and Eastern Europe. In addition, 15 percent said the state did nothing for them, so why should they pay taxes.

This destructive mistrust in the state is not helped locally by the constant political bickering, and we can see that public services such as education and healthcare have continued to deteriorate in the past few years. Extracting the informal payment component from these areas and others would probably crash them for good.

Meanwhile, policymakers expect record economic growth rates - with GDP thought to have risen by 5.1 percent in the fourth quarter of last year and 3.5 percent in the first quarter of this year - to trickle down by magic into the real economy.

Liviu Voinea, delegate minister of the budget, recently trumpeted that the crisis was over and that Romanians should start spending more. The government announced the gross minimum wage would be hiked to EUR 203 this summer and raised by EUR 17 each semester next year. This comes in a context where China's minimum wage is now higher than ours.

In order to speed up job creation and root out some of the undeclared work, the authorities have come up with a new scheme through which the state will partially cover the cost of wages for firms that create at least 20 jobs. The total budget for this scheme stands at around EUR 600 million and it can cover around 1,500 companies, although they face cumbersome procedures to become eligible.

But despite the handsome economic growth and the competitive minimum wage, we are still Europe's second poorest economy. We are not resting on our laurels, however: Romania aims to join the elite 18-member Euro zone in 2019.

And yet we are not surprised by the fact that just one quarter of Romanians were expected to vote in the European Parliament elections on May 25. I am curious how many of the people in unreported employment will go to the polls. Maybe some temporary jobs have been created on this occasion, but guess what... they are reserved for supporters of political parties.

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NEWS in brief

Reinvested profit made tax exempt

Profit reinvested by companies in new technological equipment will be exempted from tax as of July. The measure will be applied through to December 2015. Ioana Petrescu, the minister of finance, told BR in an interview in mid-April that this measure will cost the state budget RON 28 million (EUR 6.2 million) this year, provided it is rolled out in July.

Rewritten Fiscal Code to be debated this summer

Ioana Petrescu, minister of finance, said on May 15 that the rewritten Fiscal Code and Fiscal Procedure Code should be put up for debate this summer and go for a final vote in Parliament this September. Authorities say the new codes aim to simply the fiscal legislation and make it more accessible for taxpayers. The Ministry of Finance has been assisted in drafting the codes by special task forces from business advocacy groups such as AmCham and the Foreign Investors' Council.

ANAF publishes social contributions payment guide

Tax collection agency ANAF published on its website in late April a guide to the declaration and payment of social insurance contributions owed by individuals generating income from independent activities or other types of income in 2014, and also for individuals that do not earn any kind of income. The guide can be downloaded for free from www.anaf.ro, in the taxpayer assistance section.

Reduction of CAS under negotiation with IMF

A 5 percentage point reduction in social insurance contributions (CAS) paid by employers will be negotiated with the joint review mission of the International Monetary Fund, World Bank and European Commission due to arrive in Bucharest in early June, according to Ioana Petrescu, minister of finance. Guillermo Tolosa, resident representative in Romania and Bulgaria of the IMF, told BR in an interview in late April that any reduction of CAS should be discussed before next year's budget.

Romania seeks UK backing for transfer pricing policy

HM Revenues & Customs, the UK-based tax collection agency, will assist the Romanian authorities in reaching deals with multinationals over transfer prices. Ioana Petrescu, minister of finance, told BR in an interview in mid-April that the government wanted to use advance price agreements running for five years. Speaking at an event organized by Mediafax newswire, she said that such a deal had already been struck with a multinational in early May, without mentioning its name.

Government erases debts of state defense contractors

The government approved an emergency government ordinance on May 13 erasing debts of around EUR 250,000 held by state-controlled defense companies that manufacture ammunition and vehicles. The debts owned to tax collection agency ANAF can be converted into shares. This measure will not apply to defense contractors that manufacture or sell goods that do not have a military purpose.

Meat producers call for slice in VAT

Representatives of the local meat production industry kicked off a campaign in April calling for a reduction in VAT on meat products from 24 to 9 percent, similar to the reduction made for the bakery and milling industry. According to industry representatives, the local market stands at around EUR 3.2 billion. They say the lower VAT would reduce tax evasion, which amounts to around 40 percent of the market.

Government set to increase royalties for oil and gas industry

GlobalData, the research and consulting firm, said in a report that the average rate of royalties paid by oil and gas companies was set to grow from around 7-8 percent to at least 10 percent in the new framework to be introduced next year. Will Scargill, the firm's upstream fiscal analyst, predicted that the government would enforce different rates for onshore fields.

Local tax evasion stands at 22 percent of GDP

Gelu Stefan Diaconu, head of the tax collection agency ANAF, said last week in an interview with daily newspaper Adevarul that the level of tax evasion in Romania had been "exaggerated". He added that tax evasion in the country stood at 22 percent of GDP, against the EU average of 14-15 percent. Previous reports have put the level of local tax evasion at close to 30 percent of GDP.

Real estate sector grapples with construction tax

The fitting out of a space for business purposes will be subject to taxation that can be paid either by the tenant or the owner, according to the construction tax rolled out this year.

Nicoleta Radu, business intelligence consultant at Zanti Exclusiv, a real estate consultancy, commented that any improvements made to a building following its delivery on the market will be liable for the new tax.

"If a tenant wishes to rent a space in an office building, logistics park or retail center and arranges the space according to its needs, the amount spent on this must be filed with the tax collection agency ANAF. This also applies to street spaces where the arrangements are paid for by the tenant," Radu told BR.

"If the investment exceeds 25 percent of the building's book value, another tax payment is due from the owner," she added.

The annual 1.5 percent tax is levied on the building's book value.

This topic will be addressed on June 5 at the Business Review event: Realty 2014, the Romanian Real Estate Market Forum.

Building a bigger tax base: the construction tax has alarmed companies

Authorities 'underestimate' business impact of construction tax

The impact of the new construction tax on local companies has been underestimated by the Ministry of Finance, according to Gabriel Biris, partner at law firm Biris Goran.

He said the initial impact on the economy, put by the authorities at RON 500 million (EUR 113 million), was likely to be 10 times higher.

"The severity of this tax casts a shadow on the newly introduced exception to capital gains, a measure that creates interesting opportunities to structure businesses using Romanian holding companies," he told BR.

Biris said the tax hits real estate investors through investments in infrastructure for their buildings, especially industrial and logistics centers for platforms, interior roads and alleys. It also impacts the agriculture sector through facilities such as greenhouses, fish farming units or pumping stations, "although it seems that the lawmakers' intentions was not also to tax the agriculture sector," according to the partner.

The 1.5 percent tax has to be paid in two installments by May 26 and September 25. It does not apply to buildings for which the local tax of 0.25 to 1.5 percent of the book value is already applicable. BR

Ovidiu Posirca

Tax cull may have limited impact on fiscal burden

With the Ministry of Finance having come up with two draft bills cancelling or merging 92 para-fiscal taxes and tariffs whose administration costs approach the amount collected, tax experts say the move will only slightly reduce the fiscal burden on companies.

Some of the taxes that will be axed include the charge for issuing a deposit license and the one for assistance services provided by trade registry offices.

"Given the insignificant sum these taxes account for in the expected budgetary revenue this year, adding to the fact that they are specific to certain sectors and one-off charges, we expect the impact on the fiscal burden on companies to be insignificant or even nonexistent," Daniel Petre, director at Deloitte Tax, told BR. He said the move would only ease some of the fiscal burden for companies that have to pay them regularly.

Romania has made progress in reducing the number of taxes since the European Commission, the executive arm of the EU, warned in a report some six years ago that the fiscal burden was too great. The country had 74 fiscal duties and around 500 non-fiscal taxes in 2009, according to the first inventory completed at that time by the authorities.

Ramona Jurubita, tax partner and deputy head of taxation at professional services firm KPMG, said that almost half of the non-fiscal taxes had been abolished or merged over the following two years.

"In the past few years we have seen progress in simplifying tax compliance, a good example being the introduction of the single tax return (112) for social contributions," Jurubita told BR.

The authorities have collected less than RON 100,000 (EUR 22,500) over the last year for each of the taxes or tariffs they aims to scrap, most of which were payable by individuals or for very specific actions, according to Alexandru Ambrozie, partner at law firm Popovici Nitu&Asociatii.

Jurubita of KPMG commented, "Any simplification of the tax compliance burden is good news for businesses in Romania, but a mere reduction in the number of taxes will probably have limited effect. Simpler and clearer rules for existing taxes would have a greater and longer lasting impact on the business environment in Romania." BR

Ovidiu Posirca

Draft bills under debate

Government to scrap or consolidate 92 taxes, non-fiscal tariffs

The Ministry of Finance put up for debate in mid-May two draft bills that aim to eliminate or consolidate 92 parafiscal taxes. The minister will issue some orders to allow the full implementation of these bills. Authorities will scrap or consolidate 27 taxes and non-fiscal tariffs, and through the orders issued by Ioana Petrescu, minister of finance, another 65 taxes and parafiscal tariffs will be reduced. Petrescu said these two bills should ease the burden for taxpayers and reduce the administration costs of these taxes, for which the collected sum is small. "In addition, this measure contributes to the enhancement of predictability and creates a fiscal-budgetary framework that stimulates the development of the business environment," said the minister in a statement. The bills would scrap the charge for the issuing of a temporary passport or another document for crossing a border, which stands at RON 22, and the hourly tariff for reporting the founding of a firm, which is RON 19.8.

Application norms for construction tax published

A draft bill that includes the application norms for the construction tax was put up for public debate by the Ministry of Finance in early May. The 1.5 percent tax is levied on the accounting value of special constructions and must be paid in two equal installments by May 25 and September 25. The bill stipulates that constructions granted in administration, concession or rented buildings, which are registered in accounts off the balance sheet, are not included in the tax base. In addition, for constructions comprising built elements and equipment, the tax is payable only for the construction elements.

Reinvested profit to be tax exempt

Under a draft bill published by the Ministry of Finance in early May, the authorities have made the term of production of technological equipment subject to the application of the tax exemption on reinvested profit. They have also included technical clarification for taxpayers that apply accounting regulation based on International Financial Reporting Standards (IFRS) and which at the first application of the IFRS evaluate tangible assets at the just value and opt to use it as deemed cost.

Individuals performing independent activities could pay social contributions twice

Individuals earning income from independent activities, but who are also employed, pensioners or registered unemployed, will have to pay social security contributions, under the convergence program for the next three years submitted in April by the government to the European Commission, the executive arm of the EU.

The individuals will have to pay these contributions irrespective of whether they derive other types of income on which contributions are due, according to Ramona Jurubita, tax partner and deputy head of taxation at professional services firm KPMG.

"This has been discussed for more than a year now, but has been a sensitive issue in the context of recent and upcoming elections. Another issue is making a reliable estimate of the impact of these measures on the budget and on individuals, but the authorities have declared that impact studies in this respect have been initiated," Jurubita told BR.

The EC is set to provide recommendations to Romania on the submitted document on June 2. The program outlines the government's strategy for public finances, ranging from public debt to tax collection and budget deficit targets.

"If an individual is an employee and sole trader and there is no ceiling for both income sources, then he or she will contribute twice to the same system, which will not double his or her pension, because it is limited in reference to the ceiling reached once," Daniel Petre, director at Deloitte Tax, told BR.

Double trouble: some taxpayers may find themselves paying contributions twice

At present, individuals performing independent activities contribute to the public pension system at an integrated quota of 31.3 percent and to the healthcare insurance system with an individual quota of 5.5 percent. The taxation base for income generated from independent activities is capped at around RON 800 and 11,500, respectively. A sole trader or an individual performing independent activities pays between RON 250 and RON 3,600 monthly.

Under current regulations, employees do not have to pay these contributions because their contributions to the public pensions system are paid by their employer. An employee will pay 10.5 percent of his or her gross wage, with a maximum monthly cap of RON 11,500. The employer will pay 28 percent of the gross wage, with the cap here theoretical because it is rarely reached, according to Petre.

Claudia Sofianu, tax senior manager at EY Romania, the professional services firm, said that the authorities have already taken the first steps in expanding the taxable base. Income from rents and farming is subject to health fund contributions even when the beneficiary is already paying them for other types of reported income.

The government said this move would help fund the social insurance budget.

"However, we believe that there are easier and more equitable ways to collect the contributions - it just requires a little effort to streamline the fiscal administration system, and I refer to a decrease in the number of statements that have to be submitted (e.n. by tax payers), the simplification of various cumbersome procedures incumbent on the taxpayer and the easing of payment methods," said Petre of Deloitte Tax.

Romania also has an issue with the taxation of low-income individuals, who pay more in social security contributions than in other countries. The government said it was aiming to cut social security contributions, but this would only apply for employers. This measure has to be discussed with the joint mission of the International Monetary Fund, the EC and the World Bank, due in Bucharest in early June. 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

Serban Toader

was reconfirmed in May as senior partner of **KPMG** in Romania and Moldova for a third consecutive mandate. Toader, who took the initial mandate in 2007, coordinates the governance and strategy of the professional services firm. He is a member of the KPMG executive board for Central and Eastern Europe. In Romania, Toader is a member of the board of directors at the Foreign Investors' Council, and a member of the managing board of United Way. He is also a member of CAFR, CECCAR and ACCA UK, and has received a series of academic distinctions including the Executive MBA from Ecole Nationale des Ponts et Chaussees, Paris, University of Edinburgh School of Management, London Business School and Harvard Business School.

Liliana Solomon

is the new chief financial officer (CFO) of **Unify**, formerly Siemens Enterprise Communications, with the appointment effective from May. Solomon most recently served as European CFO at the Vodafone Group, and was previously CEO of the company's operations in Romania. She has also served in financial controlling and CFO roles at leading brands including Cable & Wireless, Deutsche Telekom and O.Tel.O Germany, during a 20-year career. She has replaced Ray Leclercq of the Gores Group, who had held the role in an interim capacity since mid-2013.

Stefan Alexandru Frangulea

was appointed manager of the department for strategy and international cooperation at **Hidroelectrica**, the state-owned hydroelectricity producer, in late April. He is tasked with coordinating the sale of 123 small hydro plants from the company's portfolio. He will also manage relations with Hidroelectrica's shareholders and investors, and prepare its stock exchange listing. Frangulea was recruited by Pedersen & Partners as part of a wider program to appoint professional boards and managers at state companies. He has worked in the banking sector for more than a decade and had a stint as vice-president at General Electric. Frangulea is a graduate of the Bucharest University of Economic Studies and holds two MBAs.

Sorin Biban

has been promoted to tax manager by **Biris Goran**. He joined the law firm in 2008, having practiced as a tax and finance consultant since 2004. He is specialized in direct taxation and accounting matters. Biban is an active member of the Romanian Chamber of Fiscal Consultants and a member of the Romanian Chamber of Certified Accountants.

Tax exemption for reinvested profit could help firms

Firms have welcomed the exemption

Tax exemption for companies' reinvested profits will boost the local business environment, although it might not work for large-scale investments, say experts.

The government has made previous attempts to approve this measure, but it was of little use due to strict award criteria and potentially disproportionate sanctions applicable in the future, according to Alexandru Milcev, tax partner at professional services firm EY Romania.

"I am expecting many taxpayers to take it up, leading to higher investments in fixed assets in the coming period," Milcev told BR.

The exemption will be available only to companies that invest in equipment and work installations and can be used only by certain industries.

"In addition, in the case of investments with a long development cycle, the tax exemption applies when the investment is partially put into use. In this case, fixed assets that cannot be started upon partial completion will be disadvantaged in the first year of operation," Daniel Petre, director at Deloitte Tax, told BR.

Ramona Jurubita, tax partner and deputy head of taxation at professional services firm KPMG, suggested that companies that had already planned investments will get a head start although other firms may make use of it given that it will be applied for two and a half years.

The incentive will cost the state RON 137.5 million (EUR 31 million) this year if all eligible companies use it, according to estimates by the Ministry of Finance. Meanwhile, the Fiscal Council, the body tasked with assessing Romania's fiscal and economic policy, reported that that it would cost RON 2 billion (EUR 451 million).

Ioana Petrescu, the minister of finance, attributed the mismatch to different calculation mechanisms. BR

Ovidiu Posirca

EU-based buyers of local farmland hit by cumbersome procedures

Although the country approved a new bill this year, allowing EU citizens and companies to buy agricultural land outside the city limits, buyers could be discouraged by the cumbersome legal procedures they must go through before they can seal a deal.

Sorin Aungurenci, senior associate at law firm Biris Goran, said the bill contains provisions that grants the first option to buy land (pre-emption rights) to co-owners of the land, lessees, neighboring owners, then the state through the State Domain Agency.

"In order to allow the beneficiaries of the pre-emption rights to exercise their right, city halls, the Romanian Ministry of Agriculture and the territorial structures of this ministry need to publicize the land sale offers at their headquarters and on their websites," said the senior associate.

"This procedure seems straightforward, but its enforcement may turn out to be a challenge, as the Romanian authorities will need to set in place a seller-city hall-ministry communication network guaranteeing that all offers of sale are properly publicized. Only time will tell if this mechanism will work in a timely and functional manner," he added.

Sellers need to obtain special prior approval from the Ministry of Defense to purchase land within 30 km of the Romanian border or the Black Sea, as well as for plots within 2,400 sqm of special facilities. For land within archeological sites, or located in a protected area of archeological heritage or with archeological potential, sellers must secure prior approval from the Ministry of Culture.

"By law, the seller is expected to determine whether the land he or she intends to sell falls within these geographical and archeological criteria. In practice it may turn out to be rather difficult for a seller without sufficient time/information to determine this alone," warned Aungurenci. BR

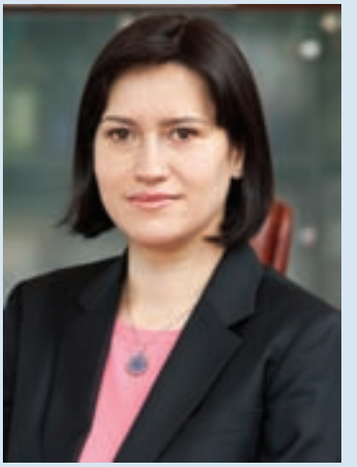
Ovidiu Posirca

PARTNER CONTENT

The future of vouchers

by Raluca Rusu, Senior Tax Manager, Popovici Nițu & Asociații TAX

After two years of public consultations, as well as various rounds of discussions between Member States, new rules on the VAT treatment of vouchers are just about to be born. The amendments to the VAT Directive are expected to be finalized, approved and to enter into force as of January 1, 2015.



In May 2012 the European Commission has put forward a proposal to amend the VAT Directive in order to ensure a harmonized treatment of vouchers across the European Union. Based on information made public at that time, vouchers represented a market of more than € 52 billion/year in the EU, out of which approx. 70% consisted of prepaid telecom, followed by gift vouchers and discount vouchers.

In lack of a definition for vouchers, as well as the existence of different local approaches with respect to the applicable treatment, cross-border supply chains involving vouchers have the potential in resulting either in double taxation or in non-taxation. Hence the need for harmonization.

The current form of the proposal, dated March 2014, departs both from the "means of payment" approach and the existing jurisprudence, re-writing the rules of the game. It is worth mentioning that the current definition of vouchers is rather broad and a great variety of instruments used in practice are likely to fall under the new rules (from pre-paid telecom cards and meal tickets to gift cards and multi-journey public transport tickets). Nevertheless, pure discount vouchers are not part of the current proposal.

The proposal differentiates the VAT treatment of vouchers depending on the voucher type: single purpose voucher (SPV) vs. multi-purpose voucher (MPV). In practice, most types of utilized instruments are likely to qualify as SPVs - i.e. vouchers for which both (i) the country where the redeemed goods/services are taxable and (ii) the applicable VAT rate are known at the moment when the voucher is issued.

In a nutshell, while SPVs are seen as a delivery of the underlying goods/services at each step in the distribution chain and the actual redemption is ignored for VAT purposes, MPVs are ignored in the distribution chain and a delivery of goods/supply of services takes place at the moment of redemption. Sounds simple? Well, as always, the devil lies in the details.

While the rules on VAT have been set (although some clarifications and fine-tuning are still needed in certain areas), the interaction of the proposed VAT rules with the accounting registrations and the corporate income tax rules is bound to create uncertainty, confusions and in some cases even a time-limited taxation of overstated profits. Most disruptions would probably occur at the level of the issuer (the person/entity in whose name the voucher is issued) and at the level of the supplier (the person/entity who accepts the voucher as a consideration/part consideration for goods or services).

In this context, an integrated approach of the legislators would be much needed upon implementation, ideally doubled by practical guidelines.

In the meantime, retail players which issue, distribute or accept such instruments as well as other interested parties still have some (limited) time available in order to consider the impact of the proposed changes on their business, not only from a fiscal perspective but also from an operational one.

New Insolvency Code helps state creditors

With the country having got a new Insolvency Code in mid-April, eight years after the roll out of an insolvency law, experts say that the new bill should improve creditors' chances of recovering more in receivables, although state creditors still have more rights.

The new code was passed by Parliament after an earlier version of the draft bill was rejected in late 2013 by the Constitutional Court for certain aspects related to the insolvency of broadcasters. The new rules would have applied to all ongoing procedures, which judges ruled unconstitutional.

Code aims to strike balance between creditors and debtors

The regulation aims to give creditors a more "adequate" treatment while at the same time maintaining a balance between debtors' and creditors' rights, according to Stan Tirnoveanu, co-managing partner at ZRP Insolvency.

Vasile Godinca-Herlea, managing partner at CITR, said the new bill offered creditors two instruments to recover receivables after the opening of insolvency procedures.

"They will now be able to request payments from the judicial administrator, and then ask the bankruptcy judge to open bankruptcy proceedings, if the receivables are not paid within 60 days of the measure being approved by the judicial administrator or by a court decision," Godinca-Herlea told BR.

Furthermore, utility firms may cease to provide services to a debtor company if it does not pay receivables registered after the start of the insolvency procedure. These services have to be paid for within 90 days. During the observation period, utility firms may not cease providing services to a company that has filed for insolvency if that would impact its current operations.

An indispensable creditor has been defined in the new code as a supplier of services, raw materials or utilities that have a crucial role in keeping the debtor operational. They cannot be replaced during the procedure.

Under the new legislation, the approval of the reorganization plan has to be backed by creditors whose receivables account for at least 30 percent of the value of the creditors' table, on top of the vote on the category of receivables, said Alexandru Rusu, managing partner at Fractal Insolventa.

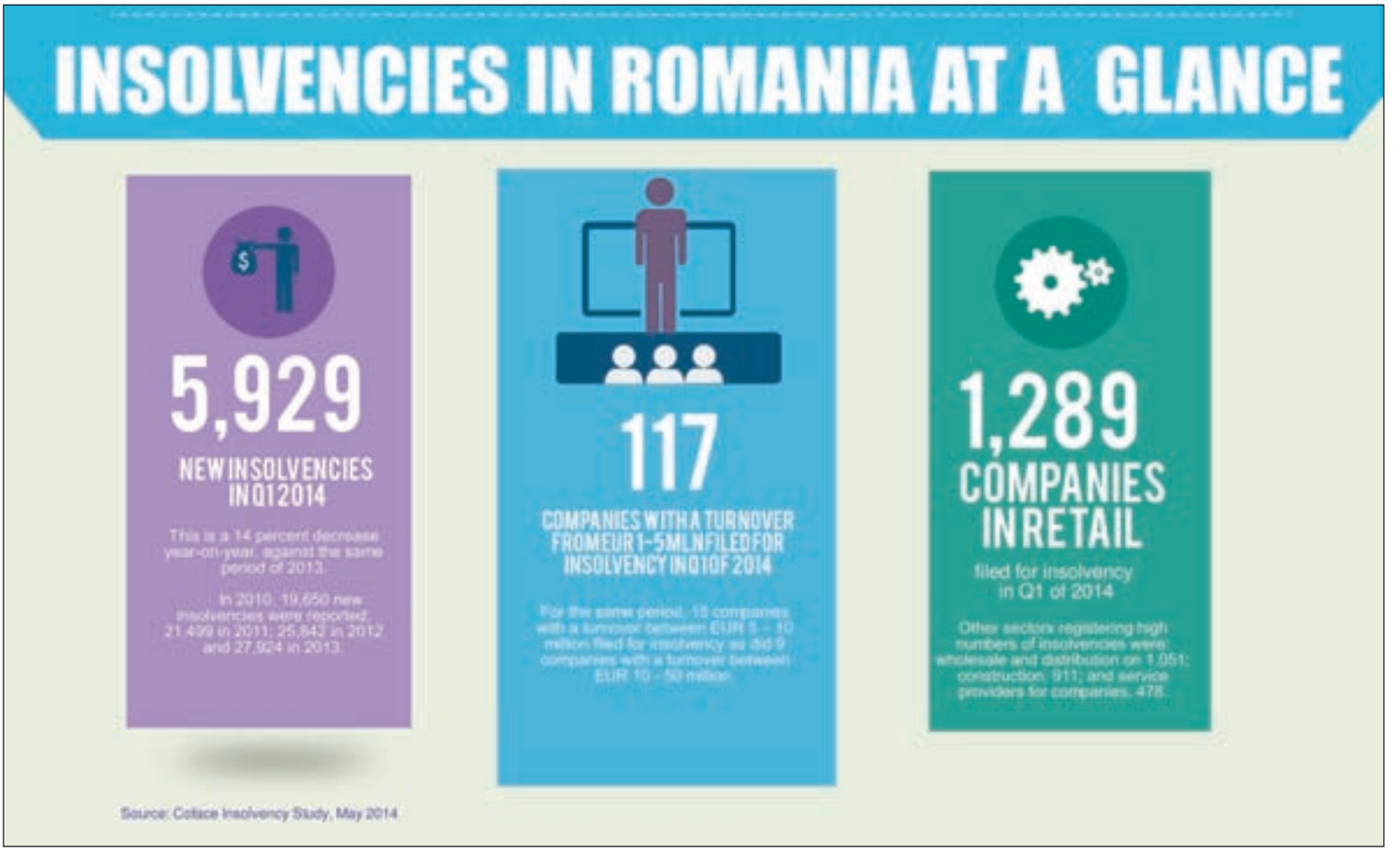
Lorena Stoian, managing associate at Predoiu Law Firm, said that both the creditor and debtor can now ask for the insolvency proceedings to begin if the debt amounts at least to RON 40,000 (EUR 9,000). The previous law enforced a threshold only for the creditor.

Another provision that brings more balance to the procedure is that debtors have been prevented from prolonging the procedure in bad faith, for instance by moving the company's headquarters to another county shortly before filing for insolvency, according to Rusus of Fractal Insolventa.

Public institutions flexing muscles

One of the key changes in the new insolvency framework is the greater flexibility granted to creditors that are public entities, which have hitherto hindered the approval of reorganization plans.

"Under the old regulations, when



Going for broke: The number of companies that went into administration in the first quarter of this year fell by 14 percent to 5,929 against the same period of last year, with retail the worst hit sector, followed by wholesale and construction

companies had public institutions as creditors, the success of the reorganization plan was significantly diminished as the public institution creditor voted against accepting any reduction in the receivables, fearing it might be held accountable for granting state aid, which is incompatible with EU rules," said Stoian of Predoiu Law Firm.

Another change is the regulation of a procedure known as the private creditor test, which effectively sidesteps the state aid risk by proving that a public entity creditor could recover a bigger share of any receivables if the reorganization plan were passed than it would get if the debtor went bankrupt.

The tax collection agency ANAF also got additional firepower to scrutinize companies that file for insolvency. It will be able to start auditing a company within 60 days of the notification of its insolvency being published in the Bulletin for Insolvency Procedures.

The authority's report could generate additional budgetary receivables, even though it assesses the company's activity before it became insolvent. These receivables will be registered as previous receivables and the public entity is entitled to collect them, according to Godinca-Herlea of CITR.

This could be one of the levers used by the authorities to tackle companies that file for insolvency solely to avoid paying taxes. Prime Minister Victor Ponta praised this aspect of the new code, saying that it protected fair-dealing companies and punished rogue ones. However, experts commented that the number of firms going into administration to dodge taxes is slim.

Moreover, public sector creditors will hear of the intention of the company or of other creditors to file for insolvency before the rest of the creditors do. They are obliged to notify the fiscal authority of this plan, according to Godinca-Herlea.

Tirnoveanu of ZRP Insolvency pointed out that at EU level only claims regarding social insurance still get a preferential treatment.

Creditors whose current receivables have not been paid for more than 60 days can petition for the bankruptcy of the indebted company, according to Stoian of Predoiu Law Firm.

"This change is intended to avoid the artificial maintenance of non-viable companies, which cannot even pay their current obligations," said Stoian.

Reorganization plans to last up to four years

Companies that have gone into administration can be financed in the observation period, under a new provision in the code, stated Tirnoveanu. This period runs from the opening date of the insolvency procedure to the confirmation of a reorganization plan by creditors or bankruptcy.

It is limited to 12 months by the code and those companies that cannot secure a reorganization plan in this period will face bankruptcy, said the CITR representative.

In addition, the insolvency practitioner has the right to sell certain non-essential assets, thus increasing the wealth of the debtor company.

After creditors approve the reorganization plan, the company will have three years to turn its activity around and avoid bankruptcy, with the possibility of extending this period by one year.

This provision has been maintained from the previous law. An older version of the code reduced the duration of the plan from three years to one, with experts claiming it was almost impossible to avoid bankruptcy.

"A new element that we hope will have a positive impact on the reorganization plan is the clearer and more practical regulations regarding the guarantee of the recovery of financing made during the procedure. It is about the super-priority mechanism, which has been poorly regulated to date," said Godinca-Herlea of CITR. BR

Ovidiu Posirca