

Taxation changes regarding salaries and other income assimilated to salaries starting with 1 January 2018

1. Overview of the changes to the taxation of salaries and other income assimilated to salaries following the latest amendments to the Romanian Fiscal Code

Government Emergency Ordinance no. 79/2017 was published in the Official Gazette no. 885 on 10 November 2017, and is aimed to reform the current taxation mechanisms starting with 1 January 2018.

The main amendments with the impact on the remuneration paid by Fondul Proprietatea SA (the “Fund”) to the Board of Nominees (“BON”) members are presented in the table below and refer to the:

- Decrease of the income tax from 16% to 10%;
- Change of the mandatory social security contributions rates due by the members of the BON and by the Fund for monthly BON remuneration.

TAXATION IN DECEMBER 2017	TAXATION STARTING WITH 1 JANUARY 2018
SOCIAL SECURITY CONTRIBUTIONS RATES - due by the members of the BON and by the Fund	
Member of the BON: <ul style="list-style-type: none"> ▪ 10.50% - pension fund contribution ▪ 5.50% - health fund contribution 	Member of the BON: <ul style="list-style-type: none"> ▪ 25% - pension fund contribution ▪ 10% - health fund contribution
The Fund: <ul style="list-style-type: none"> ▪ 15.80% - pension fund contribution for normal working conditions ▪ 5.20% - health fund contribution 	The Fund: <ul style="list-style-type: none"> ▪ No contribution to be paid by the Fund
Total social security contributions paid to State Budget (for both BON member & the Fund)	
37.00%	35.00%
INCOME TAX RATE - due by the BON member	
16%	10%

Further details regarding the applicable legislation in case of BON remuneration is presented in Annex 1.

2. Impact of the changes in taxation of salaries and income assimilated to salaries starting 1 January 2018

Below are presented two scenarios analysed by the Fund’s payroll provider regarding the impact of the latest amendments to the Romanian Fiscal Code on the monthly remuneration paid by Fondul Proprietatea to its BON members:

Scenario 1: Keep the same Gross remuneration per BON member, respectively RON 20,000

Under this scenario, the monthly net remuneration per BON member will decrease by RON 2,412 from RON 14,112 to RON 11,700 and the total annual Fund’s costs with BON members remuneration (including gross remunerations for 5 BON members and all related contributions) will decrease by RON 252,000 (EUR 54,285 using an exchange rate of 4.6422 RON/ EUR¹) respectively from RON 1,452,000 to RON 1,200,000.

¹ based on National Bank of Romania exchange rate published on 29 November 2017

Scenario 2: Keep the same Net remuneration per BON member (as in December 2017) respectively RON 14,112

Under this scenario, the monthly gross remuneration per BON member will increase by RON 4,123 from RON 20,000 to RON 24,123 and the total annual Fund's costs with BON members remuneration (including gross remunerations for 5 BON members and all related contributions) will decrease by RON 4,620 (EUR 995 using an exchange rate of 4.6422 RON/ EUR¹) respectively from RON 1,452,000 to RON 1,447,380.

Considering the decision adopted by other companies following the change of legislation, and the fact that the total expense included in the budget of Fondul Proprietatea for BON's remuneration will not be increased, we propose to keep the same net remuneration per BON member as in December 2017 and to increase the monthly gross remuneration accordingly.

Annex 1

Fiscal treatment according to the Romanian Fiscal Code in force during December 2017

According to art. 76 paragraph 2 letter i) of the Romanian Fiscal Code, the amounts received by the members of the Audit Committees, as well as the amounts received for the participation in councils, different commissions and committees and the like, are considered as income assimilated to salaries and are subject to income tax of 16% according to the provisions of art. 64 paragraph 1 of the Romanian Fiscal Code.

As regards the mandatory social contributions due by the BON members and the Fund, according to Fiscal Code article 139 paragraph 1 letter f) and art. 140 paragraph 1 (related to the social insurance contribution) corroborated with the provisions of art. 157 paragraph 1 letter g) and art. 158 paragraph 1 (related to the health insurance contribution), the amounts received by the members of the censors committee or the audit committee, as the case may be, as well as the amounts received for participation in councils, different commissions and committees and the like shall be included in the base calculation of the social security contributions and health insurance contributions due by the Fund and the BON member. The contribution rates are stipulated in the Romanian Fiscal Code as follows:

- 26.3% for the pension fund contribution according to art. 138, out of which 10.5% for the individual contribution (respectively in our case, due by the BON member) and 15.8% for the contribution due by the employer (respectively in our case, by the Fund)
- 5.5% for the individual health insurance contribution (respectively in our case, due by the BON member) and 5.2% for the health insurance contribution due by the employer (respectively due by the Fund) according to art. 156 letter a) and letter b).

Given the fact that the contributions mentioned below are not included in the base calculation of the social security contributions previously mentioned it was considered that they are not applicable in case of mandate agreements:

- unemployment fund contribution (i.e. 0.5% for individual contribution and 0.5% for the employer contribution);
- the contribution for medical leaves and health indemnities of 0.85% due by the employers;
- the insurance contribution for work accidents and professional illnesses (between 0.15% and 0.85%) due by the employers.

Taken into consideration that BON members have a mandate agreement concluded with the Fund, the contribution to the fund for the guarantee of the salary receivables is not applicable in case of Fondul Proprietatea (respectively 0.25% of monthly gross salary according to art. 213 letter a) applicable for the incomes which are based on an individual labor contract).

Fiscal treatment applicable starting with 1 January 2018 according to the Government Emergency Ordinance no. 79/2017

The income tax rate that will apply to salary income and other incomes assimilated to salaries will decrease from 16% to 10%, according to art. 64 letter (1). Thus, the income earned by the BON members will be subject to a 10% income tax.

Regarding the mandatory social contributions due by BON members, the same fiscal treatment mentioned above is maintained, but the contribution rates are changed as follows:

- according to art. 138 letter a) the pension fund contribution will be 25% for the individuals who have the quality of employees or for which there is the obligation to pay such contribution according to the law.

- according to art. 156 the health fund contribution will be 10% and will be due by individuals who have the quality of employees or for which there is the obligation to pay such contribution according to the law.

Also, the chapters of the Fiscal Code regarding the contributions payable by employers respectively:

- the health fund contribution (art. 158),
- the unemployment fund contribution (art. 184-191),
- the contribution for holidays and social health insurance allowances (art. 192- 200),
- the insurance contribution for work accidents and professional illnesses (art. 201-208)
- the contribution to the fund for the guarantee of the salary receivables (art. 209-215)

were abolished and a new contribution named "insurance contribution for work" was introduced according to art. 220 ^ 1 whose percentage will be 2.25% according to art. 220 ^ 3. However according to the provisions of the new article 220 ^ 4 the amounts received by the members of the audit committees as well as the amounts received for participation in different councils, commissions, committees and the like are not included in the monthly calculation basis for the insurance contribution for work.