

Regulation of the Small and Medium-sized Enterprises in European Union Legislation and in National Legislation¹

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Abstract

The current social and economic context has had and continues to have the consequence of adopting new normative acts, especially fiscal regulations, which restrict or limit the fiscal facilities granted to traders. The normative act that we are going to analyze is Law No. 346/2004 on stimulating the establishment and development of small and medium-sized enterprises, respectively Recommendation 2003/361/EC on SMEs at the level of the European Union. As part of a research project carried out by the Faculty of Management within the Academy of Economic Studies in Bucharest, this paper aims to analyze the notion of SMEs, the legal regime of SMEs, both at the European Union level and at the national level and, in particular, the applicable fiscal treatment, considering the “famous 1% tax rate” applicable to microenterprises. The paper aims to critically analyze the legislation in the field using various methods of interpretation, especially logical and grammatical, and to formulate de lege ferenda proposals aimed at returning to the original meaning and purpose of the analyzed normative act, improving the tax treatment applicable to SMEs and increasing their number.

Keywords: *small and medium-sized enterprises (SMEs), microenterprise, turnover, microenterprise tax, profit tax, Fiscal Code.*

JEL Classification: K22, K33

1. Regulation of the small and medium-sized enterprises (SMEs) at the European Union level

At the European Union level, SMEs, microenterprises, small and medium-sized enterprises are regulated by the European Commission Recommendation 2003/361/EC³. According to art. 1, the company's enterprise is "any entity engaged in an economic activity, regardless of its legal form". As a result, the notion of enterprise covers all natural persons engaged in independent activities in the form of authorized natural persons or sole proprietors and family businesses engaged in craft or other activities, as well as partnerships or associations that regularly engage in an economic activity.

The legal regime of microenterprises, small and medium-sized enterprises is determined according to the number of employees and the financial ceilings regarding

¹ Competition of institutional research projects with impact on society, Bucharest University of Economic Studies, edition 2025. Research project „Female leadership in the transition to a green economy: the contribution of women entrepreneurs to sustainability initiatives and the transition of SMEs to ecological and energy-efficient practices, analyzing the social and economic impact”.

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³ Recommendation 2003/361/EC concerning the definition of micro, small and medium-sized enterprises, published in the Official Journal of the European Union L 124/20/05/2003 P. 0036 – 0041. Also see Seán O'Reilly, Louise Gorman, Ciarán Mac An Bhaird, and Niamh M. Brennan. “Implementing the European Union Green Taxonomy: Implications for Small- and Medium-Sized Enterprises.” *Accounting Forum* 48 (3), 2024: 401–26. doi:10.1080/01559982.2023.2272394.

turnover.

Thus, according to art. 2.3, a micro-enterprise is an enterprise that employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed 2 million euros. According to art. 2.2, a small enterprise is an enterprise that employs fewer than 50 persons and whose annual turnover and/or annual balance sheet total does not exceed 10 million euros and according to art. 2.1, a medium-sized enterprise is an enterprise that employs fewer than 250 persons and whose annual turnover does not exceed 50 million euros and/or an annual balance sheet total does not exceed 43 million euros.

Depending on the legal relationships between SMEs, enterprises may have the status of autonomous enterprise, partner enterprise or affiliated enterprise, according to art. 3 of Recommendation 2003/361/EC.

In order to determine the legal status of micro, small or medium-sized enterprise, two criteria are taken into account: the annual turnover or balance sheet total and the number of employees. Although Recommendation 2003/361/EC does not provide a definition of turnover, this notion represents the total value of income obtained from the main activity (production, management or disposal of goods or provision of services) by a professional during one year. In fact, it is the gross income obtained, without including VAT, credits or loans, subsidies, amounts not directly arising from commercial activity or other extraordinary income.

The annual balance sheet total represents the total value of the professional's assets at the end of the financial year, being the total sum of the balance sheet: equity and liabilities. The legislator offers the professional the possibility to choose between the value of the turnover and the value of the annual balance sheet total, which sometimes have a different maximum threshold⁴.

Regarding the second criterion, the number of staff, according to art. 5 of the EC Recommendation, this corresponds to the number of annual work units (AWU), i.e. the number of people who worked full-time within the undertaking or on its behalf during the entire reference year considered. The work of people who did not work the entire year, the work of those who worked part-time, regardless of duration, and the work of seasonal workers are considered fractions of AWU. From the perspective of Recommendation 2003/361/EC, the staff is made up of: employees; people who work for the undertaking, who are subordinate to it and are considered employees under national law; owner-managers and partners who carry out regular activity within the enterprise and benefit from financial advantages from the enterprise.

Apprentices or students engaged in vocational training with an apprenticeship or vocational training contract are not included in the category of personnel. Also, the duration of maternity or parental leave is not taken into account in establishing annual work units.

In 2024⁵, there were 25.8 million SMEs active in the non-financial economic sector in the European Union, representing 99.8% of all SMEs, 2 out of 3 jobs in the private sector being provided by SMEs, with a total of 88.7 million people, which represents approximately 65% of all jobs.

⁴ Kristin Schreiber. "From Crisis to Recovery: The Role of the EU Policies in Supporting MSMEs." *Journal of the International Council for Small Business* 1 (1), 2020: 42–44. doi: 10.1080/26437015.20.20.1714361.

⁵ LinkedIn Scribd.Consilium, Internal Market and SMEs.

Of the approximately 26 million EU SMEs:

- 93% have at least one area of activity aimed at improving resource efficiency: energy saving, recycling, waste reduction⁶, and
- 25% have developed a strategy to reduce their carbon footprint or achieve climate neutrality.

According to another statistic, of the 25.8 million SMEs registered in the European Union:

- 32% (8.3 million) offer green products or services and 11% plan to do so in the coming years⁷
- 23% (6 million) purchase renewable energy from suppliers,
- 12% (3.1 million) generate renewable energy on their own premises⁸.

Respecting the principle of non-discrimination, European Union legislation does not regulate tax incentives specifically for SMEs in the field of green energy with female leadership. This does not mean that there are no projects or programs carried out by SMEs with female leadership in the field of sustainability and green energy. At the level of the European Union, this concern for sustainability, green energy, recycling, environmental protection, etc. is not the result of granting tax incentives, mainly, but is the result of awareness of the importance of this field. As a result, as we have shown statistically, almost all SMEs (93%) in the non-financial field carry out at least one activity aimed at resource efficiency: energy saving, recycling, waste reduction. The orientation of activities towards sustainability, green energy and environmental protection has determined the continuous promotion of private and public research projects and programs in this field.

2. Regulation of SMEs in national legislation

In Romania, the normative act that generally regulates the legal status of SMEs is Law no. 346/2004⁹, a normative act that is supplemented by the provisions of art. 3 of the Civil Code¹⁰, Law no. 31/1990¹¹ on companies, Law no. 265/2022¹² on the Trade Register, and Emergency Ordinance no. 44/2008¹³. The most important normative act that regulates the tax regime (unfortunately, it sometimes changes at the will of the Union and national legislators) is Law no. 227/2015¹⁴ on the Tax Code.

⁶ Eurereporter.com Internal Market and SMEs.

⁷ European Environment Agency.

⁸ <https://www.europarl.europa.eu/factsheets/ro/sheet/63/intreprinderile-mici-si-mijlocii>, accessed on 20 November 2025.

⁹ Law no. 346/2004 on stimulating the establishment and development of small and medium-sized enterprises, published in the Official Gazette of Romania, part I, 681 of 2004.07.29,

¹⁰ Law no. 287/2009 on the Civil Code, published in the Official Gazette of Romania, part I, no. 505 of 2011.07.15,

¹¹ Law no. 31/1990 on companies, amended and republished, published in the Official Gazette of Romania, part I, no. 1066 of 2004.11.17,

¹² Law no. 265/2022 on the Trade Register, published in the Official Gazette of Romania, part I, no. 750 of 2022.07.26,

¹³ Government Emergency Ordinance no. 44/2008 amended on the conduct of economic activities by authorized natural persons, individual enterprises and family enterprises, published in the Official Gazette of Romania, part I, no. 328 of 2008.04.25.

¹⁴ Law no. 227/2015 on the Fiscal Code, published in the Official Gazette of Romania, part I, no. 688 of 2015.09.10, in force until 31.12.2025.

2.1. The notion of enterprise

From the perspective of legal provisions, the term enterprise has a double legal meaning, that of a legal subject, a natural and/or legal person carrying out a certain activity (meaning used by the SME Law), but also the meaning of economic activity itself, in the phrase "*operating an enterprise*", in the sense of an organized activity carried out by a professional, by combining production factors, with the aim of achieving or not an economic objective (this meaning became generalised after the entry into force of Law no. 287/2009 on the Civil Code).

Without delving into the dichotomy of the term enterprise, we specify that, from the perspective of the Civil Code, the general norm in the field of private law, including Commercial Law and Business Law, the enterprise represents the systematic exercise, by one or more persons, of an organized activity consisting of the production, administration or alienation of goods or the provision of services, regardless of whether it has a lucrative purpose or not. National legislation, especially after the entry into force of the Civil Code in 2011, does not use terms and expressions such as business and businessmen, but uses the term professional trader, a person who operates an enterprise. However, GEO no. 44/2008, in the introductory part when establishing the scope of application, in art. 2 para. 1 letters e and f refer to the term "*entrepreneur*" in the sense of a natural person who organizes an "*economic enterprise*", i.e. an economic activity carried out in an organized, permanent and systematic manner, combining financial resources, labor, raw materials, logistical means and information, at the entrepreneur's risk¹⁵.

This legal text places together the entrepreneur and the economic enterprise, the term "*entrepreneur*" having the meaning of entrepreneur.

According to the Civil Code, those who operate an enterprise are called professionals. And if the purpose of operating the enterprise is patrimonial, that is, obtaining profit, these legal subjects are called professional traders, which, in ordinary language, we call by the term *entrepreneur*.

2.2. The notion of SME

From the perspective of Law no. 346/2004 on SMEs, the enterprise represents the subject of law, not the economic activity. Although the normative act is called the law on small and medium-sized enterprises, in fact, the normative act considers 3 categories of enterprises, namely microenterprises, small enterprises and medium-sized enterprises, classified according to the average annual number of employees and the annual net turnover or total assets they hold. The Romanian legislator has opted to introduce Recommendation 2003/361/EC into our legislation, effectively translating the EU text. As a result, and in the view of art. 3 and 4 paragraph 1 of Law no. 346/2004, microenterprises are those enterprises that have up to 9 employees and achieve an annual net turnover or have total assets of up to 2 million euros, equivalent to lei, small

¹⁵ Farhan Muhammad Muneeb, Amir Karbassi Yazdi, Thomas Hanne, and Arkadiusz Mironko. "Small and Medium-Sized Enterprises in Emerging Markets and Foreign Direct Investment: An Integrated Multi-Criteria Decision-Making Approach." *Applied Economics* 57 (25), 2025: 3327–44. doi: 10.1080/00036846.2024.2337777.

enterprises are those enterprises that have between 10 and 49 employees and achieve an annual net turnover or have total assets of up to 10 million euros, equivalent in lei, and medium-sized enterprises are those enterprises that have between 50 and 249 employees and achieve an annual net turnover of up to 50 million euros, equivalent in lei, or have total assets that do not exceed the equivalent in lei of 43 million euros.

Just as the regulation of SMEs at the European Union level refers to the legal relationships between enterprises, art. 4.1-4.4 of Law no. 346/2004 classifies enterprises according to their relationship with other enterprises, related to their capital or voting rights held or the right to exercise a dominant influence, into autonomous enterprises, partner enterprises and linked enterprises.

An autonomous enterprise is any enterprise that is not classified as a partner enterprise or as an affiliated enterprise.

A partner enterprise is an enterprise that is not classified as an affiliated enterprise, where the following relationship exists: an enterprise (upstream enterprise) holds, either alone or together with one or more affiliated enterprises, 25% or more of the capital or voting rights of another enterprise (downstream enterprise). However, an enterprise may also be classified as autonomous if this 25% threshold is reached or exceeded by the following investors, provided that these investors are not linked, either individually or together, to the enterprise in question. Such enterprises may be: public investment companies, venture capital companies, individuals or groups of individuals with a regular venture capital investment activity that invest equity in unlisted enterprises, provided that the total investment of these investors in the same enterprise is less than 1,250,000 euros, universities or non-profit research centers, institutional investors, including regional development funds, as well as autonomous local authorities with an annual budget of less than 10 million euros and less than 5,000 inhabitants.

Affiliated enterprises are enterprises which have any of the following relationships between them: an enterprise holds a majority of the voting rights of the shareholders or members of another enterprise; an enterprise has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another enterprise; an enterprise has the right to exercise a dominant influence over another enterprise pursuant to a contract concluded with that enterprise or to a provision in its memorandum or articles of association or articles of association; or an enterprise, which is a shareholder or member of another enterprise, controls alone, pursuant to an agreement with other shareholders or members of that enterprise, a majority of the voting rights of the shareholders or members of that enterprise¹⁶.

3. Tax regime for SMEs

3.1. Microenterprise tax. Profit tax

The Fiscal Code (Law no. 227/2015) which regulates the tax regime of taxpayers establishes in art. 17 the profit tax rate of 16% applicable to taxable profit. However, the Fiscal Code, in Title III, has a special regulation regarding the Tax on income of

¹⁶ Nam Hoang Vu, and Ngoc Minh Nguyen. "Development of Small-and Medium-Sized Enterprises through Information Technology Adoption Persistence in Vietnam." *Information Technology for Development* 28 (3), 2022: 585–616. Doi: 10.1080/02681102.2021.1935201.

microenterprises, derogating from the 16% tax rate, this being set at 1% in certain cases or 3%. In fact, this is the “*tax facility*” that determines Romanian entrepreneurs (professional traders) to opt for the legal regime of microenterprise, thus benefiting from the reduced tax rate of only 1%.

As we have previously analyzed, Law no. 346/2004 on SMEs regulates:

- Microenterprises, if they have up to 9 employees and achieve a net annual turnover or have total assets of up to 2 million euros, equivalent in lei,
- Small enterprises if they have between 10 and 49 employees and achieve a net annual turnover or have total assets of up to 10 million euros, equivalent in lei and
- Medium-sized enterprises if they have between 50 and 249 employees and achieve a net annual turnover of up to 50 million euros, equivalent in lei, or have total assets that do not exceed the lei equivalent of 43 million euros.

The current economic and social context, unfortunately, has determined the entry into force of some legislative measures that, instead of improving the tax treatment of SMEs, have generally imposed more restrictive conditions and have diminished or even eliminated certain tax facilities.

Thus, from 01.01.2025 the Romanian legislation in the field of SMEs was amended by GEO no. 156/2024¹⁷, and starting from 01.01.2026, these legislative amendments will impose even more restrictive conditions.

These legislative amendments concern the conditions that a professional trader (entrepreneur) must meet in order to acquire the legal status of a micro-enterprise, the reduction of the turnover ceiling, as well as the increase in taxes.

The provisions of Title III of the Fiscal Code apply only to micro-enterprises, not to small and medium-sized enterprises, even if they fall within the criteria established by the Law no. 346/2004 of SMEs.

Also, not all micro-enterprises benefit from the respective tax facilities, but only certain micro-enterprises that meet the conditions established by art. 47 of the Fiscal Code, namely:

a. to be a Romanian legal entity. Through this provision, the Fiscal Code expressly eliminates from the category of micro-enterprises professional traders who are natural persons (PFA, individual enterprise owner or family enterprise) regulated by GEO no. 44/2008. This measure has the consequence of excluding many professional traders from the micro regime, having a significant impact on the approximately 460,000 micro-enterprises active in 2024, according to ANAF.

b. has achieved income that did not exceed the equivalent in lei of 250,000 euros (from 01.01.2025), respectively 100,000 euros starting with 01.01.2026. The exchange rate for determining the equivalent in euros is the one valid at the close of the financial year in which the income was recorded. The verification of the ceiling for 2025 is based on the income achieved until December 31, 2024. If the turnover exceeds 250,000 euros during the year 2025, starting with the quarter in which this ceiling is exceeded, the micro-enterprise will become a payer of profit tax, i.e. 16% applied to profit (income minus deductible expenses). The verification of the ceiling for the year 2026 is made

¹⁷ Government Emergency Ordinance no. 156/2024 on some fiscal-budgetary measures in the field of public expenditure for the substantiation of the general consolidated budget for 2025, for the amendment and completion of some normative acts, as well as for the extension of some deadlines, published in the Official Gazette of Romania, part I no. 1334 of 2024.12.31

based on the income achieved until December 31, 2025. If the turnover recorded on 31.12.2025 exceeds the ceiling of 100,000 euros, starting with 01.01.2026 the micro-enterprise will become a payer of profit tax - i.e. 16% applied to profit (income minus deductible expenses), not to turnover (only income obtained from the exercise of economic activity). This regulation does not amend the Law on SMEs which establishes a maximum turnover ceiling for micro-enterprises of 2,000,000 euros, but only grants the tax facility of 1% profit tax only to micro-enterprises that have a turnover of a maximum of 250,000 euros, equivalent in lei until 31.12.2025 and a maximum of 100,000 euros, equivalent in lei starting with 01.01.2026. To verify the condition regarding the income earned, the income earned by the Romanian legal entity is taken into account, cumulated with the income of the enterprises related to it¹⁸;

c. its share capital is held by persons other than the state and administrative-territorial units;

d. it is not in dissolution, followed by liquidation, registered in the Trade Register or with the courts, according to the law;

e. it has at least one employee, with a certain exception. From the perspective of the Labor Code and the Fiscal Code, an employee is understood as a person employed with a full-time individual employment contract. This condition is also met if, within a maximum of 30 days from the termination of the employment relationship, a new employee is hired with an individual employment contract for an indefinite period or for a fixed period of at least 12 months. In the case of micro-enterprises that have employees with part-time individual employment contracts, the condition is met if the fractions of the norm added together represent the equivalent of a whole norm. In the event that the employment relationship is suspended, the condition of having at least one employee is considered met if the suspension period is less than 30 days and the situation is registered for the first time in the respective fiscal year;

f. has associates/shareholders who hold, directly or indirectly, over 25% of the value/number of participation titles or voting rights and is the only legal entity established by the associates/shareholders to apply the legal text;

g. has submitted the annual financial statements on time, if it has this obligation according to the law;

Therefore, the main tax facility, namely the tax rate of 1%, instead of 16%, profit tax imposes much more restrictive conditions than the general conditions established by the SME Law for classification in the micro-enterprise status.

Furthermore, according to art. 47 paragraph 3 of the Fiscal Code, even if they meet the conditions presented above, the following entities cannot benefit from the tax facility of applying the micro-enterprise tax:

a) the Deposit Guarantee Fund in the banking system, established according to the law;

b) the Investor Compensation Fund, established according to the law;

c) the Private Pension Guarantee Fund, established according to the law;

d) the Insured Guarantee Fund, established according to the law;

e) the fiscally transparent entity with legal personality;

¹⁸ For a comparative view, see generally Marco B. M. Loos, and Ilse Samoy (eds.), *The Position of Small and Medium-Sized Enterprises in European Contract Law. of IUS Commune: European and Comparative Law Series*. Intersentia, 2014.

- f) the Romanian legal person carrying out activities in the banking field;
- g) the Romanian legal entity carrying out activities in the field of insurance and reinsurance, capital market, as well as Romanian legal entity carrying out intermediation/distribution activities in these fields, with the exception of secondary insurance and/or reinsurance intermediaries, defined according to the law, which have earned income from the activity of distributing insurance/reinsurance in a proportion of up to 15% inclusive of total income - e.g. travel agencies;
- h) the Romanian legal entity carrying out activities in the field of gambling;
- i) the Romanian legal entity carrying out activities of exploration, development, exploitation of oil and natural gas deposits.

If the micro-enterprise cumulatively meets the conditions of art. 47 paragraph 1 and is not in any situation expressly provided for by art. 47 paragraph 3 of the Fiscal Code, it, upon meeting additional criteria, will benefit from the application of the 1% tax. These additional conditions concern the income earned and the type of economic activity.

Thus, according to art. 51 letter b) of the Fiscal Code, for micro-enterprises that generate incomes higher than 60,000 euros, including or that carry out, as main or secondary activity, certain types of economic activities, the tax rate is 3%.

These activities, expressly provided, correspond to the NACE codes: 5821 - Computer game publishing activities, 5829 - Other software publishing activities, 6201 - Custom software development activities (customer-oriented software), 6209 - Other information technology service activities, 5510 - Hotels and other similar accommodation facilities, 5520 - Holiday and short-term accommodation facilities, 5530 - Caravan parks, campsites and camps, 5590 - Other accommodation services, 5610 - Restaurants, 5621 - Event catering activities, 5629 - Other food services, 5630 - Bars and other beverage serving activities, 6910 - Legal activities - only for companies with legal personality that are not fiscally transparent entities, established by lawyers according to the law, 8621 - General medical assistance activities, 8622 - Specialized medical assistance activities, 8623 - Dental assistance activities, 8690- Other activities related to human health.

According to art. 51 letter a of the Fiscal Code, the 1% tax rate applies only if the micro-enterprise does not generate income exceeding 60,000 euros and does not carry out any activity expressly excluded by art. 51 letter b).

In the case of other SMEs, including micro-enterprises that have a turnover of over 250,000 euros, equivalent in lei until 31.12.2025 and 100,000 euros, equivalent in lei, starting with 01.01.2026, the tax due is the profit tax in the amount of 16% of the taxable income.

3.2. Dividend tax. VAT

By GEO no. 156/2024 amending Law no. 227/2015 on the Fiscal Code, amendments were also made regarding the dividend tax, with the taxation of this income to be made by applying a tax rate of 10%, increased from 8%, in the case of dividends paid by a Romanian legal entity to a Romanian legal entity, dividends paid by a legal entity to individuals and dividends paid by a resident to non-residents. Also, through the new Draft Law on Fiscal-Budgetary Measures, it is proposed to increase the dividend tax to 16%. Obviously, if the value of the dividends exceeds the value of 6 minimum

wages per economy, CASS must also be paid on the income from the respective dividends.

Regarding the 19% VAT owed by SMEs, by O.G. no. 22/2025¹⁹, from 01.09.2025, the VAT exemption ceiling for small enterprises increases from 300,000 lei to 395,000 lei. Also, theoretically, the process of registration for VAT purposes is simplified. and the possibility of exiting the VAT system is created. The amendment of the Fiscal Code by O.G. no. 22/2025 had the role of transposing into national legislation EU Directive 2020/285²⁰ on the common system of value added tax with regard to the special regime for small enterprises. As a result, taxable SMEs established in Romania that register a turnover below the threshold of 395,000 lei, have the possibility to benefit from the special VAT regime for enterprises in other Member States, if their turnover does not exceed the EU threshold of 100,000 euros and the operations carried out in the Member State in which they request the exemption do not exceed the exemption threshold applicable in that Member State. These SMEs do not collect VAT on the supplies of goods or services made and cannot deduct VAT on purchases.

3.3. Employee payroll contributions

Like any other employer, SMEs must pay the following mandatory social contributions regulated by Title VI of the Fiscal Code:

a. The social insurance contributions due to the state social insurance budget, CAS, provided for in art. 136 et seq. of the Fiscal Code. This contribution is paid by the employee, but is withheld and transferred by the employer. The amount of CAS is 25% of the employee's gross salary.

b. The health social insurance contribution, CASS, provided for in art. 153 et seq. of the Fiscal Code. This contribution is paid by the employee, but is withheld and transferred by the employer. The amount of CASS is 10% of the employee's gross salary.

c. The labor insurance contribution, CAM, provided for in art. 2201 of the Fiscal Code. This contribution is paid by the employer. The amount is 2.25% of the gross salary.

4. Conclusions

The title of the normative act that regulates SMEs in the national legislation, Law no 346/2004 is "*law on stimulating the establishment and development of small and medium-sized enterprises*". As a result, it is desirable that subsequent normative acts that refer to micro-enterprises, small and medium-sized enterprises stimulate these professional traders, regulate more favorable conditions for their establishment, operation and, especially, taxation. Unfortunately, the regulations subsequent to Law no. 346/2004, especially the Fiscal Code, have only worsened the legal regime of SMEs, adding new requirements for inclusion in the SME regime, new (increasingly lower)

¹⁹ Ordinance No. 22/2025 amending and supplementing Law No. 227/2015 on the Fiscal Code, published in the Official Gazette Part I, No. 806 of 2025.08.29,

²⁰ Council Directive EU 2020/285 amending Directive 2006/112/EC on the common system of value added tax as regards the special scheme for small enterprises and Regulation (EU) No. 904/2010 as regards administrative cooperation and exchange of information for the purpose of monitoring the correct application of the special scheme for small enterprises, published in the Official Journal of the European Union L 62 of 2020.03.02

turnover values for meeting the requirements to acquire "micro" status, and drastically restricting the economic activities to which the fiscal facility of the 1% tax rate applies.

It would be advisable to expand, not narrow, the scope of application of the "micro" status, the additional conditions regulated subsequently to Law no. 346/2004 putting professional traders with SME status in a situation of uncertainty, the instability of the legal framework and the lack of foresight being causes that either determined the dissolution of many professional traders already existing, or the abandonment or postponement of the establishment of new professional traders.

Also, in the vision of the Fiscal Code, the classification in the micro-enterprise regime has as criterion, the turnover (total income obtained, without deducting deductible expenses), with the subsequent tax rate being applied to the profit obtained (i.e. the taxable income obtained by deducting deductible expenses from total income). It is obvious that there is a large difference in value between turnover and taxable income. It would be recommended that the taxable income achieved at the end of the calendar or financial year, not the turnover, be the criterion taken into account when classifying microenterprises, small and medium-sized enterprises.

Also, although Law no. 346/2004 recognizes the status of SMEs to the professional traders who are natural persons (PFA, ÎI and ÎF), the Fiscal Code excludes these professionals from the category of SMEs that could acquire the status of "micro", although precisely these, given the limited number of employees and the limitation of CAEN codes that can be provided for as the object of activity, would meet the other conditions for classification in the "micro" regime and the application of the 1% tax.

As we have shown, the legislative amendments in 2025-2026 regarding the fiscal regime will significantly restrict the applicability of the micro-enterprise regime, and it is expected that their number will decrease drastically. Investments in green energy, sustainability, ecological practices, etc. are areas that require considerable investments, which makes classification, especially, in the micro regime practically impossible.

The consequence is that entrepreneurs will have to analyze more seriously the projects of establishing SMEs, which, in fact, are professional traders established for the purpose of carrying out some economic activities that bring profit. Given that the tax regime of SMEs, especially micro-enterprises, is becoming increasingly unfavorable, the viability of the project of establishing an SME (the chances of obtaining profit being increasingly reduced) must be analyzed compared to the project of establishing a non-trade professional (foundation or association) when, in effect, the idea of obtaining profit is abandoned, the purpose being purely charitable.

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