

Tax & Legal Weekly Alert

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Contributions to the Environmental Fund: Changes regarding the management of packaging and packaging waste

The management of the contributions to the Environmental Fund has suffered some changes, referring mainly to the management of packaging and packaging waste, as per Order no. 149/2019, published on February 27.

Amendments brought to the tax return no. 112

The main amendments and clarifications for the tax return no. 112 refer to the conditions for applying the tax incentives in the construction field.



Contributions to the Environmental Fund: Changes regarding the management of packaging and packaging waste

The new Order provides, among other things, a series of novelties, clarifications of existing provisions and others adjustments necessary for ensuring correlation with primary legislation concerning the contribution of 2 lei/ kg of packaging, such as:

- The quantities of packaging waste entrusted for recovery by recycling are considered to be the weight of the packaging waste entering the recycling operation in which they are reprocessed in products, materials or substances.

Note: The Order does not provide, however, which is the document, acceptable for AFM, which attests the entry of the waste in the recycling operation, and this may give rise to potential problems in practice.

- Reusable primary packaging with volumes ranging from 0.1 l to 3 l used for consumer products are registered in the accounting system, starting 31 March 2019, at the value of 0.5 lei / packaging.
- Economic operators which fulfil their annual recovery / recycling targets individually can achieve these targets by:
 - ✓ recovery of reusable primary packaging which became waste;
 - ✓ recovery of own primary packaging used / taken over from the beneficiaries, including of the primary packaging of products imported / intra-Community acquired for own use or consumption, which became waste;
 - ✓ recovery of secondary packaging and transport packaging used for the delivery of the goods and taken over from the beneficiaries, including of secondary packaging and transport packaging of products imported for own use or consumption, which became waste.

Note: In line with the amendments brought to Law No. 249/2015 regarding the management of packaging and packaging waste, the possibility of achieving the annual targets individually is significantly restricted.

Furthermore, the Order omits to mention expressly, among the categories of waste which can be used for the individual fulfilment of the targets, an important category of own packaging generated in the activity of the responsible operator. It is the case of the secondary and transport packaging waste generated by the products introduced on the market by the responsible operator and which become waste in the operator's activity as part of the operations of unpacking and preparing of the products for delivery/ distribution (e.g., unpacking and repacking for delivery to sale points), and this omission generates uncertainty regarding the possibility to use this packaging waste for the individual fulfilment of the targets.

- The products manufactured for an economic operator that applies its name, trademark or other distinctive sign on the product, for the purpose of placing on the market and / or putting it into service in Romania on its behalf are considered to have been placed on the national market by this operator.
- Wood packaging waste which is recycled into wood packaging and that which is repaired for re-use are considered to be placed on the market again when first used after carrying out those operations.

- It is clearly stated that a product imported / intra-Community acquired for export by the same economic operator is not considered to be placed on the market and, consequently, the annual targets do not have to be met for it and the contribution of 2 lei / kg is not due
- If a product located in the manufacturer's / importer's storage locations, is not yet made available or supplied for distribution, consumption or use, it is not considered to be placed on the market and, consequently the annual targets do not have to be met for it and the contribution of 2 lei / kg is not due.

Note: This clarification raises, in practice, problems of interpretation regarding the identification of the moment of placing on the market in the case of imports/ intra-Community acquisitions, respectively if it is the moment of the import/ intra-Community acquisition or a subsequent moment when the respective products are effectively directed for distribution, use or consumption.

- For the year 2019 it is allowed to transfer responsibility to an organization which implements the extended producer's responsibility obligations also for quantities of packaging introduced on the market in the months prior to the conclusion of the contract with such organization.

How will these changes impact you?

We recommend that in the next period you analyse the impact of these changes upon the management of packaging and packaging waste and take the measures necessary for ensuring compliance (e.g., amendment of the contracts for the individual fulfilment of the annual recovery targets, assessing the need to (partially) transfer responsibility if the annual recycling/ recovery targets cannot be achieved in their entirety individually, etc.). Also, we recommend to request specialized legal and fiscal assistance, considering the lack of clarity which persists both in this legal act and in the entire legislation on the management of packaging waste.

Order of the Minister of the Environment No. 149/2019 amends the annex to the Order of the Minister of the Environment and Water Management No. 578/2006 approving the Methodology for calculating contributions and fees due to the Environmental Fund.

For further questions regarding the aspects mentioned in this alert, please do not hesitate to contact us.



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Amendments brought to the tax return no. 112

The model, content, way of submission and administration of the "Tax return for income tax, social security contributions and nominal record of insured people" (form 112) were approved in the Order no. 611/138/127 and are applicable beginning with the reporting obligations of February 2019.

Regarding the amendments and clarifications introduced by the present order, we mention the following:

- The introduction of a section in the 112 form in which the employers should acknowledge if they meet the conditions for the tax incentives applicable for the construction activities;
- Includes clarifications regarding the calculation of the turnover from construction activities, including the method of computing the percentage of such item in the total turnover;
- Includes clarifications regarding the applicability of the tax incentives to the salary income obtained by the employees who have a secondment in place and for the part-time employment contracts;
- The introduction of new options for the type of insured employee depending on the level of education, work experience and on the activities performed: with or without university education, with work experience of over or of under one year, carrying out activities in the construction field;

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