

Other tax news of November



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Amendments in brief:

NAFA announces the launch of the "Hookah" operation – The announcement of the General Anti-Tax Fraud Directorate was released on November 3, 2023 on the NAFA portal.

NAFA announces the sanctioning of merchants for exceeding the quota of commercial addition – The announcement of the General Anti-Tax Fraud Directorate was released on November 9, 2023 on the NAFA portal.

The guide on how to apply the tax incentives, granted to natural persons who carry out software development activities – NAFA published the Guide on November 14, 2023, on the institution's portal, under the Taxpayer assistance/Services offered to taxpayers/Current guides and other informative materials section.

Establishing the gross minimum basic wage per country for the construction, agricultural and food industry sectors – The Emergency Ordinance no. 93/2023 was published on November 1, 2023, in the Official Gazette no. 993.

Approval of the forms used to declare the new taxes in the field of gambling - Order no. 1857 of the President of the National Agency of Fiscal Administration regarding the amendment and completion of the Order of the President of the National Agency of Fiscal Administration no. 587/2016 for the approval of the model and content of the forms used to declare taxes and fees with a self-imposed or withholding regime was published on November 9, 2023, in the Official Gazette no. 1021.

Approval of Intrastat value thresholds for 2024 – Order no. 1539 of the president of the National Institute of Statistics regarding Intrastat value thresholds for the collection of statistical information on intra-EU trade in goods in 2024 was published on November 16, 2023, in the Official Gazette no. 1041.

Other news of interest:

Approval of the format of the preliminary cross-border merger/ transformation/ spin-off certificate – Order no. 2035/C of the Minister of Justice for the approval of the format, security elements and structure of the preliminary cross-border merger certificate, the preliminary cross-border transformation certificate, respectively of the preliminary cross-border spin-off certificate was published on November 3, 2023, in the Official Gazette no. 1002.

Extension of the deadline for the entry into force of the form of reports in the field of preventing and combating money laundering and terrorist financing - Order no. 261 of the President of the National Office for the Prevention and Combating of Money Laundering for the extension of the term provided for in art. 3 of the Order of the President of the National Office for the Prevention and Combating of Money Laundering no. 191/2023 regarding the approval of the form and content of the reports provided

for in art. 6 and 7 of Law no. 129/2019 for the prevention and combating of money laundering and the financing of terrorism, as well as for the amendment and completion of some normative acts and their transmission methodology was published on November 3, 2023, in the Official Gazette no. 1003.

Changes to the documents used in the auditing of the personal fiscal situation – Order no. 1882 of the president of the National Agency for Fiscal Administration for the completion of annex no. 1.a to the Order of the President of the National Agency for Fiscal Administration no. 2.117/2018 regarding the approval of the model and content of the forms and documents used in the auditing of the personal fiscal situation was published on November 17, 2023, in the Official Gazette no. 1044.

Clarifications from the Ministry of Finance on the ceiling of 33% of the base salary applicable to extra-salary benefits - The answer to CCF's address no. 569/25.01.2023, regarding the proposals to amend the provisions of art. 76 para. (4¹) of the Fiscal Code on the global ceiling of 33% of the base salary was received from the Ministry of Finance on November 27, 2023.

Clarifications of the Ministry of Finance regarding some fiscal changes brought by Law no. 296/2023- The answer to CCF's address no. 3833/22.09.2023, through which proposals and notes were sent regarding the Draft Law on some fiscal and budgetary measures to ensure the financial sustainability of Romania in the long term, which became after the adoption, by assuming the responsibility of the Government, Law no. 296/2023, was received from the Ministry of Finance on November 28, 2023.

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Amendments in detail:

Key-words:

- Anti-Fraud
- "Hookah" operation
- Hookah tobacco
- Fines

NAFA announces the launch of the "Hookah" operation (ATFD Announcement)

- ❖ The General Anti-Fraud Tax Directorate (ATFD) announced the launch of the "Hookah" operation, which targets companies that own/sale harmonized excise products from the "Other smoking tobacco" category, implicitly the products generically named "Hookah Tobacco".
- ❖ The operation aims to reduce tax evasion and illicit trade in the field of sales of excisable products in the "other smoking tobacco" category (mixture for hookah smoking).
- ❖ The anti-fraud inspectors identified, between October 24 and 31, 2023, deviations from the legislation specific to the sale of excisable products, for which they ordered 37 contravention fines in the total amount of 1,301,500 lei. The "Hookah" operation will continue in the following period.

Key-words:

- GEO 67/2023
- Commercial addition
- Quota
- Fines

NAFA announces the sanctioning of merchants for exceeding the quota of commercial addition (ATFD Announcement)

- ❖ ATFD announced, through an official statement, that they will continue the checks regarding the application of the provisions of GEO no. 67/2023 regarding the establishment of a temporary measure to combat the excessive increase in prices of some agricultural and food products.
- ❖ Between 1 and 8 November 2023, the anti-fraud inspectors sanctioned two of the main retail stores chains in Bucharest, as well as a distributor in Bucharest, with fines totalling 2,000,000 lei and 900,000 lei, respectively, for exceeding the quota of commercial addition on certain food products.
- ❖ We remind you that, until January 31, 2024, the commercial additions practiced for some agricultural and food products have been limited through GEO no. 67/2003, in order to combat the excessive increase in prices.

Key-words:

- NAFA Guide
- Software development activities
- 10,000 lei
- Tax incentives
- Tax exemption

The guide on how to apply the tax incentives, granted to natural persons who carry out software development activities (NAFA Guide)

- ❖ The guide was published by NAFA, following the amendments made to Law no. 227/2015 on the Fiscal Code, by Law no. 296/2023 regarding some fiscal-budgetary measures to ensure the financial sustainability of Romania in the long term, regarding the tax incentives granted to natural persons who carry out software development activities, provisions that apply starting with the **revenues related to November 2023**.
- ❖ We remind you that, by Law no. 296/2023, the applicability of the tax exemption for software development activities, was limited to gross monthly income of **up to 10,000 lei inclusive**, obtained from salaries and salary related, made based on a **single individual employment contract**, service report, act of delegation or secondment or of a special statute provided by law.

- Social contribution quota

- ❖ At the same time, in case of individuals who benefit from this tax incentive, **the social contribution quota is reduced by the percentage of the contribution to the privately administered pension fund**, individuals being allowed to opt for the payment of the contribution owed to the privately administered pension fund.
- ❖ The guide also provides an example of calculating the income tax and mandatory social contributions for the year 2023, for a gross income greater than 10,000 lei.

Key-words:

- Minimum wage
- Construction sector
- Agricultural sector and the food industry
- Tax incentives

Establishing the gross minimum basic wage per country for the construction, agricultural and food industry sectors (GEO 93/2023)

- ❖ The minimum gross wage per country guaranteed in payment is established for the following sectors:
 - **for the construction sector** - the gross minimum basic wage per country guaranteed in payment is set at the amount of **4,582 lei** per month, for a normal work schedule of 165,333 hours per month on average, representing an average of 27,714 lei/hour;
 - **for the agricultural sector and the food industry** - the gross minimum basic wage per country guaranteed in payment will be **3,436 lei** per month, for a normal work schedule of 165,333 hours per month on average, representing an average of 20,782 lei/hour.
- ❖ The minimum gross wage per country guaranteed in payment, mentioned above, applies exclusively to the fields of activity to which the tax incentives provided for in Law no. 227/2015 apply.
- ❖ Non-compliance with the minimum wage level mentioned above is sanctioned with a fine from 300 lei to 2,000 lei and entails the annulment of the tax incentives granted.

Key-words:

- Relief of double taxation
- Exemption method
- Credit method

Ratification of the second Protocol amending the Double Taxation Convention concluded with Luxembourg (Law 330/2023)

- ❖ The new Protocol amends art. 25 "*Methods for the elimination of double taxation*" of the Convention for the Avoidance of Double Taxation concluded by Romania with Luxembourg.
- ❖ The mechanism for applying the exemption method by Luxembourg to one of its residents, for income or wealth taxed in Romania, is modified.
- ❖ At the same time, in the case of a resident of Romania who receives income or owns assets that are taxable in Luxembourg, the tax credit method will be applied exclusively (previously the exemption method could also be applied for certain revenues).

Key-words:

- Form 100/710

Approval of the forms used to declare the new taxes in the field of gambling (Order 1857/2023)

- ❖ The nomenclature of payment obligations to the state budget that is declared through form 100 "Declaration regarding payment obligations to

- Gambling authorization taxes

the state budget", respectively 710 "Corrective declaration" is completed with the following taxes:

- annual gambling authorization tax, regularized periodically, depending on achievements;
- the tax related to the gambling exploitation authorization for which the obligation to declare and pay is monthly;
- the tax related to the gambling exploitation authorization for which the declaration and payment obligation is annual/full.

Key-words:

- Intrastat
- Value thresholds
- 1.000.000 lei
- Shipments of goods
- Arrivals of goods

Approval of Intrastat value thresholds for 2024 (Order 1539/2023)

- ❖ The value thresholds for the collection of statistical information on intra-EU trade in goods for 2024 are approved, as follows:
 - 1,000,000 lei for shipments of goods and
 - 1,000,000 lei for arrivals of goods.
- ❖ Economic operators who, during 2023, exceeded the threshold for the year 2023, for the shipments of goods flow or for the arrivals of goods flow, have the obligation to fill-in and transmit to the National Institute of Statistics Intrastat statistical declarations starting from January 2024.
- ❖ Economic operators who, during 2024, exceed the value of the thresholds for 2024 must submit statistical Intrastat declarations starting with the month in which the cumulative value of shipments of goods and/or arrivals of goods exceed the thresholds for 2024.

Other news of interest:

- Cross-border merger/transformation/ spin-off
- Preliminary certificates

Approval of the format of the preliminary cross-border merger/transformation/ spin-off certificate (Order 2035/C/2023)

- ❖ The order approves the format, security elements and structure of preliminary cross-border merger certificate, the preliminary cross-border transformation certificate, respectively of the preliminary cross-border spin-off certificate, in written and electronic form.
- ❖ The preliminary certificates are made available to the competent authorities for verifying the legality of the procedures for carrying out operations in the member states of the European Union of the participating companies, in electronic form, through the interconnection system of the trade registers.
- ❖ The preliminary certificate is issued to the company that formulated the request for its issuance.

<ul style="list-style-type: none"> • Order no. 191/2023 • Preventing and combating money laundering and terrorist financing • Transactions report • 22 November 2023 	<p>Extension of the deadline for the entry into force of the form of reports in the field of preventing and combating money laundering and terrorist financing (Order 261/2023)</p> <ul style="list-style-type: none"> ❖ The deadline for the entry into force of Order no. 191/2023 by which the form and content of the following reports were approved in the field of preventing and combating money laundering and terrorist financing: <ul style="list-style-type: none"> – the report of suspicious transactions for banking and non-banking reporting entities; – the report of cash transactions, in lei or foreign currency, the minimum limit of which is the equivalent in lei of 10,000 euros; – the ratio of external transfers, in and out of accounts, in lei or in foreign currency, the minimum limit of which is the equivalent in lei of 10,000 euros; – the report on fund transfers for money remittance activity, the minimum limit of which is the equivalent in lei of 2,000 euros. ❖ Thus, the deadline from which the reporting entities have the obligation to submit the reports in the new IT system has been extended until November 22, 2023.
<ul style="list-style-type: none"> • Auditing notice • Natural persons 	<p>Changes to the documents used in the auditing of the personal fiscal situation (Order 1882/2023)</p> <ul style="list-style-type: none"> ❖ The format of the verification notice used in the auditing of the personal fiscal situation is modified. ❖ More precisely, the notice will include a mention with respect to the fact that the documents in a foreign language must be accompanied by the Romanian translation, certified by authorized translators.
<ul style="list-style-type: none"> • 33% • Extra-salary benefits • Holiday vouchers 	<p>Clarifications from the Ministry of Finance on the ceiling of 33% of the base salary applicable to extra-salary benefits (Address 569/2023)</p> <ul style="list-style-type: none"> ❖ The Chamber of Tax Consultants (CCF) sent an address to the Ministry of Finance proposing that the ceiling of 33% of the base salary, up to which extra-salary benefits are non-taxable, is to be applied annually, not monthly as it currently is. ❖ The response of the Ministry of Finance to the proposal submitted by CCF is that the use of an annual ceiling would generate difficulties in its application, considering that the tax and contributions applicable to salary income are due monthly and situations could be reached where, in the last month of the year, there would be much too high salary deductions. ❖ Regarding the difficulties in applying the 33% ceiling in case of tourist services settled by the employer, reported by CCF, the Ministry of Finance specified that the employer also has the possibility to grant holiday vouchers that do not fall within the respective ceiling.

Clarifications of the Ministry of Finance regarding some fiscal changes brought by Law no. 296/2023 (Address 3833/2023)

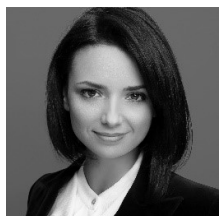
- Law 296/2023
 - ❖ CCF sent an address to the Ministry of Finance proposing a series of amendments and making notes regarding some of the fiscal measures proposed in the Draft Law that later became Law no. 226/2023, as follows:
 - with respect to the proposal regarding the minimum turnover tax, regarding the reduction of the taxable base with the depreciation of the assets included in the value of indicator I, the Ministry of Finance considers that such an amendment would mean a double deduction;
 - as for the comments made on the changes in the definition of the term "*that can be inhabited as such*", the Ministry of Finance replied that the current definition would have led to situations in which suppliers would sell shell housing with the aim of falling within the value ceiling for the application of the reduced quota. The amendment of the definition was also necessary in the context of eliminating the uncertainty regarding the finishes/ equipment required in order to apply the reduced VAT rate;
 - with respect to the comments on the exclusion of food products with a high sugar content from restaurant and catering services for which the reduced VAT rate is applied, the Ministry of Finance mentioned that this change complies with the provisions of the VAT Directive and a differentiated application of the rates of VAT in the case of the supply of such products compared to the situation of the provision of restaurant and catering services also existed before January 1, 2023;
 - with regard to the note related to the obligation to notify the customs authority on the changes in the registration application, the Ministry of Finance replied that the failure to update the data, a situation often encountered in practice, complicates the administration, supervision and control of excisable products, which are high tax-risk goods;
 - regarding the proposal on the special tax on immovable and movable assets of high value, which concerns the elimination of legal entities from the obligation to pay the tax for cars enrolled/ registered in Romania, the answer was that the text of the law respects the intention of the legislature.
- Minimum tax
- That can be inhabited as such
- Food products with a high sugar content
- Restaurant and catering services
- Registration request
- Special tax



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În acest moment, NOA operează din trei sedii la București, Cluj-Napoca și Londra.



Otilia Pețu
Managing Partner
otilia.petu@noagroup.ro



Mircea Dumitrașcu
Partner
mircea.dumitrascu@noagroup.ro



Lidia Terzea
Partner
lidia.terzea@noagroup.ro



Diana Roșu
Tax Director
diana.rosu@noagroup.ro



Maria Bădescu (Pascu)
Tax Senior Manager
maria.badescu@noagroup.ro