Council of the
European Union

Brussels, 2 June 2023
(OR. en)

9875/23
ADD 2

LIMITE

FISC 103
ECOFIN 501

REPORT

From:	General Secretariat of the Council
To:	Delegations
Subject:	Code of Conduct Group (Business Taxation) - Report to the Council

Romania's Exemption from payment of the tax specific to certain activities for the taxpayers in the field of HORECA (RO013)

I. Background

1. Romania notified one **temporary, COVID-19 related, measure** in the 2022 Standstill notification exercise: *RO013 - Exemption from payment of the tax specific to certain activities for the taxpayers in the field of HORECA*[1]. It concerns the prolongation of the tax exemption previously applied to the HORECA sector for a period of **180 days** calculated starting from 3 February 2022 (the date of entry into force of the normative act[2]).

[1] HORECA tax: tax specific to certain activities for the taxpayers required to pay the specific tax in accordance with Law no. 170/2016 on the tax specific to certain activities who carry out activity in the hospitality field: hotels, restaurants, cafes (HORECA). Ndlr: **HORECA tax** is a substitute for corporate tax for taxpayers in the restaurant, hotel, catering sector.

[2] Government Ordinance no. 11/2022 of January 31, 2022 for the modification and completion of some normative acts, as well as for the modification of some deadlines, published in the Official Gazette, Part I, no. 97 of January 31, 2022.

2. Romania also informed that **as of 1 January 2023** the rules setting a specific tax on certain activities, which regulated the taxation of taxpayers who carry out activities in the hospitality sector: hotels, restaurants, cafes (HORECA) were repealed[3]. Legal entities operating in the hospitality sector: hotels, restaurants, cafes (HORECA) are since then **liable to pay corporate income tax**, according to the general taxation rules set out in the Tax Code[4].

II. Preliminary remarks

3. For the sake of completeness, we recall that for taxation purposes, the **HORECA tax** has been since tax year 2017 a substitute for corporate tax for taxpayers in the hospitality sector (restaurant, hotel, catering sector) [5].

4. The *Exemption from payment of the tax specific to certain activities for the taxpayers in the field of HORECA* was notified twice in the past, in 2021 and 2020 Standstill exercises[6]. As in the previous notifications, the Romanian authorities stress that in the context created by the COVID-19 virus, Romania introduced certain tax measures to support taxpayers who carry out activities in the hospitality field: hotels, restaurants, cafes (HORECA). The regimes have been beneficial for the business environment given that the measures for fighting the COVID-19 pandemic have caused financial difficulties for most economic operators.

3 Government Ordinance no. 16/2022 of 15 July 2022 amending and supplementing Law no. 227/2015 on the Tax Code, repealing certain
normative acts and other financial-fiscal measures, published in the Official Gazette of Romania, Part I, no. 716 of 15 July 2022.

4 Law no.227/2015 on the Tax Code, as amended; Title II - "Corporate income tax" or microenterprise income tax, according to the rules set out in
Title III - "Microenterprise income tax" of the Tax Code.

5 LEGE Nr. 170/2016 din 7 octombrie 2016 privind impozitul specific unor activităţi

6 RO exemption from payment of the tax for the taxpayers carrying out specific activities in the HORECA sector. Measure RO010 (see WK 1526/2021 in annex); and measure RO012 (see WK 1398/2022)

5. The exemption from payment of the HORECA tax applied for the period during which such taxpayers totally or partially interrupted their business activity throughout the state of alert. It started in 2020 and was subsequently prolonged throughout 2021[7]. It was prolonged for the last time by Government Ordinance no. 11/2022[8] for a period of 180 days calculated starting from 3 February 2022.

III. Conclusion

6. The measure RO013 is in fact a prolongation of the measures RO010 and RO012. The prolongation of the exemption from the specific HORECA tax for the 180 days beginning 2022 was a direct consequence of the total or partial interruption of business activity for the taxpayers concerned. The measure only applied to a business sector that was particularly affected during the CoVID-19 crisis.

7. In 2021 and 2022, the Group agreed that the measures RO010 and RO022 did not need to be assessed[9].

8. The reasons underpinning the Group's decision in 2021 and 2022 regarding measures RO010 and RO012 remain valid. It therefore remains the Commission Services' view that – although the measure RO013 falls within the scope of the Code of Conduct - it does not need to be assessed, as it was a temporary measure to support the Horeca sector during the interruption of business activity in the COVID-19 crisis and it is not in force anymore.

9. Moreover, such prolongation can no longer take place under the HORECA specific rules, given that as of tax year 2023, the taxpayers in the HORECA sector are no longer subject to a specific tax, but are liable to corporate tax according to the general corporate tax rules.

IV. Follow-up

10. The COCG agreed that this measure does not need to be assessed.

---

[7] By way of Emergency ordinance 226/2020 for : a period of 90 days calculated from 1 January 2021; and then by way of Emergency ordinance 19/2021 for a period of 90 days calculated from 1 April 2021.
O.U.G nr. 226/2020 regarding some fiscal-budgetary measures and for the modification and completion of some normative acts and the extension of some terms, published in the Official Gazette of Romania, Part I, no. 1332 of December 31, 2020; and
O.U.G. nr. 19/2021 regarding some fiscal measures, as well as for the modification and completion of some normative acts in the fiscal field, published in the Official Gazette of Romania, Part I, no. 315 of March 29, 2021.

[8] Government Ordinance no. 11/2022 of January 31, 2022 for the modification and completion of some normative acts, as well as for the
modification of some deadlines, published in the Official Gazette, Part I, no. 97 of January 31, 2022.

[9] Report to Council ST 9341/2021 and Report to Council ST 9295/2022