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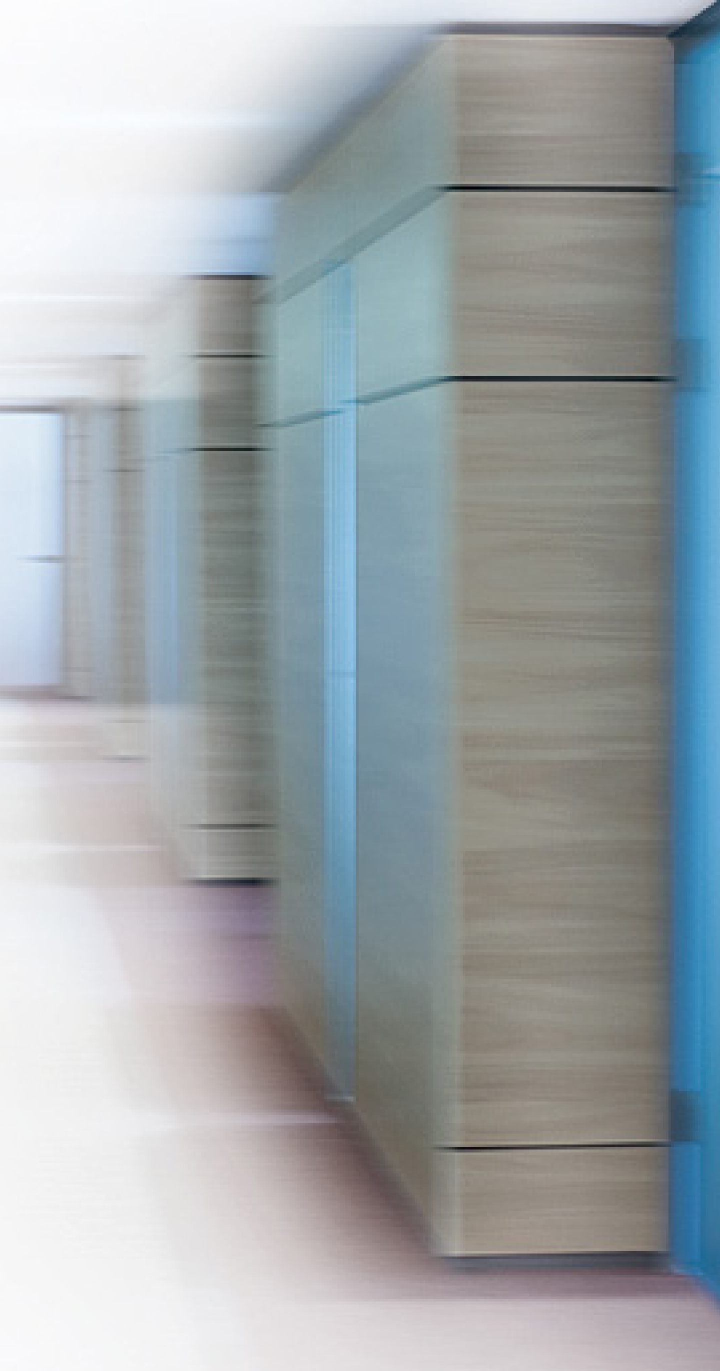

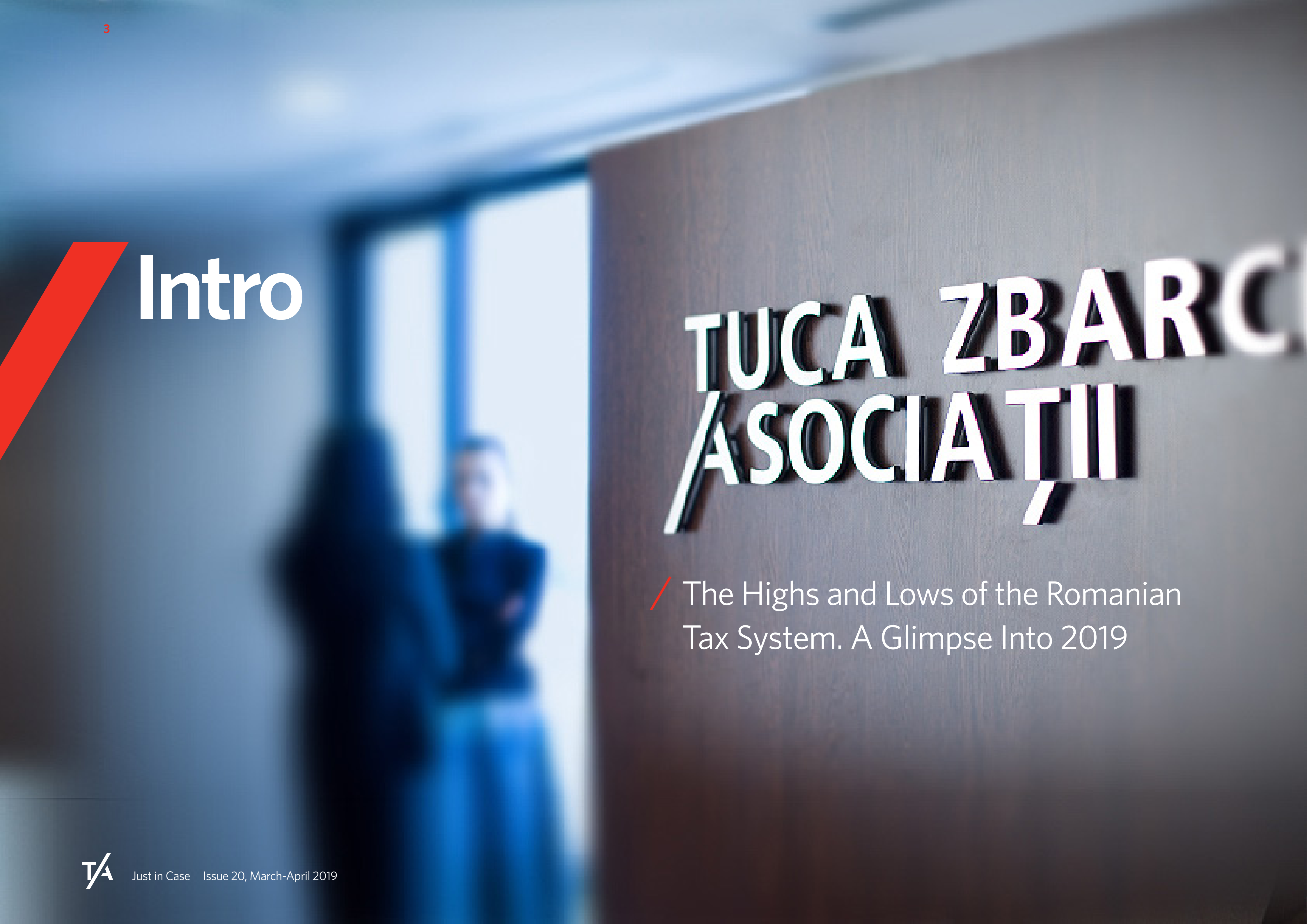

Intro

The Highs and Lows of the Romanian Tax System. A Glimpse Into 2019

The Highs and Lows of the Romanian Tax System. A Glimpse Into 2019

At first glance, Romania has a competitive tax system, with one of the lowest corporate income tax rates (16%) in the EU, combined with a derogatory regime for micro-enterprises.

In addition, the standard dividend tax has been cut down to 5%, while Romania benefits from a favorable local holding regime allowing investment outcomes, such as dividends and capital gains, to transit efficiently through Romanian companies. As regards the VAT, Romania's standard rate of 19% is below the average rate in the EU and, at the same time, its applicability has been increased. Notwithstanding that, labor taxation remains relatively high (over 40% of the combined effect of income tax and social contributions on employer's aggregate payroll costs), but such burden does not grossly deviate from the average costs in other countries from the region, and it is even at the lower end of the spectrum when compared with other western EU countries. Also, notably, the IT sector is stimulated by allowing professionals in the field to benefit from an income tax exemption.

In this context, 2018 initially appeared to be a year of stability with regard to the tax system in Romania. But this unfortunately lasted only until late December, when the issuance of an Emergency Ordinance ("GEO 114") took the fiscal environment by storm, creating a ripple effect across the economy. The Banking, Insurance, Energy, Construction and Gambling industry sectors were suddenly hit by a plethora of measures, including specific taxes and contributions, which were adopted unexpectedly with little to almost no public debate.

Four months into 2019 and measures provided under GEO 114 have already been toned down, by basing the financial assets tax due by the banks on, arguably, more nuanced and rational grounds. It is expected that additional clarifications or amendments are to be brought as regards the tax burden imposed on other industries as well.

Inappropriate as it may be, Romanian taxpayers are more accustomed to this scenario of Government emergency ordinances (rather than regular laws) which create legislative disruptions in the tax field and are followed by raw reactions and debate between the state and the business environment. >

Looking back, middle ground was usually reached after the government rushed to change tax rules (the VAT split system and the introduction of an onerous procedure for obtaining the VAT codes are good examples), in what can be seen as a reversed healthy legislative process. One can't help but wonder whether the trade-off between maintaining a predictable business environment and barging into whole categories of tax payers and industry sectors, justifies the emergency.

Romania's current budgetary pressures and inefficiencies in tax administration may be the reason behind such past actions of the government and they may continue to create vulnerabilities in 2019. Government spending was hardly kept under control in 2018, impacted by a rapid advance of budgetary expenses and a relatively low rate of tax collection. Romania continues to raise the lowest amount of tax revenue as a percentage of GDP and faces the largest VAT gap in the EU. In this context, several concerns remain, mainly as regards potential future changes in fiscal policies intended to cover short-term budgetary needs, and the worsening of the taxpayers-government relationship. The business environment has already voiced various complaints about excessive or ineffective tax administration measures which put obstacles in the good taxpayers' way, such as, for example, the management of tax payers' obligations (including the rescheduling of their debts), the non-transparent procedures for managing the tax payers risk (by assigning different risk levels to each company) and for obtaining and keeping VAT codes. Also, companies have generally faced an increase of tax audits and a lack of time-efficient remedies (with regard to the manner of appealing in front of the tax authorities and of obtaining advance binding rulings) to protect their business.

So, one manner in which Romania might avoid hindering the stability and competitiveness of its tax system is to improve the quality of tax administration which should ensure higher tax revenues and mitigation of tax leakages. This can be done by making progress towards tax digitalization, centralization of taxpayers' risk analysis and voluntary compliance. From another angle, the local legislation and administration must keep up with the unfolding trends in taxation at EU and international level. Long-debated EU Directives reforming the VAT rules, the anti-abuse and anti-BEPS (base erosion and profit shifting) actions are either reaching or are closer than ever to implementation stage. These rules should be put up for public information and discussion and smoothly implemented, as they may significantly influence the manner in which companies will do business in the medium and long run.

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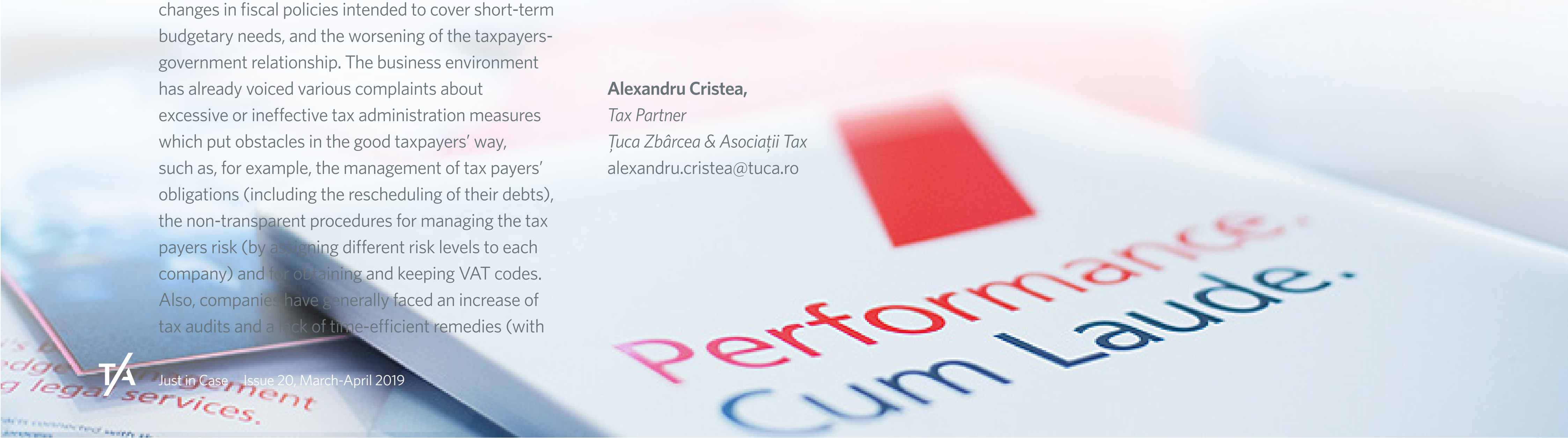

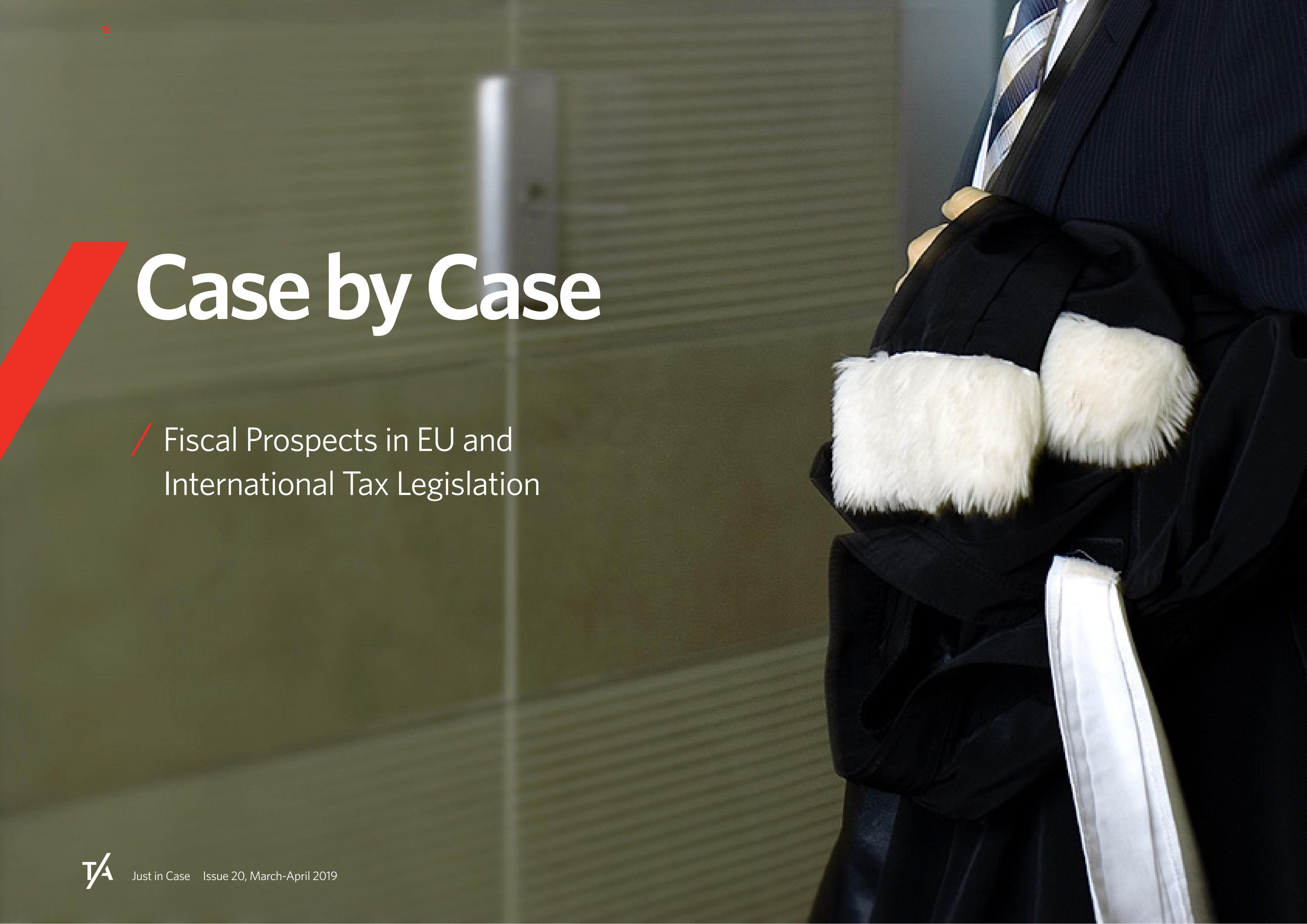

Case by Case

Fiscal Prospects in EU and International Tax Legislation

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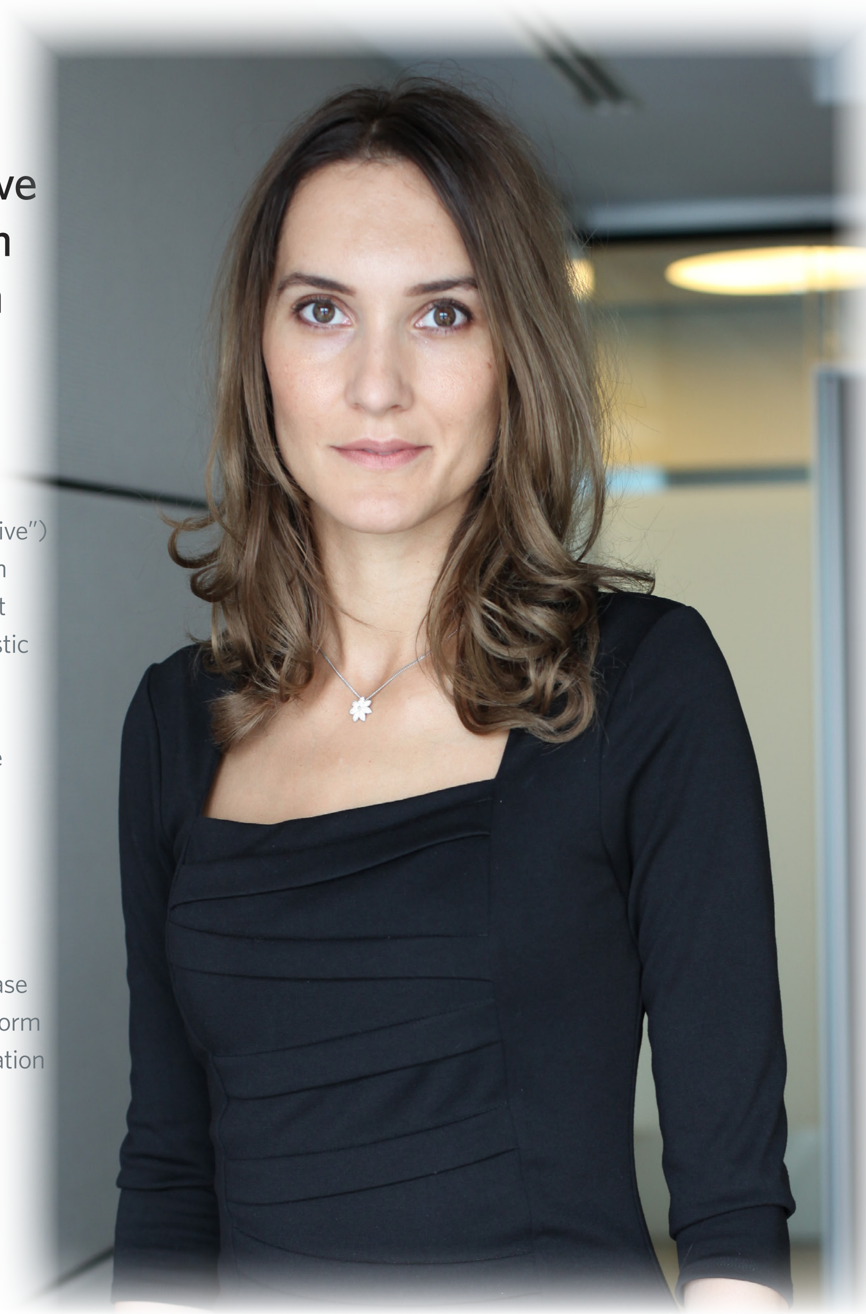

Given the unprecedented development of the economy and the increasing number and size of international transactions, deficiencies within outdated international tax regulations have become so obvious that OECD Member states, together with members of the G20 group, have put together an action plan to combat Base Erosion and Profit Shifting (BEPS) activities conducted by multinational groups of companies.

Generically named the BEPS Action Plan, this initiative has put together a set of 15 actions in 2013, aimed to block cross-border tax avoidance strategies.

Although Romania is not yet an OECD member state, it did join the BEPS Implementation Forum, thus facilitating its involvement in the local implementation of the measures addressed by the BEPS package, including increased transparency requirements, tackling treaty shopping and double non-taxation issues.

Concomitantly, relevant bodies within the European Union have also engaged themselves in implementing a common fiscal framework for Member States, aiming to tackle more or less the same issues targeted by the BEPS action plan. The Directive 2016/1164 laying down rules against tax avoidance practices that directly affect the functioning of the internal market ("ATAD Directive") adopted on 12 July 2016 represents the minimum level of protection against base erosion and profit shifting and it is already transposed in the domestic legislation of Member States.

Below, there is a summary of international developments following BEPS initiative which are currently on the European Union's tax agenda.

The Common Corporate Tax Base (CCTB) and The Common Corporate Consolidated Tax Base (CCCTB)

The Common Corporate Consolidated Tax Base (CCCTB) is the most ambitious corporate tax reform proposed in the EU and it refers to the harmonization of the corporate income tax systems in the EU. A design for such tax system was made by the>

European Commission back in 2011 through a draft proposal, however, for various reasons, this proposal could not count on being met with warm interest by the Member States.

One of the most controversial issues was the cross-border consolidation and the apportionment of the consolidated profit to the jurisdictions in question by using a formula based on assets, workforce and sales instead of a more sophisticated transfer pricing approach. The budgetary implications for Member States were the main reasons for the lack of consensus. Thus, at the end of 2016 the European Commission re-launched the CCCTB project in a two-step approach, by publishing two new interconnected Directive proposals: on a common corporate tax base (CCTB), and on a common consolidated corporate tax base (CCCTB). These two proposals were approved by the European Parliament on 15 March 2018.

> *"The Common Consolidated Corporate Tax Base (CCCTB) contains principles of fiscal consolidation and the formula for allocating the tax base of a multinational company between Member States.*

In the form adopted by the European Parliament, the directives will be binding on groups of companies with a consolidated turnover of at least EUR 750 million (the threshold is to be lowered to zero within seven years at most).

The first proposal (CCTB) provides a single set of detailed rules to calculate the taxable income of a company. Next to the rules addressing traditional profit calculation issues, for example rules on the depreciation of assets, the proposal contains provisions against base erosion and profit shifting (BEPS) in addition to the EU Anti-Tax Avoidance Directive (ATAD). In the form proposed by the European Commission, the directive also contained two specific features to boost the economy, namely an allowance for growth and investment and an extremely generous deduction of R&D expenses. However, the form adopted by the European Parliament does not currently provide anymore for such allowance for growth and investment and amended the incentives for R&D, limiting the tax credit to 10% of the R&D staff costs and imposing a maximum threshold of such eligible costs of EUR 20 million.

The Common Consolidated Corporate Tax Base (CCCTB) contains principles of fiscal consolidation and the formula for allocating the tax base of a multinational company between Member States.

Fiscal consolidation means that there would be a "one-stop-shop" – the principal tax authority – where one of the companies of a group, that is, the principal taxpayer, would file a tax return. In order to distribute the tax base among the Member States concerned, a formulary apportionment system is introduced, taken into account: workforce, assets, sales and data collected and exploited by digital content users, with each of these factors having equal weight. If the consolidated base is negative, losses may be carried forward over a period of a maximum of five years.

The above-mentioned two Directive proposals mention the deadline of 31 December 2019 for transposing their provisions, with measures to take effect as of 1 January 2020.

Taxation of Digital Activities

In today's global digital economy, it has become very clear to the international community that the current tax rules are not well-suited to support that fast pace of development. Thus, recently the EU and OECD have entered a race to find a solution to the taxation of the online economy.

At EU level, the European Commission issued on 21 March 2018 a package of rules to ensure that digital business activities are taxed in a fair and growth-friendly way. Such package includes a proposal for a European Council Directive establishing rules relating to the corporate taxation of a significant digital presence and a proposal for a European Council Directive on a common system for the digital services tax on revenues resulting from the provision of certain digital services.

The first proposal would allow Member States to tax profits that are generated across their territory, even if a company does not have a physical presence there. Thus, it expands the definition of permanent establishment to include cases of a business carried out through a significant digital presence.

A digital platform shall be deemed to have a taxable digital presence in a Member State if it meets at least one of the following criteria:

- The annual revenues from digital services supplied to users in a Member State exceed EUR 7 million;
- The number of users of a digital service in a>

Member State exceeds 100,000 throughout a tax period;

- The number of business contracts for digital services created between the company and business users in a taxable year exceeds 3,000.

The proposal also introduces new rules on the profit attribution to the permanent establishment in a way which better reflects how companies can create value online.

The deadline for transposing the provisions is 31 December 2019 with applicability as of 1 January 2020.

The second proposal aims at introducing a single digital tax to be applied to revenues from the provision of certain digital services.

The single digital tax is 3% and will apply to revenues deriving from activities where users play a major role in value creation and which are the hardest to capture with current tax rules, such as:

- Placement on a digital interface of advertising targeted at users of that interface;
- Making available of multi-sided digital interfaces which allow users to find other users and to interact with them, and which may also facilitate the provision of underlying supplies of goods or services directly between users;
- Transmission of data collected about users and generated from such users' activities on digital interfaces. If no revenues are obtained from the supply of such services, there should be no DST liability.

Such single digital tax will apply to entities, regardless of whether they are established in a Member State or in a non-EU jurisdiction, meeting both of the following conditions: (i) the total amount of worldwide revenues reported by the entity for the financial year exceeds EUR 750 million; and (ii) the total amount of taxable revenues obtained by the entity within the EU during that financial year exceeds EUR 50 million.

This proposal is the Commission's short-term solution until a solid and long-lasting one is found and implemented.

Multilateral Convention to Implement Tax Treaty-Related Measures to Prevent Base Erosion and Profit Shifting (MLI)

The Multilateral Instrument (MLI) and its Explanatory Statement were developed by OECD through a negotiation involving more than 100 countries and jurisdictions (including Romania) and adopted on 24 November 2016 with the idea to include BEPS measures in bilateral treaties in an efficient manner. Subsequent to the signing ceremony held in Paris (June 2017) 84 countries, including Romania, have adhered to the MLI. Basically, the instrument was created to enable signatory jurisdictions to efficiently adjust bilateral treaties concluded for the avoidance of double taxation, but became vulnerable to tax avoidance practices.

In this context, MLI's stated goal is to address the following:

- Neutralize the effects of hybrid mismatch arrangement (BEPS – Action 2);
- Prevent the granting of treaty benefits in inappropriate circumstances (BEPS – Action 6);
- Prevent the artificial avoidance of permanent establishment status (BEPS – Action 7);
- Render dispute resolution mechanisms more effective (BEPS – Action 14).

> *"Basically, the instrument was created to enable signatory jurisdictions to efficiently adjust bilateral treaties concluded for the avoidance of double taxation, but became vulnerable to tax avoidance practices.*

While certain provisions within the MLI concern minimum standards that adherent countries are required to enforce (i.e. Action 6 and 14 above), other provisions encompass recommendations for best practices for the implementation and application of fiscal rules (i.e. Action 2 and 7 above).

Depending on the individual options taken by the signatory countries as regards the expressed reservations and notifications, the provisions within current bilateral conventions may continue to be applied until potential contradictory standpoints are sorted out. However, this negotiation stage is only accessible to countries which have already deposited their ratification, acceptance or approval instrument. Alternatively, if two jurisdictions opt for the same changes, the adopted provisions of the MLI supersede those within the respective bilateral convention.

As per the publicly available information available on the OECD website, as of 25 February 2019 the>

MLI was ratified by 21 countries, 15 of which have in place bilateral double tax avoidance conventions with Romania. Once Romania ratifies it, the MLI would potentially start producing effects on January 1st of the year subsequent to when the second adherent jurisdiction deposits its instrument of ratification.

> *"Romania needs to transpose DAC 6 regulations within the domestic legislation by 31 December 2019 and to set out applicable reporting obligations as of July 2020.*

Therefore, on account that Romania submits its instrument of ratification in the second half of 2019 (no confirmation in this regard is currently available), MLI-related implications would need to be observed starting 1 January 2020.

Mandatory Disclosure of Tax Planning Schemes

An item of particular interest last year was the adoption on 25 May 2018 of the Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements ("DAC 6"). By adopting the DAC 6, the EU Council puts together a set of rules that Member States need to implement and follow towards establishing reporting obligations for cross-border arrangements which present potentially aggressive tax planning characteristics. Thus, taxpayers and intermediaries (i.e. including lawyers and tax consultants), would need to notify national tax authorities in respect of reportable transactions within 30 days from their occurrence. Subsequently, every three months, Member States will conduct an automatic exchange of information relevant for identifying tax avoidance strategies.

As per the agreed schedule, Romania needs to transpose DAC 6 regulations within the domestic legislation by 31 December 2019 and to set out applicable reporting obligations as of July 2020. This should facilitate the initial automatic exchange of information scheduled for 31 October 2020. However, given DAC 6's "retroactive" character, its provisions also regulate monitoring obligations for taxpayers and intermediaries who also need to identify reportable transactions initiated or developed from 25 June 2018 onwards, and include them in the initial report (i.e. due on 31 August 2020). Given the Directive's stated goal is to strengthen fiscal transparency and to combat aggressive tax planning practices (BEPS – Action 12), reportable transactions are identified as such if they present at least one hallmark included in any of the following categories:

- Category A - Commercial characteristics seen in marketed tax avoidance schemes;
- Category B - Tax structured arrangements seen in aggressive planning, like buying a loss-making company to exploit its tax losses;
- Category C - Specific hallmarks related to cross-border transactions, including deductible cross-border payments between affiliates where the recipient pays less or no tax;
- Category D - Specific hallmarks concerning automatic exchange of information and beneficial ownership (e.g. agreements which undermine the rules, or lack of, beneficial ownership);
- Category E – transfer pricing hallmarks, including the use of unilateral safe harbours.

As per the DAC6 provisions, the reporting obligation generally lays with any person that designs, markets, organizes or manages/assists with the implementation of a reportable cross-border arrangement (i.e. intermediaries, including lawyers and tax consultants). However, taxpayers themselves should inform tax authorities in their country of residence t if no EU intermediary is involved or if the EU intermediary has informed the taxpayer on waiving its reporting obligation due to legal professional privilege.

Steps Towards a Definitive European VAT System

Strangely, as it may seem at first glance, the current VAT system regulating the intra-community trade of goods and services was introduced, more than two decades ago, as a transitory arrangement, in view of a future "definitive" VAT system governing the EU market. Such definitive system is based on the principle of taxing the goods and services at destination and is meant to reduce VAT fraud and alleviate the administrative burden concerning intra-community trade. It mainly presumes that intra-EU deliveries of goods shall not be VAT-exempt anymore, and the seller shall invoice the buyer with the relevant VAT quota from the latter's home country. The new>

system is currently envisaged to enter into force starting 1 July 2022; nevertheless, it remains to be seen whether the actual deadline is feasible, considering that it has to pass the test of acceptance from all Member States. Meanwhile, the current framework is constantly being reviewed and updated by the EU, making steps towards a destination-based framework applicable to a single market. More specifically, lately we have witnessed an intense flow of legal acts and proposals from EU bodies, targeting aspects such as the special regime applicable to small enterprises and VAT rates (i.e. proposals for Directives), as well as the administrative cooperation between Member States in relation to VAT (i.e. Regulation 2018/1541).

Also, the EU focuses on improving the existing transitory VAT system addressing aspects such as the conditions for applying the VAT exemption on intra-community transactions (i.e. Regulation 2018/1912) and the harmonization of certain rules regarding the chain transactions and call-off stocks between Member States (i.e. Directive 2018/1910). Importantly, these changes will be effective as of 1 January 2020.

Final Remarks

To conclude, 2019 appears to be a serious bid for the year when BEPS initiatives will reach their final stage, generating substantial changes to domestic legislation and to bilateral tax treaties. Putting in place proactive processes to monitor, assess, quantify and comply with these changes will be critical if companies wish to avoid unpleasant surprises.

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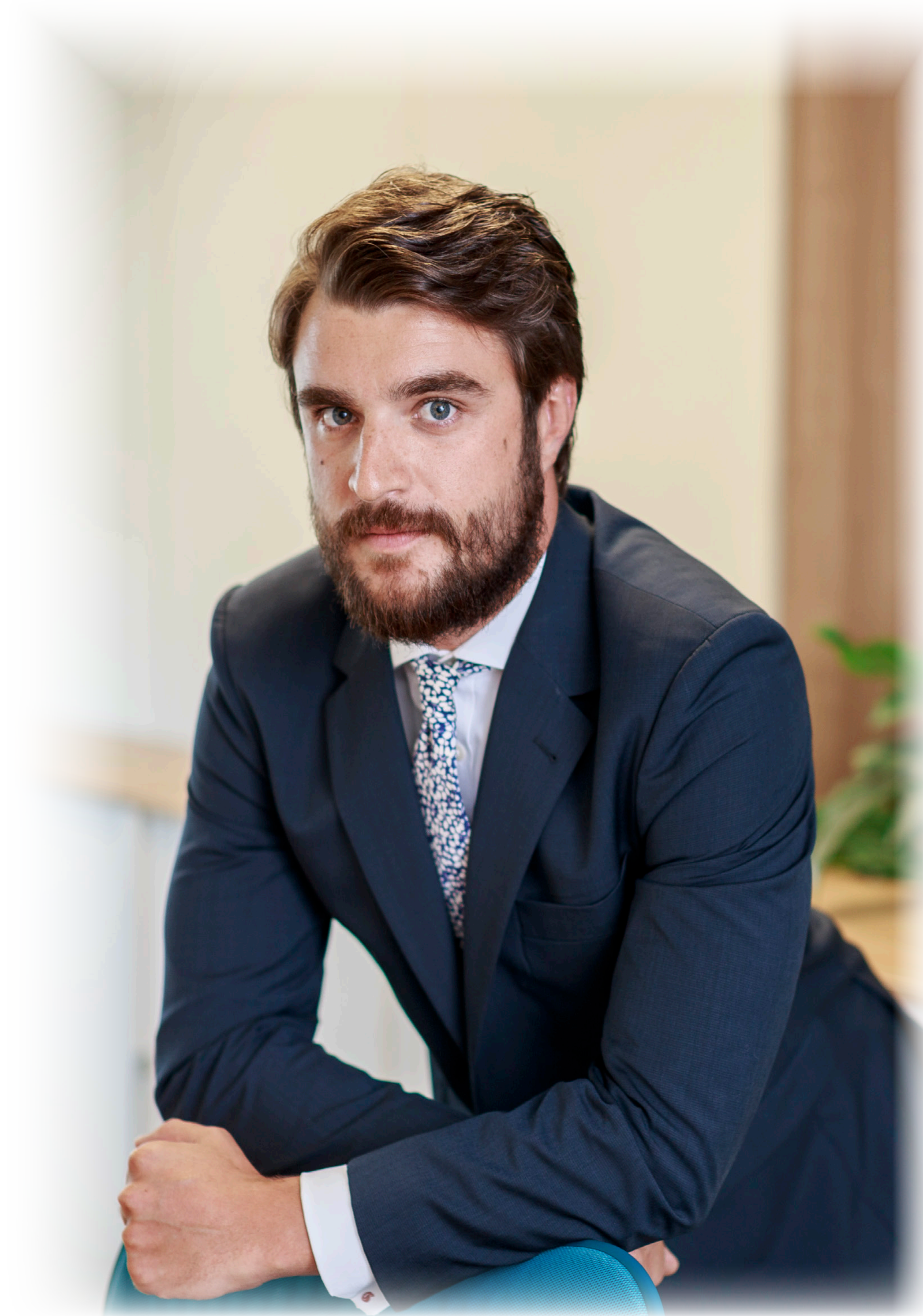

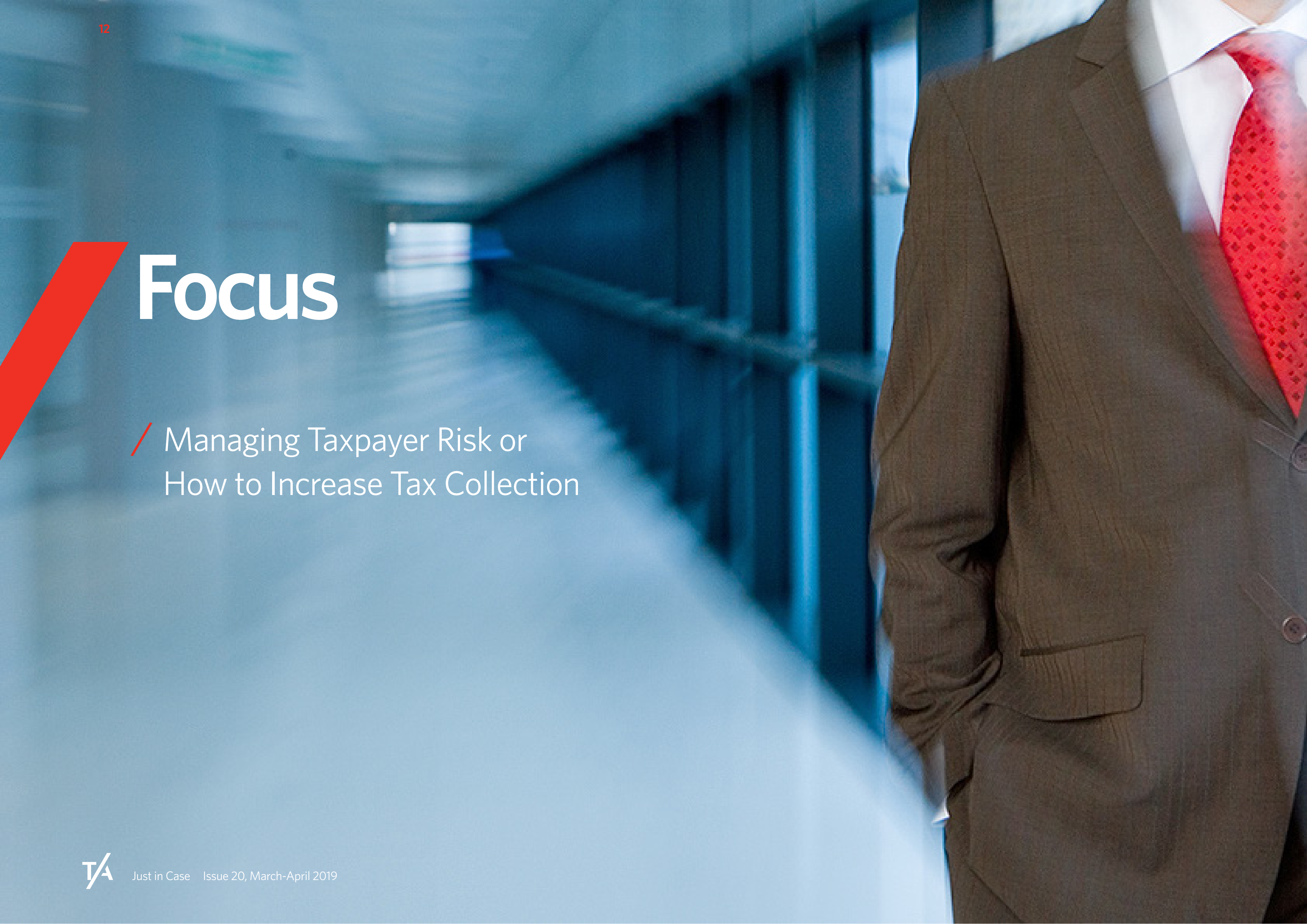

Focus

Managing Taxpayer Risk or How to Increase Tax Collection

Managing Taxpayer Risk or How to Increase Tax Collection

One of the hottest topics in recent months has been the annual state budget, with intense discussions (particularly within the political environment) over the rather ambitious figures provided by the draft annual state budget.

In this context, one should note that an ambitious target for 2019 provided within this draft is represented by the increase in VAT collection by approximately RON 10 billion, meaning around EUR 2.2 billion. For a better understanding of the figures, it is to be noted that should such target be accomplished, this shall represent a ground-breaking achievement given that the biggest leap forward in increasing the annual VAT collection for the past seven years was performed in 2015; this is when Romania recorded an increase of approximately RON 6 billion in the collected VAT, which is around EUR 1.3 billion.

All the above come in the context of Romania being constantly ranked first in the EU with regard to the VAT gap (i.e. the difference between expected VAT revenues and the VAT actually collected). Specifically, as per the latest publicly available Study and Reports on the VAT gap in the 28 EU Member States, the VAT gap in Romania has reached 35.88% in 2016.

To sum it up, it does not take an in-depth economic analysis to draw the conclusion that in order to reach the budgetary targets, Romania should focus its efforts on the approach towards improving the efficiency of tax administration, as well as on increasing tax collection. In this respect, the digitalization of tax administration, coupled with specific measures targeted at ensuring that the right mechanism for diminishing tax leakage and fraud is in place, should represent top priorities. While on the digitalization part (i.e. which should determine an increase in the degree of compliance, as well as better monitoring by tax authorities) small steps forward have been taken, no systemic changes have been put in place with respect to the reform of the taxpayers' administration. This is where the management of taxpayer risk should come into play.

Briefly speaking, the concepts of "*taxpayer risk*" and "*risk analysis*" appear in the existing tax legislation with regard to various tax administration matters, such as the selection of taxpayers which>

shall be subject to a tax inspection, granting the VAT registration code or solving the VAT returns with refund option. However, these concepts are not treated in a unitary and transparent manner across the legislation. Thus, it becomes obvious why taxpayers are still having headaches when trying to determine whether and when they may be subject to a tax audit, or which are the elements triggering a certain degree of risk.

In an effort to simplify and make existing procedures more transparent, the tax authorities have recently introduced amendments to the Fiscal Procedure Code. The said changes mainly refer to the fact that taxpayers shall be administered by the Romanian tax authorities depending on the tax risk associated with them. Generally speaking, a taxpayer shall be categorized as having a high, medium or low tax risk, based on a risk analysis performed by the tax authorities and depending on general criteria, such as criteria related to submitting tax returns or payment of taxes/debts to the Romanian state budget/ its creditors. However, the implementation norms detailing the procedures for establishing a certain risk class/sub-class are yet to be issued, with the 20 April 2019 publicly stated deadline already being exceeded.

Considering the above, there is hope that tax authorities will actually make the procedure for performing the risk analysis (i.e. leading to the establishment of the taxpayers' risk) more transparent.

However, as we shall highlight below, tax authorities' intentions do not always materialize. As a matter of fact, there have been cases when, in contrast with the declared positive intentions of the tax authorities, the actual result of implementing specific legislative changes led to a series of negative repercussions in real life. This has been the case of the risk analysis and taxpayer risk which had a significant effect upon the VAT registration procedure.

> *" Generally speaking, a taxpayer shall be categorized as having a high, medium or low tax risk, based on a risk analysis performed by the tax authorities.*

Managing the VAT Code

Without going into detail, given that, for some time now, Romania ranks 1st in the EU in relation to the VAT gap, tax authorities have focused on limiting the access of fraudulent taxpayers to the VAT system. Thus, the relevant changes were targeted at the moment when the taxpayer "*enters*" into the VAT system: the VAT registration, which basically allows for the collection and deduction of VAT. Thus, the tax authorities made a priority out of implementing measures for easier identification of a potential fraudulent taxpayer before the latter is actually able to commit VAT fraud. Such approach is generally considered an admirable one given its preventive nature. However, there is a thin line between preventing VAT fraud and "*preventing*" honest taxpayers from obtaining the VAT code for undertaking legitimate business. Unfortunately, as we shall detail below, this thin line was somehow crossed.

The real crusade against fraudulent taxpayers began in 2015 when the infamous Form 088 was introduced. This was introduced with the purpose of evaluating taxpayers' "*intention and capacity of undertaking business*". In this respect, Form 088 was so comprehensive that it requested the taxpayer to fill in information related to aspects such as the occupations of its administrators or financials of the taxpayer's shareholders. Two years later, in 2017, after intense criticism from the business community accusing the tax authorities of the fact that they require information not having a single link with any economic rationale, Form 088 was abolished and a new procedure was introduced. However, although the new procedure somehow simplified the VAT registration, this happened mostly on paper, with tax authorities maintaining the right to request whatever information or document they may consider necessary for approving the VAT registration.

Moving on, after few other minor changes, the VAT registration procedure for taxpayers choosing to apply for VAT registration before the start of their economic activity reached the point where it is at today. Currently, the VAT registration procedure, as regulated by Order No. 2856/2017, provides for a set of particular topics which shall be subject to the analysis of the tax authorities. Tax authorities' analysis is performed by a software and among the data to be analyzed are the headquarters, fiscal activity/debts/convictions of the taxpayer's Directors, accounting, employees and bank accounts. The said topics are broken down into 22 specific criteria each of whom bears a certain number of points not known to the taxpayer and not provided by Order No. 2856/2017. After submitting the VAT registration file, the risk assessment begins. Thus, it becomes>

obvious that, although the VAT registration procedure is publicly available via Order No. 2867/2017, the more important details concerning the risk assessment mechanism are not, making the VAT registration procedure opaque to the taxpayer.

This actually led to abuse from the tax authorities, with taxpayers receiving notices stating the rejection proposal due to a single not-fulfilled criterion. In addition, since Order No. 2856/2017 is not explicit, different tax authorities require different documentation/affidavits from the taxpayer in order to prove the fulfillment of the criteria. This leads to a lack of predictability for the taxpayer in what concerns the final result of the VAT registration process. However, based on the recent approach of tax authorities, the taxpayer should give proper consideration to topics such as:

- **Accounting**: the taxpayer should subcontract the bookkeeping activities to a company which is an active member of The Body of Expert and Licensed Accountants of Romania – CECCAR; should the taxpayer opt for an internally employed accountant, the latter should fulfill certain formal conditions (e.g. employed under specific COR code, etc.).

- **Bank accounts**: the taxpayer should authorize, with respect to operating its bank accounts, only persons having the quality of Director/ employee/shareholder, and not, for example, the representative of the company taking care of the taxpayer's bookkeeping.

- **Directors**: should the taxpayer have at least one non-resident Director, then the share capital should exceed RON 45,000.

Furthermore, to better highlight the approach of the tax authorities, it is worth mentioning that the VAT registration procedure for taxpayers with an annual turnover below the statutory threshold (i.e. RON 300,000) but which choose to apply for the VAT registration has been changed in an attempt to simplify the said procedure. The "*simplification*" mainly consists of the introduction of an affidavit which should be formalized by the taxpayer's Directors and associates by which they undertake, with the relevant consequences derived from such undertaking, that they comply with most of the criteria mentioned under the previous procedure. More specifically, the "*simplification*" of the procedure mainly alleviates the burden on the tax authorities (i.e. by relying on the taxpayer's affidavit), not that of the taxpayer, who still has to observe the criteria which he then declares within the affidavit as being complied with.

It is worth mentioning that obtaining the VAT code does not mean that the whole process related to the VAT registration ends here. This is because the taxpayer still has to be able to keep the said VAT code and this is done via the same opaque risk analysis. More specifically, the tax authorities periodically analyze whether the taxpayer still complies with certain criteria, determining the tax risk based on the number of points attributed to each criterion, but not known by the taxpayer.

So, keeping the above in mind, it seems that, despite all the changes designed to make the VAT registration procedure more transparent and simpler for the taxpayer, we are still going around in circles, with the taxpayers, especially non-residents envisaging starting a business in Romania (and thus, having complex shareholding and financing structures), complaining about the opaque and burdensome VAT registration procedure.

> " *Saving the best for last, there is another tax administration area upon which the incidence of the risk analysis and taxpayer risk concepts are of utmost importance: the tax inspection*

Saving the best for last, there is another tax administration area upon which the incidence of the risk analysis and taxpayer risk concepts are of utmost importance: the tax inspection. As we shall see next, this tax administration area is a determinant in the economic life of every taxpayer, especially because it has the potential of impacting the taxpayer's cashflow and business activities in their entirety.

The Tax Inspection

Generally speaking, taxpayers' exposure to a tax inspection is assessed by reference to the tax risk: as such, the selection of one or the other to be subject to a tax inspection is made based on their level of risk. In addition, the said taxpayer risk influences the duration of a potential tax inspection, as well as the complexity of the said inspection (i.e. partial or general tax inspection). All these represent reasonable principles. After all, it could be interpreted as it being a common situation for a high-risk taxpayer to become subject of a general tax inspection more often. Still, there is one element which characterizes the tax inspection: the>

lack of transparency. More specifically, at the moment this text is written, there are no details regarding the procedure for performing the risk analysis or related to the criteria which determine a certain level of risk. Of course, as mentioned above, we keep our hopes with regard to the recent legislative change, as well as with the envisaged so-called "*secondary rules*" (whose official deadline of 20 April 2019 has now passed) to be enforced, but, for the time being, these cannot be analyzed.

However, despite the lack of transparency concerning the risk analysis, the past months' experience has revealed some clues as to the elements based on which tax authorities determine the taxpayer's level of tax risk. These clues were divulged by specific informative notices through which specific disparities were signaled by the tax authorities to the taxpayers. Such inconsistencies could have been considered as influencing the taxpayer's level of tax risk, among these being aspects such as inconsistencies between VAT returns submitted by the taxpayer and those submitted by its clients/suppliers, or the existence of potential acquisitions from inactive taxpayers.

To summarize, although the taxpayers may try to determine the elements leading to a tax risk based on the said notices, determining the exact elements triggering the tax risk, as well as the actual level of the said tax risk (i.e. high, medium or low) is practically impossible.

To sum things up, we wish to remain confident that the tax authorities will actually listen to the needs and concerns of the economic environment and that, through the expected legislative changes, they will clarify and simplify the management of taxpayer risk. We are of the opinion that transparency and simplification are of paramount importance when it comes to building an honest relationship with the economic environment.

Then and only then, we may be able to create a strong and durable link between tax authorities and taxpayers, with the former being able to perform efficient checks based on access to relevant information, and the latter being able to easily and efficiently (from a cost perspective) comply with their tax obligations.

Only then we may end this paradox wherein in order to reduce the VAT gap, we are not increasing the VAT actually collected, but we are limiting the expected VAT revenues.

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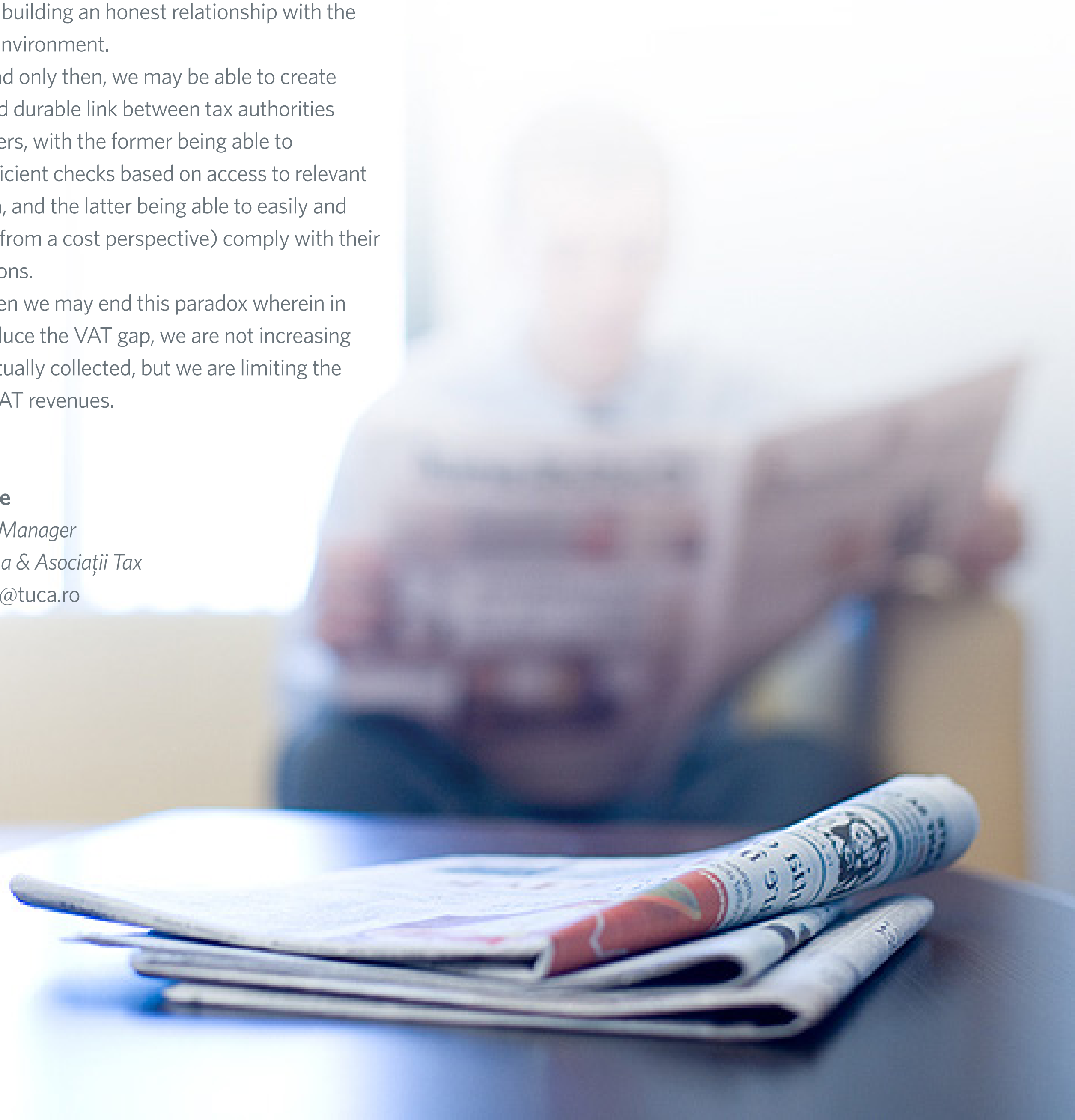
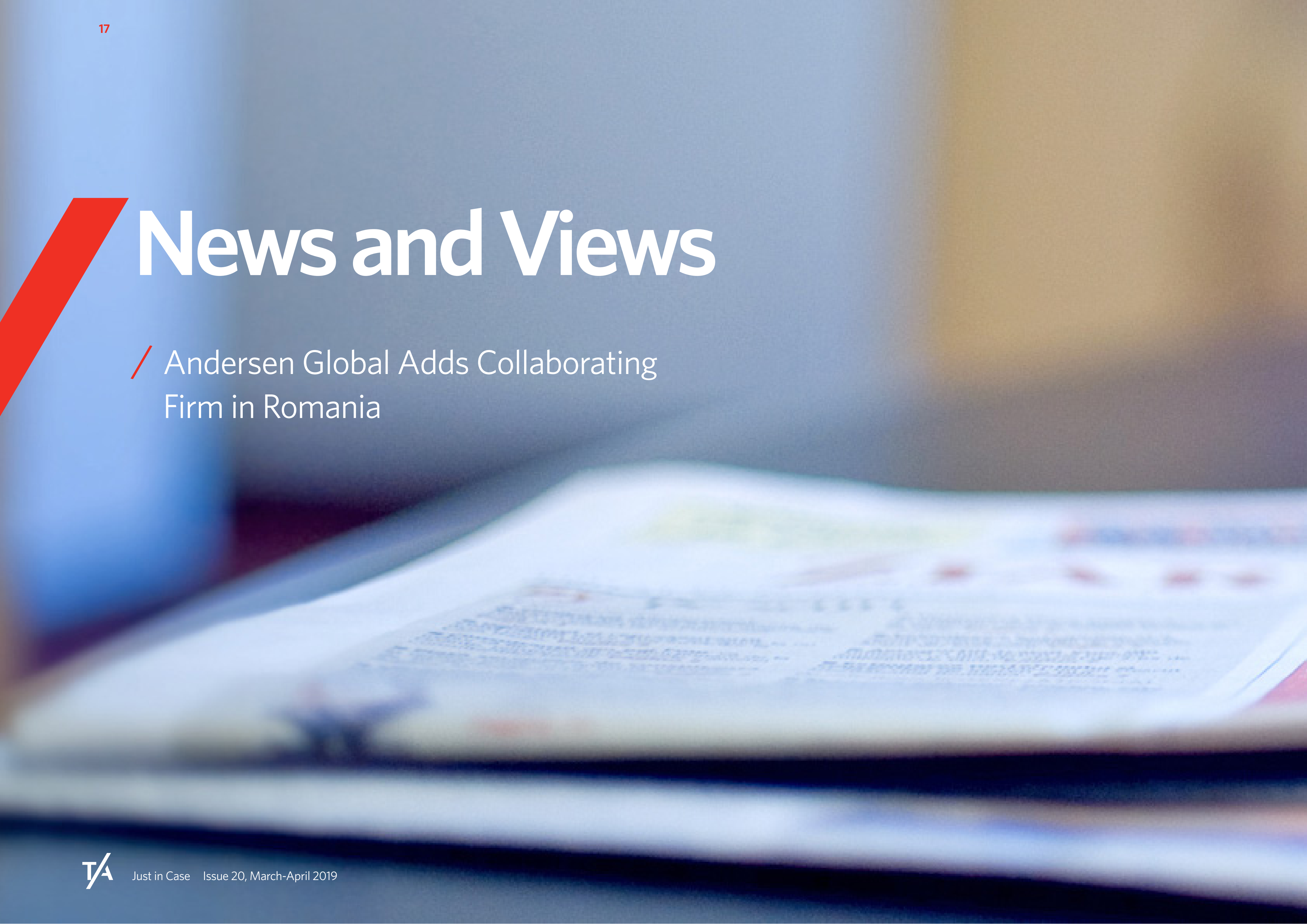


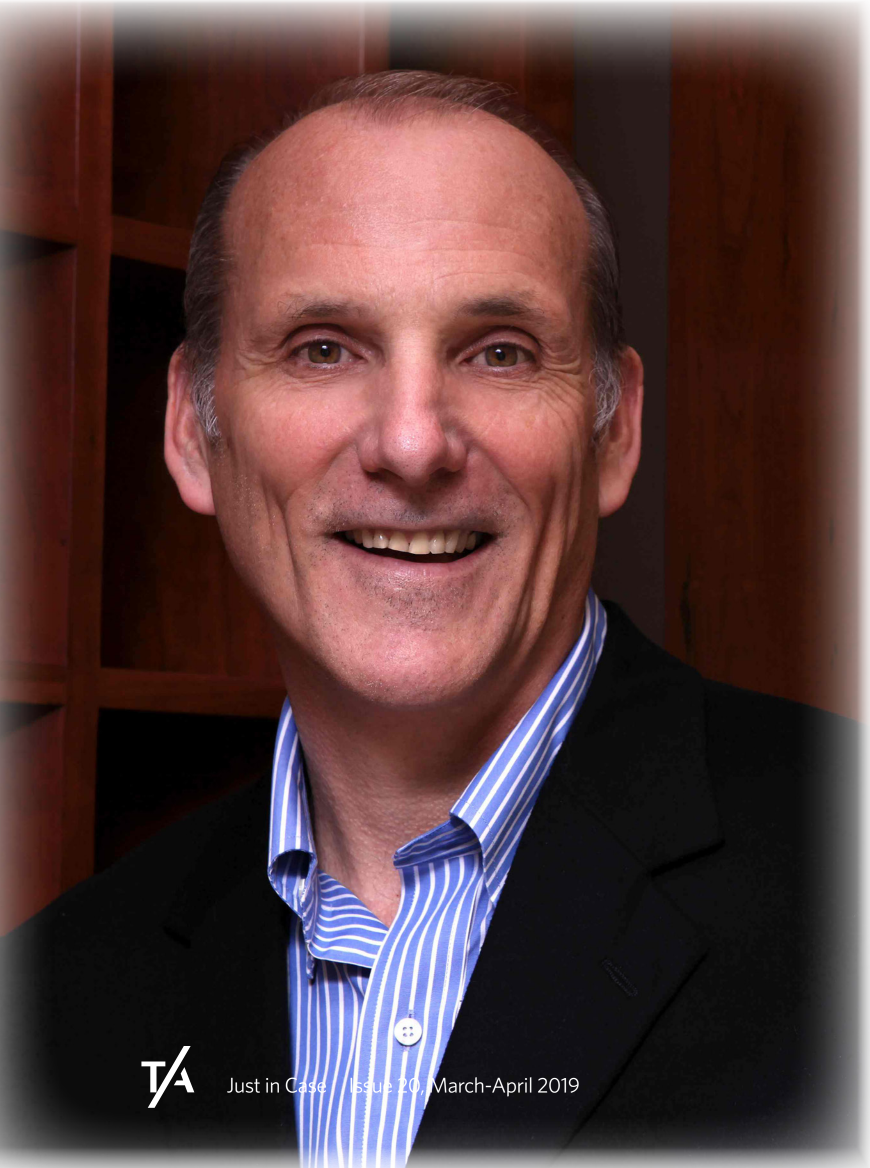
News and Views

/ Andersen Global Adds Collaborating Firm in Romania



Andersen Global Adds Collaborating Firm in Romania

The news that Andersen Global signed a collaboration agreement with a Romanian firm made headlines in mid-March.



A month later, Mark Vorsatz, Andersen Global Chairman and Andersen Tax LLC CEO, Gabriel Zbârcea, Managing Partner Ţuca Zbârcea & Asociații and Alexandru Cristea, Partner Ţuca Zbârcea & Asociații Tax share their views on how this collaboration was made possible.

- **Mr Vorsatz, what are the roots of Andersen Global and where it is presently standing?**

Andersen Global was established as the international entity surrounding the development of a seamless professional services model providing best in class tax and legal services around the world. Andersen Global was formed in 2013 but our connection to the Andersen legacy extends much further. Many of our Partners came from Arthur Andersen and many did not, but we all share the same core values including providing best-in-class, seamless service, transparency, and stewardship.

Currently, the global organization has more than 4,000 professionals worldwide, over 500 global Partners, and a worldwide presence through its member and collaborating firms.

- **Mr Vorsatz, what are the Andersen values and differentiators in the global legal and tax market?**

The integrated services, comprehensive geographic coverage, seamlessness, combined tax and legal services, and common vision and culture through the member and collaborating firms of Andersen Global have been differentiators for us. We are continuing to chip away at the global platform in terms of the number of countries in which we have legal services. Currently we have close to 1200 lawyers globally, 41 countries with legal services and tax in 50. I expect us to continue to make systematic progress.

- **Mr Vorsatz, what do you look for specifically when selecting a new partner in Europe? How did you finally choose Ţuca Zbârcea & Asociații in Romania?**

First and foremost, we look for the best quality firm, not necessarily the biggest in size. Additionally, we look for like-mindedness, as well as a common vision. There also needs to be a cultural fit. We felt Tuca was a high-quality firm with an outstanding team, great quality, and a high level of confidence.>

- **Mr Zbârcea, why did you want to become an Andersen Global collaborating firm in Romania? What are the benefits and what do you put on the table?**

First of all, we are very proud that Andersen Global chose us as their collaborating firm in Romania.

From our side, such collaboration was a natural decision, as we are convinced of the power of Andersen Global's leadership and worldwide association of member firms.

This will give us access to global know-how and breadth, together with cross-border projects and clients.

I think this is a perfect addition to our capabilities, as Țuca Zbârcea & Asociații is already recognized for its quality and innovation on the business law market in Romania as proven by the various local and international awards that our law firm has received and also by the top tier rankings of our law firm in all top legal directories.

We have a solid team of professionals with diverse backgrounds, as well as a network of certified insolvency and IP professionals. In addition, our Tax division is best placed to provide the required consultancy services in the fiscal area.

We are basically a "one stop shop" whereas our clients benefit from integrated legal, tax, insolvency services etc.

- **Mr Cristea, how do you think the local and international tax professional market will be shaped in the near future? How do you think**

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your tax practice will be enhanced by the collaboration with Andersen Global?

I think there are challenging times ahead for the legal and tax markets, both at international and local levels, driven by the economic context and the changing needs of our clients.

On the tax side, there are the global directions imposed by the BEPS, anti-avoidance rules and initiatives, envisaged changes in the EU VAT system, just to name a few, which will make the companies to reconsider, more and more, their tax position from a strategic point of view.

On the other hand, there is a need to manage the increasing complexity of tax and transfer pricing compliance in a fluid and transparent way, by means of efficient flows and technology.

The best positioned service providers will be the ones who can bring a mix of scale (which enables know-how and specialization) and flexibility, being close to their clients. In this context, I think that companies will be more and more attracted to work with independent legal and tax advisors, free from the restrictions imposed to the traditional audit firms.

The presence of Andersen Global in the Romanian market will bring all the above.

/ **The materials included herein are prepared for the general information of our clients and other interested persons. They are not and should not be regarded as legal advice.**

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