

AmCham Romania views regarding the Letter of Intention submitted by the Romanian Government to the International Monetary Fund (IMF) and the announced fiscal related legislative projects

As mentioned in our previous position documents, the American Chamber of Commerce in Romania (AmCham Romania) welcomed the decision of the authorities not to increase taxation for economic players, offering the private sector the time and space to recover after a difficult economic cycle. Beyond the pressure on the business environment, potential tax increases will send a negative signal to investors, and will lead to a significantly reduced economic attractiveness for Romania, both at regional and European level.

The measures proposed in the package of anti-crisis laws are meant to support Romania in meeting the targets set within this letter of intent, respectively reduced budgetary spending, fighting fiscal evasion, expanding the taxation base for income and social security tax, ensuring the premises for Romania's future economic growth.

Under such circumstances, please find below some punctual observations on AmCham's side, as follows:

I. Consultations with the business community

Our organization has constantly and repeatedly affirmed along the years that it is highly important for the legislation to provide means to efficiently fight the fiscal evasion, a purpose for which we have always offered our support.

Although we understand the emergency degree of the measures to be taken, we consider that the business community has not been consulted with regard to the practical application and the impact of these measures on the economy.

In AmCham's opinion, the constituency of the Economic and Social Council (CES) is not representative for the Romanian business environment, and we are taking this opportunity to call again the reconfiguration of CES so that business associations could be assimilated to employers and entitled to be part of CES. This way, a better representativeness of employers is ensured and social dialogue between employers, trade unions and Government leads to viable policies in which all stakeholders are aligned and act coherently.

Such measures that impose new requirement for registering and reporting, those regarding the liability of persons other than the payer for not reporting and/or not paying the fiscal obligations, although in principle touches correct objectives, are actually raising concerns regarding their practical implementation and their success in fighting the fiscal evasion.

The revising of the requirements provided by the law for the transfer of social participations or shares within companies is only weighing the transfer process of social shares, by conditioning the completion with the result of the irrevocable solving of the complaint against the general assembly of shareholders decision, which will lead to increased costs and risks related to such transactions, and will only result into discouraging the merger and acquisitions market in Romania, already strongly affected by the recession.

In line with this, we reiterate the importance of the consultation process initiated by the authorities, as it allows the consolidation of the fiscal strategy and legislation in order to better address the needs of the authorities and of the business community in Romania.

II. Modernization of fiscal administration and improving the capacity to collect taxes

The continued increase of requirements related to reporting and compliance (such as the setting up of the Intracommunity Operators Register) in the absence of modern, integrated informational systems will only have a marginal effect in efficiently fighting the fiscal evasion, while increasing the bureaucracy and administrative burden for honest payers.

Our recommendation is that the measures for fighting the fiscal evasion should also include measures for increasing the efficiency of the authorities in controlling and indentifying fiscal fraud. To this end, the fiscal controls should be focused on concrete issues, without time-consuming check-ups (i.e. of each invoice) which statistically have proven to have no relevant result.

In view of an efficient collection to the state budget of the income tax and social contributions, we are submitting to your attention an instance in which observing the legal provisions for payers is in place, however, due to some administrative inadvertences at the ANAF/Ministry of Labor, this is not possible, leading to significant losses to the social insurances budget. More specifically, this is the case of foreign legal entities, not located in Romania, but in the EU, which have the obligation to register in Romania as social security contribution payers for their employees which are working in Romania.

Currently, although they must pay the contribution to the social security budget in Romania, such persons and their employers, not residing in Romania cannot fulfil their obligations, as non-resident employers are not allowed to register as contributors to the social security fund in Romania.

We consider that the approach announced in the letter of intent to IMF, through which, in a first stage, the effort of the authorities will focus on fraud and non-compliance with the VAT legislations, through a better administration of increasing fiscal arrears and more controls of large contributors, is one with little chances of success in fighting the fiscal evasion at the level of the Romanian economy, knowing that large contributors are already paying their fiscal obligations on time.

III. The current legislation allows for abusive use of the rights of control bodies currently have

We are expressing our concern also related to some measures included in this proposal through which the fiscal and custom authorities are granted criminal research powers. This can lead to abuse and can lead to transforming fiscal trials and criminal trials, although the facts that are tried can be considered a crime at most, if the fiscal authorities have sentenced the breaching of the fiscal law, in advance.

Such phenomenon will not only affect the result of such trials (as long as they will not be solved by tax specialized judges, and by criminal law judges) but will also touch on the rights of contributors, through the significant delays in solving such trials, while most often, the disputed amounts will have been long executed by the fiscal authorities.

IV. Encouraging entrepreneurship versus the excessive imposing of liberal professions

Facilitating and supporting a favorable environment of entrepreneurship is an objective aimed by EU member states.

Romania must continue to promote entrepreneurship by creating and maintaining an adequate and inviting legislative framework for different free lancer categories to carry on their profession independently.

AmCham Romania considers that there must be a distinction between PFA (independent authorized person) who provide dependent services, as employees, and those who fit in the entrepreneur's profile and in the definition of a free lancer. Therefore we are against a same treatment tax wise for employees and free lancers.

V. Financial – Fiscal Responsibility Legislation

AmCham Romania understands the important consultative role of the Fiscal Council in ensuring the fiscal and economic stability and predictability in Romania. Therefore, in our view its structure should have included a representative of the business community who could ensure balanced information of the Council with regard to the needs of the business environment and the impact of the economic and fiscal measures have on the business community, both on a short and long term.

In conclusion, we are reiterating the availability of the American Chamber of Commerce in Romania, through its taxation working group, to be part of a genuine consultation process in view of adopting the best fiscal policies for overcoming the economic crisis and ensuring a stable and attractive environment for current and potential investors.

AmCham Romania strongly recommends that the Romanian authorities will maintain the fiscal regime as an important element in the country's overall competitiveness in region, especially as neighboring states are using fiscal tools to tackle the economic crisis.
