

TAX ALERT NO. 2/2020



In this note we inform you that for designation of one or more persons in relation to the National Office for Preventing and Fight Against Money Laundering, the deadline is January 17-th.

According to the provisions of article 23 of Law no. 129/2019 regarding the prevention and fight against money laundering and terrorist financing, reporting entities are required to designate one or more persons with responsibilities in applying Law no. 129/2019. Their names will be communicated to the National Office for the Prevention and Fight Against Money Laundering (hereinafter referred to as the "Office"), exclusively in electronic format, by accessing the institution's website - the section "Personal designation and online reporting" - the sub-heading "Personal designation" and online reporting "and completing the steps to obtain an account in the Electronic Data Transmission System (EDTS).

In accordance to the provisions of article 5 of Law no. 129/2019 the reporting entities are the following:

- (a) credit institutions incorporated in Romania and branches of foreign legal entities;
- (b) financial institutions incorporated in Romania and branches of financial institutions having foreign legal entities;
- (c) managers of private pension funds in their own name and for the private pension funds which they administer, with the exception of occupational pension schemes;
- (d) gambling service providers;
- (e) auditors, accounting experts and approved accountants, auditors, persons providing tax, financial, business or accounting consultancy;
- (f) public notaries, lawyers, bailiffs and other persons performing liberal legal professions, when assisting in preparation or concluding of operations for their clients concerning the purchase or sale of immovable property, shares or social shares or items of goodwill, the management of client financial instruments, securities or other assets, transactions involving an amount of money or a transfer of ownership, the establishment or administration of bank accounts, savings or financial instruments, the organization of the process of subscription of consideration necessary for the constitution, operation or management of a company; foundation, administration or management of such companies, collective investment undertakings in securities or other similar structures, as well as if they



participate on behalf or for their clients in any operation of financial character or targeting immovable property;

- g) service providers for companies or trusts, other than those provided in letter e) and f);
- h) real estate agents;
- i) other entities and natural persons who sell, as professionals, goods or services, insofar as they carry out cash transactions whose minimum limit represents the equivalent in lei of 10,000 euros, regardless of whether the transaction is executed through a single operation or through several operations that have a connection between them.

(2) Without prejudice to the provisions of par. (1), the agents and distributors of the institutions issuing electronic money and payment institutions, including those of institutions from other Member States that provide services in the territory of Romania or the central contact point, as the case may be, comply with the legal obligations regarding prevention and fight against money laundering and terrorist financing.

(3) In applying par. (2), the institutions issuing electronic money and the payment institutions contractually impose on the agents and distributors through which they provide services in the territory of Romania the compliance with the provisions of this law and of the regulations issued in its application and establish the compliance mechanisms.

According to article 23 paragraph 4 of Law no. 129/2019 the reporting entities provided in article 5 paragraph 1 letter i from the law (other entities and natural persons who sell, as professionals, goods or services, insofar as they carry out cash transactions whose minimum limit represents the equivalent in lei of 10,000 euros, regardless of whether the transaction is executed through a single operation or through several operations that have a connection between them) DO NOT have the obligation to designate a person in relation to the Office.

In accordance with art. 60 paragraph 3 of Law no. 129/2019 the reporting entities are required to comply with their obligations, within 180 days from the date of entry into force of the law. Thus, January 17, 2020 is the deadline for the designation of one or more persons in relation to the Office.

According to article 43 of Law 129/2019, failure to comply with the obligation to designate a person in relation to the Office, is considered a contravention and is punished as follows:

a) For individuals:

- warning or fine from 25,000 lei to 150,000 lei

b) For legal entities:

- warning or fine from 25,000 lei to 150,000 lei whose maximum limit is increased by 10% of the total revenues in relation to the completed fiscal period.

Also, we inform you that the reporting entities, through their legal representative, have the obligation to declare the real beneficiary within 12 months from the entry into force of the law, that is until July 21st, 2020, or, as the case may be, within 15 days since the approval of the annual financial



statements.

The statement regarding the real beneficial owner will be submitted annually to the Trade Register Office or whenever a change occurs and it will be authenticated to the notary.

In the event of a change regarding the identification data of the real beneficial owner, the declaration will be submitted within 15 days from the date on which it occurred.

According to the provisions of article 57 paragraph 1 of Law no. 129/2019, non-compliance of the legal representative of the legal entities to submit the declaration regarding the real beneficial owner, is considered a contravention and is punished with a fine from 5,000 lei to 10,000 lei.

Exceptions!!! Do not have the obligation to declare the real beneficial owner the autonomous administrations, national companies and societies, companies full owned or in majority owned by the state.

Also, we remind you that starting with the entry into force of Law no. 129/2019 will be forbidden to carry out operations with shares in the bearer, as well as issuing new shares to the bearer.

The holders of such shares in the carrier will have at their disposal 18 months, respectively until January 21st, 2021, to submit them to the issuing companies in order to convert them into registered shares.

Failure to do so will result in the automatic cancellation of these shares and the reduction of the share capital accordingly.

In the case of bearer shares which have been deposited, the conversion will have to be carried out within exactly the same period, otherwise the companies will risk dissolution.

Joint stock companies which do not fulfill their conversion obligation by January 21st, 2021 are likely to be dissolved.

The cause of dissolution may be removed before the final conclusions are reached, and the court may allow a limited term for this purpose.

In order to an uniform enforcement of Law 129/2019, on preventing and cfight against money laundering and terrorist financing, the National Office for the Prevention and Fight Against Money Laundering has published on its own website (www.onpcsb.ro/faq-onpcsb) a response to frequently asked questions of reporting entities, as follows:

1. The entities mentioned in article 5 paragraph (1) letter e) of Law no. 129/2019 (auditors, accounting experts and approved accountants, auditors, persons providing tax, financial, business or accounting consultancy) **DO NOT have to fulfill the obligation** provided in article 23 paragraph (1) of Law no. 129/2019, for the designation of a person in relation to the Office, **and for its own clients.**

The obligation provided in article 23 paragraph (1) of Law no. 129/2019, regarding designation of a person in relation to the Office, must be carried out by the entity itself, and not by the auditor,



accounting expert, authorized accounting officer, auditor or person providing it tax, financial, business or accounting consultancy.

2. Reporting to the Office of transactions with amounts in cash, in lei or in currency, whose minimum limit represents the equivalent in lei of 10,000 euros, carried out by the clients of the entities mentioned in art. 5 paragraph (1) lit. e) of Law no. 129/2019 (the auditors, the accounting experts and the authorized accountants, the auditors, the persons who provide fiscal, financial, business or accounting advice) return to the clients.

Reporting to the Office of transactions with amounts in cash, in lei or in currency, whose minimum limit represents the equivalent in lei of 10,000 euros, carried out by the clients of the entities mentioned in article 5 paragraph (1) letter e) of Law no. 129/2019, belongs to the clients themselves and not to the auditor, the accounting expert, the authorized accountant, the auditor or the person who gives them fiscal, financial, business or accounting advice.

CLARIFICATION:

In the situation where, from the verifications carried out regarding the activities of their own clients, there are indicators of suspicion in accordance with article 6 of the law, the entities mentioned in article 5 paragraph (1) letter e) of Law no. 129/2019 have the obligation to submit a report of suspicious transactions.

3. Reporting obligations of reporting entities according to Law no. 129/2019:

3.1. Reporting of suspicious transactions - art. 6.

3.2. Reporting of transactions that DO NOT present suspicion indicators - art. 7, respectively:

- reporting transactions with amounts in cash, in lei or in currency, whose minimum limit represents the equivalent in lei of 10,000 euros;
- reporting of external transfers to and from accounts, in lei or in currency, whose minimum limit represents the equivalent in lei of 15,000 euros, made EXCLUSIVELY by the credit institutions and financial institutions defined according to the law;
- reporting the transfers of funds whose minimum limit represents the equivalent in lei of 2,000 euros, realized EXCLUSIVELY by the entities through which the activity of remittance is carried out.

CLARIFICATION:

The reporting of transactions with cash amounts, in lei or currency, whose minimum limit represents





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the equivalent in lei of 10,000 euros, does not exclude their reporting as suspicious transactions, if there are indicators of suspicion, according to article 6 of the law.

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