

Tax & Legal Weekly Alert

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Government Ordinances drafts regarding the modification of the Fiscal Code and the Fiscal Procedure Code

Government Ordinance draft for completing the Government Emergency Ordinance no. 28/1999 on the obligations of economic operators to use electronic cash registers for tax purposes

According to the information presented on the website of the Ministry of Public Finance, it is foreseen the publication of two emergency ordinances by which legislative changes will be made, regarding the Fiscal Code and the Fiscal Procedure Code.

Moreover, the Government Emergency Ordinance no 28/1999 is foreseen to be modified.

Thus, on August 14, 2019, three projects were published as following:

- The Government Ordinance project for updating the Government Emergency Ordinance no. 28/1999 on the obligations of economic operators to use electronic cash registers for tax purposes;
- The Government Ordinance draft for amending and supplementing Law no. 227/2015;
- The Government Ordinance draft for amending and supplementing Law no. 207/2015.

In the design of the two emergency ordinances that will produce changes in the two codes, Fiscal and Fiscal Procedure, the date of entry into force of these normative acts would be set, generally speaking, on January 1, 2020.



Government Ordinance draft for completing the Government Emergency Ordinance no. 28/1999 on the obligations of economic operators to use electronic cash registers for tax purposes

The draft proposes to define the concept of "tips" and the obligation to mention it on the tax receipt by the taxpayers operating restaurants or bars. For taxpayers who carry out other economic activities, the draft provides a right of option regarding the tips.

The amounts from the tips will be granted to the employees, being taxed according to the provisions of Title IV – Personal Income Tax.

Government Ordinance draft amending and completing Law no. 227/2015 regarding the Tax Code

The project involves proposed **changes in the following area:**

1. General provisions - proposals for amending Title I

- Amending the definition of "*the place of effective management*" and introducing conditions for determining it;
- Amending the definition of the concept "*resident*" and establishing general regulations applicable to legal entities which have the place of effective management in Romania;
- Clarifying the tax obligations of a tax resident individual in Romania, applicable from January 1, 2020;
- The clarification of the definition for "affiliated parties" (Art. 7, pt. 26, letter d.) – the affiliation definition between two legal entities.

2. Corporate Income Tax - proposals for amending Title II

- Clarifications concerning the reinvested profit, more precisely clarifications regarding the corporate income tax limit in which the exemption may be granted;
- Distribution of the reinvested profit to reserves is proposed to be made at the end of the financial year or during the following year;
- The exclusions of the assignment of securities from the provisions regarding the deductibility limitation of losses deriving from the sale of receivables are proposed;
- Possibility of recovery for the amounts deducted from the corporate income tax in the previous tax periods/same tax year, when the beneficiary of sponsorship/patronage/private scholarship refunded the amounts referring to sponsorships;
- Proposition for the taxpayers that are obliged to use IFRS as accounting base with respect to the calculation of the corporate income tax. The most relevant proposed provisions refer to expenses with depreciation in case of leasing agreements, expenses with interest and reinvested profit exemption;
- Tax losses of micro-enterprise taxpayers, which were corporate income tax payers in the past, can be carried forward by the absorbent – corporate income tax payer, as a result of a restructuring process;
- Proposition for certain amendments with respect to the mandatory supporting documents necessary for obtaining tax credit.

Introducing the concept of tax group ("tax consolidation") for corporate income tax

Most relevant proposed aspects with respect to the tax group:

- Maintaining the group for a minimum period of 5 years;

- The rights to participate/vote together shall be of min. 75% (under certain conditions);
- Micro-enterprises and tax paying entities for specific activities (ex: HoReCa Tax) cannot be included;
- Members must apply the same corporate income tax payment system;
- The consolidation can be carried out vertically and/or horizontally;
- Each member prepares his own individual computation of corporate income tax, but the return no. 101 will be sent by the group leader;
- Each member is required to prepare the transfer-pricing file which will include both transactions carried out with members of the fiscal group as well as with related parties outside the fiscal group, and the files thus prepared by each member of the fiscal group will be presented by the responsible legal person.

3. Micro – enterprise income tax - proposal for amending Title III

According to the draft, it was proposed to repeal the provisions regarding the 1% rate for the newly incorporated entities.

Another proposed change is the deduction from the tax base of dividend income and the inclusion of favourable exchange rate differences as elements similar to revenues in the first quarter for which the taxpayers should pay corporate income tax (in the case of taxpayers getting out from the micro-enterprise income tax regime).

4. Corporate income tax and Social security contributions – proposal for amending Titles IV and V

- Clarifications are brought regarding the moment when a non-resident individual fulfilling the tax residency criteria becomes a tax resident in Romania, applicable from January 1, 2020;
- The consideration of tourism services and/or treatment, including transportation, provided by employers for their own employees and their family members, according to the individual employment agreement, will be non-taxable and no social security contributions will be due, within the limit of a monthly gross average salary per country, per year, starting with January 1, 2020;
- The favorable tax treatment applicable to the usage of vehicles for personal purposes is extended at those belonging to the companies applying the tax regime of micro-enterprises and the specific tax for certain activities;
- New obligations arise in terms of computing, withholding, paying and reporting the personal income tax and social security contributions due for benefits in-kind or cash received from third parties (including from non-resident entities);
- The rental income will include a new type of income, from renting out the rooms in personal property dwellings, for tourism purposes; the criteria that are taken into account when determining the applicable income norms and the specific taxation rules, applicable as of January 1, 2020, are established;
- the following are amended:
 - the deadline for filing the unique statement and paying the related income tax and social security contributions from March 15 to May 25, starting with the filing obligations of 2020;
 - the deadline for providing the taxpayers with the information on the total gains/losses and submitting the informative statement (form 205) by intermediaries/certain income taxpayers with withholding obligations, from the 31st of January to the last day of February.
- The clarifications of the definition of the income obtained from Romania, derived from the transfer of securities, applicable from January 1, 2020;
- Commercial discounts are added within the category of non-taxable income from prizes;
- The procedure for avoiding double taxation by means of applying the tax credit/exemption method and the type of supporting documents required for the taxpayer are clarified;

- The phrase "based on the individual employment agreement" is eliminated in the case of the tax incentives related to the salary income derived by individuals from employers who render activities in the field of constructions, starting with the salary income derived from September 2019.

5. Withholding tax - proposal for amending Title VI

Several changes have been proposed within the draft, including:

- Replacing the concept "Romanian legal entity" with "resident";
- Introduction of a new statement "*The questionnaire for establishing the fiscal residence of the foreign legal entity with the place of effective management in Romania*";
- The deadline for submitting certain statements, including the informative statement D 207, will be the last day of February of the current year for the previous tax year.

6. Value added tax - proposals for the amendment of Title VII

From a VAT perspective, the most significant proposal is the introduction of a new letter, I), at article 331 (1). More precisely, similar with the supply of electrical power, in the draft law, it is proposed to extend the application of the reverse charge mechanism for the supply of natural gas towards a taxable person, established in Romania. The conditions for the application of the reverse charge mechanism are similar to the ones provided in the case of electrical power supply.

7. Excise and other special taxes - proposals for the amendment of Title VIII

Regarding the excise duties, a series of important amendments are proposed among which we can mention:

- The update of the reporting to the European and national legislation in force;
- The increase of the excise for cigarettes;
- The introduction of new rules/clarifications regarding the moment of the chargeability of the tax or of exceptions regarding the obligation to submit the excise statement;
- The modification of the designated authority for the authorization of tax warehouses, registered recipients and authorized importers in the case of economic operators that are great taxpayers;
- The introduction of an exception for authorized warehouse-keepers from the fulfilling of conditions from art. 367 (1) let. a), b) and I) for the authorized places as tax warehouses for the storage of emergency stocks.

8. Local taxes - proposal for amending Title IX

According to the draft, new changes are proposed regarding the submission of the evaluation reports, the tax value of the buildings if the value is not mentioned in the documents attesting the property, granting bonuses for advance payments.

The main changes regarding the Fiscal Procedure Code

According to the data presented on the website of the Ministry of Public Finance, the changes concern mainly:

- The grounds for annulling administrative-fiscal deeds;
- The transfer of the competence to solve the tax appeals, from ANAF to the MFP;
- Regulating the possibility of performing the rechecking at the taxpayer's request also;
- Regulating the possibility of reviewing the decision to solve the administrative appeal;
- Penalties due to failure to declare or incorrectly declaring some tax obligations.

Thus, regarding the grounds for annulling administrative-fiscal deeds, the legislator intends to supplement the **annulment reasons that may affect this type of administrative deed**. In this sense, for example:

- Not presenting the arguments for which the prior opinion issued in writing or the solution adopted by the fiscal body or the court were not taken into account, although such an opinion/solution was presented by the taxpayer prior to the issuance of the administrative-fiscal deed;
- The fiscal body does not abide the considerations of the decision solving the tax appeal in case of the issuance of a new administrative-fiscal deed, decision by which the contested administrative act was abolished, in whole or in part, because according to the documents existing in the file, the factual situation could not be established;
- Issuing the tax inspection report and the tax assessment decision or the decision not to modify the tax base by the tax authority, without the tax inspection having been resumed in accordance with the legal requirements.

Moreover, **the legislator introduces a new case of legal suspension of the tax inspection proceedings**, namely when the criminal investigation bodies have seized the taxpayer's accounting documents or there is a judicial procedure in progress at the time of the fiscal inspection, in connection with the means of proof regarding the establishment of the tax base.

In this case, the fiscal inspection will be resumed after the finalization of the judicial procedure, the date of the definitive decision of the court or the date on which the fiscal body will have access to the relevant documents of the taxpayer. **The term of 6 months, stipulated by the legislator as a maximum duration of the suspension, is not incident regarding this case of suspension**, in which case the suspension for this reason will be able to last for a longer time.

Within a maximum period of 10 days from the termination date of the suspension case or, as the case may be, from the fulfillment of the maximum duration for which the suspension can operate, the tax body must notify the taxpayer/payer and set the date from which the inspection shall be resumed.

At the same time, **the right of the taxpayer to be informed about the means of proof** obtained by the fiscal body is established, following the actions carried out and which have caused the suspension of the fiscal inspection. In addition, this right may entail limitations justified by general interest.

Further, the obligation to specify, in the tax inspection report, the findings of the tax inspection body from a factual and legal point of view and their fiscal consequences **is removed in the case of the finding facts committed as per criminal law** in relation to the means of proof regarding the establishment of the tax base subject to tax inspection.

Regarding **the object of the administrative appeal**, its extension is regulated, in the sense that the administrative deeds may be challenged not only with respect to the amounts and measures established and recorded by the fiscal body in the administrative deed in question, but also with regard to **the amounts and measures not established by the body fiscal, although there is an obligation to establish them**.

Regarding the **competence of solving the tax appeals**, major amendments are to be made. As such:

- The appeals against the administrative deeds issued by a central fiscal body will be solved by the specialized structures within the Ministry of Public Finance;
- The appeals against the administrative deeds issued by a local fiscal body will be resolved by these fiscal bodies;
- The appeals against the administrative deeds issued by other public authorities (**other than the central and local authorities**) will be resolved by the respective public authorities.

Moreover, **the obligation of the body that solves the administrative appeal to ensure access of the taxpayer to all the evidence related to the tax dispute resolution is regulated.**

In connection with the **penalties for non-declaration**, the abolishment of the condition of the express request of the taxpayer in order to obtain a 75% reduction in the cases provided by law is intended. Consequently, the reduction of the penalty will operate automatically, without the need for a request from the taxpayer.

In addition, the failure to apply the non-declaration penalty in the tax inspection report entails the **forfeiture of the tax body from the right to apply the penalty by means of other subsequent administrative or ancillary deeds.** The right to claim interest regarding the amounts to be reimbursed from the public budget will be subject to a limitation period of 5 years, which starts to lapse from one of the moments provided for, in this sense, by the legislator.

In the matter of **decisions solving the tax appeals**, the possibility of the resolution body to review, in certain cases provided by law, the decision issued in the resolution of the appeal, at the request of the taxpayer, was regulated.

In particular, such a possibility exists when:

- The body competent to resolve the tax appeal has omitted certain legal provisions whose application would have led to the adoption of a fundamentally different solution;
- Following the issuance of the decision solving the tax appeal, the Central Fiscal Commission issues a decision offering another interpretation to the relevant legal provisions;
- Before or after the issuance of the decision solving the tax appeal, the Court of Justice of the European Union adopts a decision contrary to the aforementioned decision;
- Before or after the issuance of the decision solving the tax appeal, the High Court of Cassation and Justice adopts a decision to solve a law clarification appeal or decides on a referral in the interests of the law, offering an interpretation different from that set-forth in the decision solving the tax appeal.

As regards the revision of certain tax obligations for a specific taxable period, the manager of the tax inspection body may order it, at the request of the tax inspection body designated to carry out the inspection or **at the request of the taxpayer**. Thus, the ordinance regulates the taxpayer's possibility of making a request for re-verification, based on the discovery of additional data, after the finalization of the inspection, which is likely to influence the results of the completed inspection.

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