

Tax & Legal Weekly Alert

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Substantial changes in relation to the management of packaging waste and the contributions to the Environmental Fund

Government Emergency Ordinance No. 50/2019 ("**GEO 50/2019**"), which brings important changes to the legislation regarding packaging waste and the contributions to the Environmental Fund, was published in the Official Gazette on July 2nd, 2019, and entered into force on the same day. GEO 50/2019 amends and completes GEO No. 196/2005 regarding the Environmental Fund and Law No. 249/2015 regarding the management of packaging and packaging waste.

The online filing of the tax returns that are due to the Environmental Fund has been regulated

Order of the Minister of the Environment No. 572/2019 ("**Order 572/2019**"), which regulates the conditions for submitting online the tax returns to the Environmental Fund, was published in the Official Gazette on 3 July 2019 and entered into force on the same day.



Substantial changes in relation to the management of packaging waste and the contributions to the Environmental Fund

Amongst the most relevant changes brought by GEO 50/2019, we highlight:

1. The previously applicable withholding tax of 3% on revenues from the sale of metal waste **is replaced** by a 2% tax on revenues obtained by waste holders from the sale of any type of waste. The tax is withheld by the collector/ recycler, which has the obligation to pay the respective amount to the Environmental Fund;
2. **The annual recovery targets for packaging waste** provided by Law 249/2015 and GEO 196/2005 are correlated. Thus, for the 2019–2022 period, the targets provided to date by GEO 196/2005 remain applicable (except for the recycling target for aluminum, which decreases from 21% to 20%). The annual recovery targets shall increase successively, for the years 2023, 2024 and for the period starting with 2025;
3. **The value of the eco-tax increases from 0.10 lei/piece to 0.15 lei/piece and its application is extended to all transportation bags**, except for those produced from materials which respect the requirements of SR EN 13432:2002. Within 30 days from publication in the Official Gazette of GEO 50/2019 (i.e., 2 July), an order which will regulate the technical characteristics of transportation bags exempted from the eco-tax shall be adopted;
4. **A new contribution to the Environmental Fund of 2 lei/ kg is introduced, owed by companies that perform waste collecting/ recovery/ sanitation services** and that report waste as recycled/ recovered for the organizations that implement the obligations regarding the producer's extended responsibility (OIREPs). The tax is due for the difference between the quantities of packaging waste, electrical and electronic waste, waste batteries and waste tires declared as managed and the quantities ascertained by AFM. In connection thereto, a biannual reporting obligation to AFM is introduced for these operators and OIREPs shall not have payment obligations in relation to the waste for which AFM applies this contribution to defaulting collectors/ recoverers/ sanitation operators;
5. AFM shall make available the SIATD IT application for checking the traceability of waste. SIATD will have to be used by OIREPs and by the legal persons who manage packaging waste whose net costs/ costs for waste collecting, recovery, sorting and reporting are financed by OIREPs. Within 180 days from the entry into force of GEO 50/2019 (i.e., 2 July 2019), the instructions for the use of SIATD must be approved by order of the minister of the Environment, the use of SIATD becoming compulsory henceforth. Failure to use the SIATD application by the above-mentioned categories of operators is qualified as a minor offence, and is thus sanctioned by fine between lei 80,000 and 100,000;
6. GEO 50/2019 clarifies the obligation of companies which hold used retail and industry packaging or retail and industry packaging waste to hand over all such used packaging/ waste (including not only secondary and transport packaging, as in the previous form of Law 249/2015, but also primary packaging) to a collector designated by an OIREP (the former OTRs). This represents an alternative to the other possibilities provided in a limitative manner by Law 249/2015 for this type of waste/ used packaging, respectively:
 - (i) returning the used packaging to the suppliers/ operators designated through contract by the suppliers;
 - (ii) ensuring the recycling/ recovery through other methods, through contracts with operators authorized for the performance of the

respective operations and the related reporting as per the requirements of Law 249/2015, art. 17 par. 1.

7. Companies (other than those from the hotel and food service industry) which generate, as result of their activity, used packaging and/ or packaging waste similar to that from households, are obliged to dispose of the respective used packaging/ packaging waste in one of the following two alternatives:
 - (i) hand the waste, against a price, to collectors authorized for the acquisition of packaging waste from the population;
 - (ii) hand over the waste, per type of materials, in the systems set up for the separate collection of municipal waste operated by the sanitation companies under contract with municipalities.
8. Companies from the hotel and food service industry (especially companies which organize events, prepare and serve food and beverages) which generate in their activity used packaging and/ or packaging waste similar to that from households are obliged to dispose of the respective used packaging and/ or packaging waste in one of the following three alternatives:
 - (i) return the used packaging for which they paid an amount of money within a deposit-return system;
 - (ii) hand over the used packaging to authorized collectors which prove that they have a valid contract concluded with an OIREP;
 - (iii) hand over the waste, per type of materials, in the systems set up for the separate collection of municipal waste operated by the sanitation companies under contract with municipalities.

[For further questions regarding the aspects mentioned in this alert, please contact us.](#)

Regulating the online filing of the tax returns due to the Environmental Fund

The online filing of the tax returns that are due to the Environmental Fund will be made through the "Online tax returns filing" service (*Depunere declarații online*), which will be available to the taxpayers/ payers on the AFM website. Order 572/2019 sets out the rules applicable to the online submission of the tax returns to the Environmental Fund, including:

- the use of the "Online tax returns filing" service, AFM will generate a taxpayer/payer's access account based on an application, which must be drafted in the form set out in Appendix 1 to Order 572/2019;
- the online submission of the tax returns may be done only by the legal representative of the taxpayer/payer or by the person empowered by the taxpayers/payers' legal representative, after enrolling in the AFM application, by using the enrollment form set out in Appendix 2 to Order 572/2019. In case of submission by a person empowered by the taxpayer/payer's legal representative, the enrollment form must be accompanied by a notarized statement, which must contain certain information expressly provided by Order 572/2019;
- the legal representative of the taxpayers/ payers may consent (in the enrollment form or in the notarized statement, as the case might be) to the issuance by AFM of administrative-fiscal deeds, enforcement deeds or of any other deeds, in electronic form, as well as to the option of communicating these kind of deeds through electronic means of remote transmission, according to the provisions of art. 43 paragraph (15) of the Fiscal Procedure Code;

- the signing of the online tax returns may only be done by using a qualified electronic signature based on a qualified certificate for electronic signature issued by a qualified trust service provider accredited in accordance with the provisions of Regulation (EU) No. 2014/910;
- if, within a fiscal year, the tax returns are filed both online or through communication with confirmation upon receipt or by filing at the AFM headquarters (as until the present date), the tax returns for December must be submitted online, otherwise these tax returns will be disregarded;
- the simultaneous use of multiple filing ways (online, communication with confirmation upon receipt or by filing at the AFM headquarters) for the same reporting period is not permitted. In such case, only the first tax return filed will be registered;
- the tax returns sent via the "Online tax returns filing" service shall be considered communicated on the date provided by the application, together with the assigned registration number;
- any amendment of the tax returns shall be made only by submitting an rectifying statement in paper form, as per the provisions of Order of the Minister of Environment No. 591/2017. The rectifying statements cannot be submitted online;
- in case of communication of the administrative-tax deeds or of procedural deeds through the service "Online tax returns filing", those shall be considered communicated to the indicated e-mail address or performed within 15 days as of the date of their transmission. The deeds shall be deemed to be communicated or, as the case may be, performed, even if the taxpayer waives the "Online tax returns filing" service, if the waiver occurs before the end of the 15-days communication deadline.

Order 572/2019 does not set out a deadline starting with which the "Online tax returns filing" service must be made available by AFM to taxpayers / payers. Currently, the service is not available on the AFM website.

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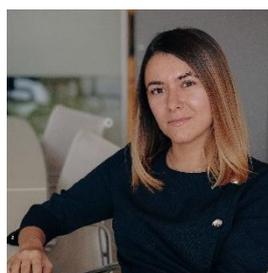
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