

Clients & Friends Alert

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An oasis in the investment desert - Romanian Parliament regulates fiscal benefits for business angels

Starting with 17 July 2015, Law 120 on the stimulation of individual investors/business angels (the "Law") will enter into force, with some fiscal deductions which have been granted to individual investors – so-called business angels – for their investments in SMEs. Here's a short review of what the Law provides and how you can benefit from its provisions.

What companies can you invest in?

The Law that states the conditions in which business angels can benefit from investing in and aiding the development of small and medium sized businesses, provided:

- a) the businesses have limited liability according to Company Law no. 31/1990;
- b) they are autonomous enterprises in the sense of Law 346/2004; and
- c) they are able to make payments and/or are not declaring bankruptcy.

If, however, one would invest in the domain of banks, insurance, real estate, gambling and bets, steel production or distribution, coal production or distribution, maritime and fluvial ship construction, or in the production or distribution of weaponry, ammunition, explosives, tobacco, alcohol, banned substances, plants, and drugs, the Law's facilities are not applicable.

Who qualifies as a business angel and what investments are sought?

Any person can become a business angel on the terms of a handful of conditions, more explicitly, if:

- a) the person is not associated in any way with the business before the investment is made;
- b) the investment is between EUR 3,000 and 200,000 and is executed through the Romanian banking system. The total limit of investment is the same regardless of the number of investors;
- c) the investment is made based on a share capital increase according to relevant corporate rules;
- d) the investment is made only for the purpose of accomplishing the main goal of the business and to aid the business plan;
- e) the investor has a clean fiscal record at the date of the investment;
- f) the business is not in violation of economical obligations, has all records in order, and is not guilty of tax fraud, embezzlement or corruption.

Furthermore, the business angel cannot be entitled to more than 49% of the company invested in. If there's more than one business angel, tax incentives can be awarded anyway only for a maximum of 49% of the business' capital, proportional to the shares owned.

What to take into consideration when deciding whether to take up investing?

Provided the conditions stated above are met, a business angel will be exempt from paying a dividend tax for a period of 3 years after becoming a holder of shares and will also be exempt from the capital gain tax if the shares are transferred after at least 3 years of holding them in the company. In case of assignment of shares held in a closed company to another business angel, the new investor (i.e. individual who was not part of the company before the assignment) benefits from the above-mentioned tax incentives for the remaining period until the 3-year threshold is met.

Any sale or other transfer of shares before the expiry of the 3-year term triggers payment of due taxes.

Other conditions to be met refer to the company's articles of incorporation; when being structured in view of the investment, certain clauses need to be included: (a) shareholders' participation to profit and loss, which will be proportional to the shares owned by each shareholder; (b) decisions related to the business plan and renouncing the profit quota resulting from the investment made will be taken by all shareholders.

Finally, the company and the shareholders must not use share premium to increase share capital and must not allocate it to the shareholders, for a period of 3 years from the business angel's entry into the company as registered with the Trade Registry. Also, the company must not have any unpaid taxes to the general consolidated budget when the business angel further transfers his shares.

Documenting the investment

The business angel, the other shareholders and the company itself need to sign a contribution agreement evidencing the increase in share capital by issue of shares and share premium; this document will be then registered with the Trade Registry. The authority will register the business angel's participation under this type of investment.

After the investment is performed, there's an obligation binding on the company's legal representative to keep information on the investment for the entire duration of activity and at least 5 years after company dissolution or otherwise cease of activity.

The fiscal deductions brought by the Law act as de-minimis or state aid scheme which is to be drafted by SMEs and Energy Ministry.

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This is a first attempt by the Romanian legislature to regulate so-called seed investment. Although limited in scope and benefits brought, it was a much needed and sought-after piece of legislation, by both investors and companies in all areas of activity. Should you require additional information which would enable you to design your investment path using the soon-to-be applicable fiscal deductions mentioned herein, do not hesitate to contact our colleagues here at Biriş Goran.

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