Executive summary

On 29 December 2018, the Romanian Government published Government Emergency Ordinance no. 114 / 29 December 2018 in the Official Gazette no. 1116. The Government Emergency Ordinance no. 114 (OUG 114) implements measures in the field of public investments and fiscal budgetary measures, as well as amending normative acts and extending certain deadlines.

This Alert summarizes the key aspects introduced by OUG 114.

Detailed discussion

Tax on financial assets

Taxpayers subject to tax

The tax on financial assets is due by banking institutions defined as credit institutions, Romanian legal entities and Romanian branches of nonresident credit institutions. Other financial institutions (i.e. non-banking) are not liable to pay the tax on financial assets.

Computation of tax

The tax on financial assets is computed by applying a tax rate on the value of the taxpayer’s financial assets, existing at the end of the computation quarter, recorded as per the applicable accounting regulations.
The tax rate on assets is differentiated according to the extent to which the 2% reference threshold is exceeded by the ROBOR quarterly average. ROBOR represents an average interest rate of the interest to which the Romanian banks borrow each other in Romanian national currency (RON). This indicator is set by the National Bank of Romania based on the information provided by the top ten most active banks on the market.

The ROBOR quarterly average is based on ROBOR rates at three months and six months, computed and published by the National Bank of Romania for the last quarter/semester prior to the quarter of computation. The computation and publication of the quarterly average is performed by the National Commission for Strategy and Prognosis.

As follows:
- If the ROBOR quarterly average is up to 0.5 percentage points, inclusive, above the reference threshold, the rate is 0.1%
- If the ROBOR quarterly average is between 0.51 – 1 percentage point, inclusive, above the reference threshold, the rate is 0.2%
- If the ROBOR quarterly average is between 1.01 – 1.5 percentage points, inclusive, above the reference threshold, the rate is 0.3%
- If the ROBOR quarterly average is between 1.51 – 2 percentage points, inclusive, above the reference threshold, the rate is 0.4%
- If the ROBOR quarterly average is more than 2 percentage points above the reference threshold, the rate is 0.5%

**Reporting and payment deadline**
The tax on financial assets shall be computed, declared and paid on a quarterly basis, by the 25th of the month following the quarter for which the tax is due.

**Other issues**
The expense recorded with the tax on financial assets is deductible for corporate income tax purposes.

The provisions shall apply starting 1 January 2019. Therefore, the first reporting and payment deadline is 25 April 2019 for the first quarter tax in 2019.

The OUG 114 does not provide more details on the classes of financial assets to be included in the taxable base.

**Income tax and social contributions**

Special provisions for the construction industry

OUG 114 introduces a new category of individuals exempted from paying tax on income from salaries and assimilated to salaries performing activities in the construction industry. The exemption applies between 1 January 2019 and 31 December 2028 if the following conditions are met:

- The employers carry out activities under certain NACE codes (Statistical Classification of Economic Activities in the European Community), based on which they have a turnover of at least 80% of the total turnover.
- The monthly gross income from salary and salary assimilated, obtained based on the individual employment contract, is between RON3,000 to RON30,000.

Furthermore, certain incentives with respect to social charges for such income from salaries and assimilated to salaries, between 1 January 2019 and 31 December 2028, shall apply as follows:

- Reduction of the social security (pension) contribution rate due from the employee by 3.75%.
- Exemption from paying the contribution due from the employee to private pension funds, within the limit of 3.75%.
- Exemption from paying the health fund contribution due from the employee.
- Exemption from paying the pension contribution due from the employer in case of special work conditions, as provided by the law.
- Reduction of the work insurance contribution to the level of the rate representing income to the Guarantee Fund for the payment of salary claims. Since the income to the Guarantee Fund for the payment of salary claims represents 15% of the work insurance contribution, arithmetically, the reduced rate would represent 0.3375%.

Individuals remain insured under the health system to cover work accidents, professional diseases, unemployment and medical leave related rights during the period 1 January 2019 – 31 December 2028, without the payment of the health fund and work insurance contributions.

The return on the obligations for payment of social charges, income tax and the nominal records of insured parties (Form 112) submitted by the employers applying the tax
incentives mentioned above is represented by a sworn statement for the fulfillment the tax incentives eligibility conditions.

The minimum gross base salary at the national level for certain activities from the construction industry, as provided by the Tax Code, during the period 1 January 2019 – 31 December 2019, has been set to RON3,000 per month. This amount is established as a cash payment and it does not include allowances or other incentives. This level is for a normal working schedule on an average of 167.333 hours per month, representing RON17.928/hour.

Cultural tickets
OUG 114 establishes the tax treatment applicable to cultural tickets granted according to Law no. 165/2018. The vouchers are subject to income tax and are exempted from social charges.

Food and holiday allowances
OUG 114 also establishes the tax treatment applicable to food and holiday allowances granted according to the provisions of the Framework Law no. 153/2017 on the remuneration of staff paid out of public funds. The allowances are subject to income tax and social charges.

Income from interest and dividends
Clarifications are made regarding the income from interest and dividends taken into account to determine the annual gross threshold of at least 12 national gross salaries calculated from several categories of income for which the health fund contribution is due. Thus, the income from interest cashed and from dividends distributed and cashed starting with 2018 will be considered.

Annual tax and social security return
OUG 114 provides for a new income category for which there is no obligation to submit the annual tax and social security return for the income obtained, i.e., income from the rental of goods for which the rent is expressed in RON if:

► The income is not determined in real system.
► At the end of the previous year the conditions for the classification of income in the category of income from independent activities are not met.

The taxation of the above-mentioned income will be done through the annual tax and social security return for estimated income.

OUG 114 clarifies that the incentive for the electronic submission of the annual tax return within the timeframe provided by the law is granted by the tax office for the individuals who had the obligation to file the annual tax return for estimated income for 2018.

The above mentioned incentive represents 5% of the following tax obligations for 2018 tax year, fully paid by 15 March 2019, inclusively: income tax, pension and health fund contribution.

The provisions for the construction industry and regarding the cultural tickets apply as of 1 January 2019, whereas the others apply as of 29 December 2018.

Value added tax
Through OUG 114, the application of simplification measures is extended through 30 June 2022 for supplies of cereals and technical plants, transfer of greenhouse gas certificates, the supply of electric energy to dealers who are taxable persons, transfer of green certificates, supplies of mobile phones, integrated circuit devices, gaming consoles, PC tablets and laptops.

Excise duties
OUG 114 brings the following amendments with respect to excise duties:

► The level of total excise duty for cigarettes in the period 2019-2022 is increased.
► For the period 1 January – 31 March 2019 the value of the specific excise duty for cigarettes is set at 372,73 lei/1000 cigarettes.
► The provisions of par. (5) and (6) of art. 342 of the Fiscal Code according to which the value of the excise duty included the contribution for financing certain health expenditures provided in Law no. 95/2006, respectively the quota of 1% due to the Ministry of Youth and Sport under Law no. 69/2000 are abolished.

Also, OUG 114 abolishes the provisions of art. 367 – 375 of Law no. 95/2006 concerning the health reform, republished, by which the contributions for financing certain health expenditure were provided for, as well as the provisions of art. 70, par. (1) let. c) of the Law of physical education and sport no. 69/2000 by which the 1% contribution for financing sports activities was provided for.
Taxes and special contributions

Extension of the application terms for certain taxes within energy and natural resource sector
OUG 114 extends the applicability of the tax on the natural monopoly in the electricity and natural gas sector provided by Government Ordinance no. 5/2013 until 31 December 2021.

OUG 114 also extends the applicability of the tax on income from the exploitation of natural resources, other than natural gas, provided by Government Ordinance no. 6/2013, until 31 December 2021.

Law on Electricity and Natural Gas
OUG 114 amends the Law on Electricity and Natural Gas no. 123/2012. Changes include:

- During 1 April 2019 - 28 February 2022, producers, including their subsidiaries and/or affiliates belonging to the same economic interest group carrying out extraction and sales of natural gas extracted from Romania, have the obligation to sell at the price of 68 lei/MWh the quantities of natural gas resulting from current domestic production activity to eligible final suppliers and customers.
- Application of a fine of 10% on the turnover of the year preceding the application of the contravention sanction for not complying with certain provisions, including the one related to the maximum price of 68 lei/MWh mentioned above.

Government Emergency Ordinance no. 111/2011 on electronic communications
OUG 114 amends the Government Emergency Ordinance on electronic communications. Changes include:

- In order to grant licenses for the use of radio frequencies through competitive or comparative selection procedures, the minimum values are set at 2% respectively 4% on the turnover, depending on the type of radio frequency band.
- The extension of the validity period of the license for the use of radio frequencies granted through the selection procedure is subject to the payment to the state budget of a license fee of 4% on the turnover of the year preceding the license extension, multiplied by the number of years for which the license is granted.
- Penalties of 0.1% for each day of delay on the previous year’s turnover for each day of use of radio frequency without license are provided. In addition, non-compliance with certain provisions is sanctioned with fines of up to 10% on the turnover.

Government Emergency Ordinance no. 33/2007 regarding the organization and functioning of the National Regulatory Authority for Energy (NRAE)
OUG 114 amends the Government Emergency Ordinance regarding the organization and functioning of the NRAE.

The monetary contribution imposed on the license holders in the field of electricity, electricity and heat in co-generation for the electricity and natural gas component equals 2% of the turnover obtained by them from the activities covered by the licenses granted by NRAE, turnover calculated according to NRAE regulations.

New tax measures for the online gambling organizers
Starting 1 January 2019, the online gambling organizers stipulated in the Government Emergency Ordinance no. 77/2009, as subsequently amended and supplemented, have the obligation to pay a monthly tax representing 2% of the total participation fees charged monthly.

The tax is computed, declared and paid to the Romanian State Budget until the 25th of the month following the one in which the participation fees were collected.

Miscellaneous

Certain economic operators to which the state or administrative units are single or majority shareholders or in which they hold directly or indirectly a majority holding, shall distribute and transfer within 60 days from the date of approval of the financial statements for 2018 in the form of dividends or payments to the state budget, of 35% of the amounts allocated to other reserves.

Public social system
Starting 1 January 2019, the value of the pension index remains at RON1,100 and, starting with 1 September 2019, will be increased by 15%, i.e., RON1,265.

Starting 1 January 2019, the value of the minimum social allowance for pensioners remains at RON640 and, starting with 1 September 2019, will be increased by 10%, i.e., RON704.

Starting 2019 the correction index used to determine the public pension is of 1.20.

Private pension funds
OUG 114 brings amendments and supplements to Law no. 411/2004 regarding the private pension funds.
The participants may opt to transfer, through an individual request, to the public social system. The option applies only to the individuals who have contributed to the private pension fund for at least five years. The contributions made until the transfer date remain in the individual’s account, managed by the private pension fund, until the date when the individual is entitled to receive the private pension.

Among other amendments-supplements, there are provisions regarding the minimum social capital requirements for the private pension fund, in relation to the value of the participants’ contributions and regarding the administration fee.

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EYG no. 012859-18Gbl
1508-1600216 NY
ED None

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