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Clarifications regarding the minimum turnover tax (“IMCA”) and the additional tax for the oil and gas sector (“ICAS”)

Emergency Ordinance no. 31/2024 clarifies the determination of the IMCA or ICAS by Romanian Energy Regulatory Authority regulated/licensed economic operators carrying out distribution/supply/transport of electricity and natural gas.

Specifically, it is stipulated that in order to benefit from the exemption of paying IMCA or ICAS, economic operators must obtain revenues from electricity and natural gas distribution, supply or transmission activities in a proportion of more than 95% of the total revenues, from which the revenues included in the Vs1 indicator are deducted (previously it was stipulated that these activities must be carried out exclusively in order to be excluded from IMCA/ICAS application).

The provisions apply starting with the tax year 2024, or, as the case may be, the amended tax year beginning in 2024

Microenterprise income tax

Emergency Ordinance no. 31/2024 clarifies the definition of the concept of "related enterprises", which is relevant in view of the annual income ceiling of EUR 500,000.

More specifically, the concept of "related enterprises" is integrated into the Tax Code and the reference to Law no. 346/2004 on stimulating the establishment and development of small and medium-sized enterprises is removed.

A Romanian legal entity is related to another entity if any of the following relationships exist:

- a) the Romanian legal entity verifying the condition holds directly or indirectly in another Romanian legal entity more than 25% of the share capital or voting rights or has the right to appoint/revoke the administrator (”Parent - Subsidiary” relationship);
- b) the Romanian legal entity verifying the condition is owned by another Romanian legal entity, directly or indirectly, with more than 25% of the share capital or voting rights or has the right to appoint/revoke the administrator (”Subsidiary - Parent” relationship);
- c) the Romanian legal entity is related to another Romanian legal entity if a person holds, directly or indirectly, more than 25% of the share capital or voting rights or has the right to appoint/revoke the administrator in the first and second company. If the entity who holds the share capital, voting rights or the right to appoint/revoke the director is a Romanian legal entity, the Romanian legal entity verifying the condition shall also cumulate the income of this entity (”Sister Companies” relationship);
- d) if the Romanian legal entity has shareholders who hold, directly and/or indirectly, more than 25% of the value of the share capital, shareholders who also carry out economic activity through forms of organisation without legal personality (i.e., PFA/individual companies/family companies). In this situation, the income recorded by the Romanian legal entity is cumulated with the income obtained by the PFA/individual companies/family companies recorded according to the accounting regulations.

The deadline for notifying the tax authorities about entering of the micro-enterprise income tax system and for exiting the system is extended from 31 March 2024 to 15 April 2024 inclusive.

Taxpayers who have complied with the notification obligation by the date of entry into force of Emergency Ordinance 31/2024 (i.e., by 29 March 2024), are required to submit a new rectifying tax return.

The above-mentioned provisions also apply to the qualification as a micro-enterprise in the tax year 2024.