

## Early education - a win-win project

by Alex Tabacu, Partner VF Tax

On November 6, 2020, Law 239/2020 was published in the Official Gazette no. 1041/2020 for the amendment and completion of Law no. 227/2015 on the Fiscal Code, by which a monthly tax incentive in amount of RON 1,500 was granted to each employee for each child enrolled in a legal form of early childhood education and care system, upon its request.

[Read more here...](#)

## Legal Changes of February 2021

Voicu & Filipescu is a full service law firm, covering all legal areas relevant to your company's activity. This issue of our monthly newsletter provides you with a brief description of some of the recent legal amendments in:

- Employment
- Litigation & Arbitration
- Real Estate

## + VF News

**20 years of Business Catalysts.** Founded in 2001, Voicu & Filipescu provides valuable expertise to its clients, being involved over time in large-scale projects for the local and regional business environment.

The dedicated VF task force addressing **Coronavirus (COVID-19) concerns** continues to be active in providing legal solutions and strategies for the benefit of companies impacted by the health crisis. [Read more here.](#)

**Legal500 EMEA 2020 edition** recommends Voicu & Filipescu for our lawyers' activity in 6 practice areas: Corporate, Commercial and M & A, Employment, PPP and Procurement, Real Estate and Construction, Restructuring and Insolvency and TMT.

**IFLR 1000, 2020 edition** recommends Voicu & Filipescu for our lawyer's activity in three practice areas: M&A, Banking and Finance and Project Development. Also, Mr. Dumitru Rusu – Partner, head of the Banking and Finance practice, was selected as a *Highly Regarded Lawyer* for the practice areas of Capital Markets and Banking.

## **Early education - a win-win project**

*by Alex Tabacu, Tax Partner*

*On November 6, 2020, Law 239/2020 was published in the Official Gazette no. 1041/2020 for the amendment and completion of Law no. 227/2015 on the Fiscal Code, by which a monthly tax incentive in amount of RON 1,500 was granted to each employer for each child enrolled in a legal form of early childhood education and care system, upon its request.*

### **What is early education? Who is it for?**

Early education is an educational service for children aged between 0 and 6 years, organized in two levels, before preschool education (0-3 years) and preschool education (3-6 years). Such forms of education are nurseries, kindergartens and day centers, state-owned or private, that operates according to unique educational content and national standards.

The education and high-quality care of preschool children are an important investment in education and training, which lay the foundations for their future success in terms of the chance to be educated, further ensuring a decent standard of living and also contributing to finding a job easier and of their integration into society.

In order to support the early education of children, the European Union aims to a reference objective of 95% of children over 4 years of age to be enrolled in the early childhood education and care system. This goal seems to have been generally achieved but there are still big differences between countries or even between regions of the same country, which is why the current trend is to help areas in difficulty evolve, so that the early education at European level to become more homogeneous.

In consideration of the above, Romania launched a working group which brings together national representatives of relevant ministries and European organizations to promote discussions on the quality of education and care of preschool children, with a special focus on inclusion and staff development. Early education is not yet fully compulsory in our country, but the tendency is that by 2030 one of the components, namely preschool education to become fully compulsory.

In an early stage, starting with 2020, the general compulsory education includes the last year of kindergarten, the preparatory grade, followed by the grades up to the twelfth, thus totaling 14 years in the educational system. Starting with 2023, the second year of kindergarten will become compulsory, and from 2030 the entire preschool cycle (first, second and third year) will be included in the compulsory education plan.

### **The tax incentive for parents with children enrolled in early childhood education and care system**

On the employees' side, the advantages of the early childhood education and care system are obvious from multiple perspectives, starting from the economic aspect and ending with elements related to socialization, healthy raising and harmonious development of young children, this being one of the criteria that led to the gradual conferment of compulsory education for the preschool stage.

At the end of 2020, an important tax incentive was introduced in the Fiscal Code to encourage early childhood education and care system development by providing grounds for settlement of an amount for each child enrolled in the early education and care system, such amount aiming to be covered from the taxes due by the parent's employer to the state budget.

### **Date of entry into force of the tax incentive**

It should be noted that Law 239/2020 does not specifically mention the date of its entry into force, which has generated problems of interpretation.

Regarding the general terms of entering into force, the Fiscal Code mentions at Art. 4, the following:

- 1) *This code is amended and supplemented by law, which enters into force within at least 6 months from the publication in the Official Gazette of Romania, Part I.*
- 2) *If the law introduces new taxes, fees or mandatory contributions, increases the existing ones, eliminates or reduces the existing facilities, they will enter into force on January 1 of each year and will remain unchanged at least during that year.*

However, these provisions do not clarify the aspect related to the date of entry into force of Law 239/2020 because, if the provisions of Art 4 paragraph (1) were applicable, the law would enter into force 6 months from the date of publication of the law; instead, if the provisions of art. 4 (2) were applicable, the provision has already entered into force starting with January 1, 2021.

In our opinion, as this is a newly introduced fiscal facility and considering that the normative act does not mention a term of its entry into force, the 6 months term after its adoption would be applicable.

However, there are several opinions and interpretations, some of which claim that the law has already entered into force three days after its publication in the Official Gazette (November 9, 2020), based on constitutional considerations and on the fact that the provisions of the Fiscal Code regarding such have rarely been taken into account.

In order to avoid interpretations regarding the aspect related to the date of entry into force, an increased clarity on the part of the legislator in the general wording of the laws concerning fiscal aspects, including in relation to the moment from which they become applicable, would be appreciated.

### **The tax regime of the RON 1,500 incentive/month/child**

The tax regime of this incentive is similar to the tax regime of sponsorships.

Specifically, the employer will declare the cost, as non-deductible and will deduct from the taxes due (profit tax, income tax, VAT, excise duties *in this specific order*) the amount of maximum RON 1,500 / month / child; on the employee' side, the amount is considered non-taxable income.

Regarding the amount paid by the employer for the early education and care of the children of his employees, the law does not limit the value to RON 1,500 but specifies that this represents the maximum amount that can be deducted from the taxes due by the employer.

Thus, the employer may decide to pay a higher amount, in accordance with the contract concluded with the early education unit, but the difference between the amount paid and RON 1,500 will not be considered as tax incentive; as such will represent a non-deductible cost.

From the employee's perspective, the tax treatment of the amounts paid by the employer for the early education and care of the employees' children is not influenced by the level of these amounts. These remain non-taxable.

### **The implementation procedure regarding the tax incentive**

Unfortunately, the Ministry of Public Finance has not considered appropriate to accompany the new legislative provision with methodological norms for application.

As such, at least until the adoption of methodological implementation norms that shall harmonize and standardize the working procedures, if case may be, each entity will be responsible for defining an internal working procedure on the regulation of the new tax incentive.

In our view, an easy way to integrate the tax incentive would be to conclude a tripartite contract which stipulates the rights and obligations of each of the parties involved (early education unit, employee and employer).

In this approach, if the price of early schooling exceeds the amount of RON 1,500, the contract may stipulate either a co-payment made by the employee from its own funds for the value exceeding RON 1,500, or a full payment from the employer, and the difference paid in addition to have a different tax treatment for the employer.

We would not recommend implementing a scheme whereby the contract would be signed directly between the early education unit and the employee, while the employer would only give a sum of money to his own employee without any contract or direct payment document between the employer and the early education unit, unless this option would be explicitly stipulated in the future methodological norms of application.

### **Win-win or someone loses?**

As regards this tax incentive, it seems that none of the parties involved loses, but rather each has a net gain.

*The employee's child* will be able to benefit from early education services, possibly of a higher quality.

*The employee* will benefit from an incentive that will allow him to enroll his child in an early education program and will have the opportunity to resume his professional activity faster.

*The employer* will be able to benefit from the employee's return to work earlier as well as to grant an additional benefit to his employee which will not impact his expenses.

*The early education unit* will have a stable budget and possibly a larger one than it would have had in the absence of such a facility.

*The State* – although lower amounts of taxes and fees will be collected as the benefits will have to be financially supported from the State budget, both the employee and the employer will pay higher taxes and fees to the state budget as the employee will resume his professional activity faster and will achieve greater added value.

## employment - legal changes published in February 2021

**Government Decision no. 35/2021 regarding the extension of the state of alert on the Romanian territory starting with February 12, 2021, as well as the establishment of the measures applied during it to prevent and combat the effects of the COVID-19 pandemic was published in the Official Gazette, Part I no. 140 of February 11, 2021, entering into force on the same date.**

According to the Decision, it was established that starting with February 12, 2021, the state of alert will be extended for another 30 days on the entire territory of the country.

The Decision maintains the obligation to wear a protective mask in public spaces, commercial spaces, means of public transport and at the workplace.

Also, for all public or private institutions and economic operators, the obligation to decide the organization of work to working from home or teleworking regime is maintained, where the specificity of the activity allows, under the conditions of art. 108-110 of the Labour Code, as well as those established by the Law no. 81/2018 on teleworking activity.

In the situation where the employee cannot work in teleworking or work from home regime, in case there are more than 50 employees, the employers have the obligation to organize the work schedule so that the staff is divided into groups to start or end the activity at a difference of at least one hour.

## **litigation and arbitration - legal changes** published in February 2021

**The Decision of the European Court of Human Rights dated 5 August 2020 ruled in Kovesi against Romania Case (Application no. 3594/19) was published in the Official Gazette, Part I no. 112 dated February 2, 2021 and it is applicable from the same date.** The application is based on

applicant's complaints regarding the denial of access to a court in order to contest the premature termination of her mandate as chief prosecutor of the National Anticorruption Directorate, as well as the complaint concerning the fact that her mandate had been terminated as a result of the views and positions that she had publicly expressed in her professional capacity concerning legislative reforms affecting the judiciary system. She relied on Articles 6 § 1, 10 and 13 of the Convention. The European Court of Human Rights held as follows: (i) joined to the merits the Government's preliminary objection as to the non-exhaustion of domestic remedies, and dismissed it; (ii) declared the applicant's complaints under Article 6 § 1 and Article 10 of the Convention admissible; (iii) that there has been a violation of Article 6 § 1 of the Convention; (iv) that there has been a violation of Article 10 of the Convention; (v) that there is no need to examine the admissibility and merits of the complaint under Article 13 in conjunction with Articles 6 § 1 and 10 of the Convention.

**Decision of the High Court of Cassation and Justice no. 14/2020 on the examination of the referral submitted by the Oradea Court of Appeal – Criminal and minors cases Division in the case file no. 918/271/2019, in order to issue a preliminary ruling was published in the Official Gazette Part I no. 135 dated February 10, 2021 and is and it is applicable from the same date.**

The High Court granted the referral submitted by Oradea Court of Appeal – Criminal and minors cases Division in the case file no. 918/271/2019 in order to deliver a preliminary ruling and consequently, determined that, in the interpretation and application of the provisions of Article 335 paragraph (3) of the Criminal code, an act of a person who entrusts a vehicle for driving on public roads to a person about whom he/she knew that was under the influence of alcohol, these must target a person having an alcohol content of more than 0,80 g/l of pure alcohol in the blood.

**Decision of the High Court of Cassation and Justice no. 24/2020 on the examination of the appeal in the interest of the law submitted by the Leading Board of Brasov Court of Appeal was published in the Official Gazette, Part I no. 144 dated February 11, 2021 and it is applicable from the same date.**

The High Court granted the referral submitted by the Leading Board of Brasov Court of Appeal related to of the issuance of an appeal in the interest of the law and, consequently, held that, (i) in case the judge is invested to judge an extraordinary appeal formulated against a decision also ruled in an extraordinary appeal procedure successively exercised against the his decision ruled in the appeal or second appeal phase, the provisions of the first sentence of Article 41 paragraph (1) of the Civil Procedure Code are not applicable if it is clear from the particular circumstances of the dispute that the judge is not required to assess, directly or indirectly, his own judgment; (ii) according to Article 41 paragraph (1) of the Code of civil procedure, the judge who ruled the decision in appeal is absolutely incompatible with resolving the motion for revision or the appeal for annulment formulated against the decision ruled in the second appeal against his appeal decision.

**Decision of the High Court of Cassation and Justice no. 4/2021 on the examination of the referral submitted by the Brasov Court of Appeal – Criminal Division in the case file no. 9010/197/2019, in order to rule a preliminary decision was published in the Official Gazette Part I no. 171 dated February 19, 2021 and is and it is applicable from the same date.** The High Court granted the referral submitted by Brasov Court of Appeal – Criminal Division in the case file no. 9010/197/2019 in order to deliver a preliminary decision and consequently, determined that, in the interpretation and application of the provisions of Article 325 of the Criminal code, the act of opening and using an account on a social media network open to public, using as a user name the name of other person and entering real personal data, which allows its identification, meets two of the essential requirements of cyber forgery offense, provided by the Article 325 of Criminal code, respectively, that the action of entering computer data is be carried out without right and that the action of entering such data into the system results in untrue data.

## real estate - legal changes published in February 2021

**Order no. 311/2020/94/2021/M.12/2021/3525/2020 of October 26, 2020 amending the Order of the Deputy Prime Minister, Minister of Agriculture and Rural Development, Deputy Prime Minister, Minister of Regional Development and Public Administration, Minister of National Defense and of the Deputy Prime Minister, Minister of Culture, no. 719/740/M.57/2.333/2014 regarding the approval of the methodological norms for the application of title I of Law no. 17/2014 regarding some measures to regulate the sale-purchase of agricultural lands located outside the built-up area and to amend Law no. 268/2001 regarding the privatization of the commercial companies that hold in administration lands public and private property of the state with agricultural destination and the establishment of the State Domains Agency, was published in the Official Gazette no. 127 of February 8, 2021.** The new regulation applies to the transfer of ownership made under a sales contract authenticated by the public notary, as well as on the basis of a court decision which replaces a sales contract, if the bilateral promise of sale is concluded in accordance with the provisions of Law No. 287/2009 on the Civil Code, republished, as amended, and the relevant legislation. The transfer of ownership may concern both the whole of the land and a share of the right to it. The methodological rules shall apply to applications registered after August 14, 2020.

For additional details on this material, please do not hesitate to contact us.

**Voicu & Filipescu SCA**

31 General Ernest Brosteanu Street

010527, Bucharest, Romania

Tel: +40 21 314-02-00

Fax: +40 21 314-02-90

E-mail: [office@vf.ro](mailto:office@vf.ro)

Web: [www.vf.ro](http://www.vf.ro)

