



In this issue:

VAT exemption for products and services for the medical sector

Draft Government Decision on the norms for the application of Law nr. 88/2023 has been published for public debate. The law introduced new VAT exemptions with the right to deduct in the medical sector, with applicability from 12 June 2023. However, it was established that these VAT exemptions will apply under the conditions set out in the methodological norms, norms that were not available at the entry into force of the law.

Order of the Ministry of Finance for the amendment of the accounting regulations applicable to economic entities

Based on this order, additions are made to the provisions of the Order of the Ministry of Finance no. 2.048/2022 based on which it was implemented the European Directive 2.101/2021 according to which multinationals and standalone entities must draw up and publish a report with information related to profit tax if they obtain revenues of more than RON 3.700.000.000 at the consolidated level for each of the last two consecutive financial years.

The procedure regarding the annulment of the fiscal liabilities that may be subject to the annulment provided by Law no. 43/2023 – annulment of fiscal liabilities related to the reclassification of gift vouchers

Order no. 906/2023 provides, *on the one hand*, the Procedure regarding the elaboration and transmission by the fiscal control structure of the list of fiscal liabilities that may be subject to the annulment provided by Law no. 43/2023 for the annulment of some fiscal liabilities, and *on the other hand*, the Procedure for the annulment of the fiscal liabilities that may be subject to the annulment provided by the Law. no. 43/2023 for the annulment of some fiscal liabilities, as well as the ways to refund them.

I. VAT exemption for products and services for the medical sector

Law no. 88/2023 introduced new VAT exemptions with the right to deduct in the medical sector, with applicability from 12 June 2023.

Specifically, the following transactions are VAT exempt with deduction right:

- a) services of construction, rehabilitation, modernization of hospital units within the state public network, as well as services of construction, rehabilitation, modernization of hospital units provided to non-profit entities (registered in the Public Register organized by tax authorities), if they are intended for hospital units owned and operated by the non-profit entity or those in the state public network, as the case may be;
- b) supplies of medical equipment, devices, appliances, articles, accessories and protective equipment, medical materials and consumables normally intended for use in health care or for use by disabled persons, goods essential for compensating for and overcoming disability, as well as the adaptation, repair, rental and leasing of such goods, to hospital units within the state public network, as well as those made to non-profit entities (registered in the Public Register organized by tax authorities), if they are intended for hospital units owned and operated by the non-profit entity or those in the state public network, as the case may be;
- c) supplies of medical prosthesis and their accessories, except for dentures which were already exempt from VAT. Until the entry into force of Law nr. 88/2023 they were subject to 9% reduced VAT rate.
- d) supplies of orthopedic products. Until the entry into force of Law nr. 88/2023 they were subject to 9% reduced VAT rate.

Although, according to general rule of legislative technique, the law is directly applicable, Law no. 88/2023 contains the specific mention that the VAT exemption applies under the conditions established by the methodological norms.

However, given that the methodological norms were not published until the law entered into force, aspects remained unclear regarding the possibility of applying the VAT exemption.

In this context, the draft Government Decision on the rules for the application of Law no. 88/2023, clarifies the conditions for applying the VAT exemption.

According to the draft, the VAT exemption for supplies under point b) above will be justified based on:

- affidavit of the legal representative of the hospital unit from which it results that the goods are normally intended for use in health care or for use by of the disabled people, essential goods for compensating and overcoming disabilities – in case of supplies to hospital units from public network- **in case of supplies to hospital units from public network.**
- affidavit of the legal representative of public institution/authority from which it results that the goods/services are used by a hospital unit that they are financing, as well as the abovementioned affidavit of the legal representative of the hospital unit – **in case of supplies invoiced to central/local public institution/authority.**

Consequently, to apply the VAT exemption (directly invoicing without VAT), affidavits from customers, hospital units or public institutions are required.

As regards supplies to non-profit entities under points a) and b) above to non-profit entities, the exemption will be applied by VAT refund procedure established by Order of the Minister of Public Finance (not published so far).

Regarding supplies of prosthesis and their accessories, as well as orthopedic products (according to points c) and d) above), the same definitions previously applicable for supplies with 9% VAT reduced rate have been maintained.

We do not expect significant amendments and additions when the final form of the Government Decision is published in the Official Gazette.

II. Order of the Ministry of Finance for the amendment of the accounting regulations applicable to economic entities

The Order of the Minister of Finance was included in the Official Gazette, Part I, no. 559 from 21st June 2023 and completes the accounting regulations regarding the individual annual financial statements and the consolidated annual financial statements (Order 1.802/2014), as well as the accounting regulations in accordance with the International Financial Reporting Standards (Order 2.844 /2016) and the Order 2.048 /2022 which initially introduced the new reporting obligations through the implementation of the Directive 2.101/2021.

Thus, it is modified and completed the applicable legislation for the “Report on income tax information”, as follows:

- The reporting requirement applies to the **Medium and Large Subsidiaries¹** controlled by a final parent company **that does not fall under the legislation of an EU member state**;
- For the purpose of reporting, the reference to EU entities refers to the entities registered in the European Economic Area (EEA);
- In case of a group with the final parent company from a third country (outside of the EEA), any affiliated entity from the group may fulfill the obligation to publish the report;
- The obligation to draw up and publish a report with information related to profit tax, refers to the current financial year, without requirement relate to the information of the previous financial year;
- If an entity has omitted to present part of the information, its presentation will be resumed within a five-year maximum period. Thus, the published report will include information corresponding to the current financial year, the one for which the reporting is prepared, as well as previous financial years for which the information was not published.

Clarifications on how to determine the revenues considering the reporting framework on which the financial statements are prepared:

- For the entities applying the Order 1.802/2014:
If the reporting framework applicable to annual financial statements does not define the net turnover indicator, the included revenues are defined by IFRS or by the financial reporting framework based on which the annual financial statements are prepared, excluding the value adjustments and revenue from dividends received from affiliated entities.
- For the entities applying the Order 2.844/2016:
If the reporting framework is different from IFRSs, the revenues are the ones defined in the reporting framework based on which the financial statements are prepared except for value adjustments and dividends received from affiliated entities **or**

revenue such as the sum of net turnover, other operating revenues, revenues from participation interest, excluding dividends from affiliated entities, revenue from other investments and loans that are part of fixed assets, other interest receivable, and other similar revenue.

¹ The size criteria for classification in the category of medium and large subsidiaries were established based on Order 2.048 /2022 which refers to point 9 par. (4) of Order 1.802/2014.

We also mention that Order 2.048/2022 includes the criteria that determine the obligation of branches to publish the report.

Clarifications regarding the financial year

- In the case of a Subsidiary whose financial year is different from that of the parent company, it fulfills its reporting obligation based on a report corresponding to the financial year of the parent company and not based on its own financial year.
- If the financial year is different from the calendar year, the provisions of the order shall apply from the beginning of the first financial year thus chosen, starting after January 1, 2023.

III. Procedure for the annulment of fiscal liabilities that may be subject to annulment under Law no. 43/2023 - annulment of fiscal liabilities related to the reclassification of gift vouchers

Order no. 906/2023 issued by the National Agency for Public Finances was published in Official Gazette no. 586 on June 28, 2023, and approves the procedures and forms used for the implementation of the provisions of Law no. 43/2023.

As a reminder, **the purpose** of the tax facility regulated by Law no. 43/2023 is to grant the annulment of differences in main fiscal liabilities as well as related ancillary fiscal liabilities resulting from the reclassification from other income sources to salary and salary-related income categories of gift vouchers obtained by individuals from persons other than employers, for tax periods from the entry into force of Law no. 193/2006 on the granting of gift vouchers and daycare vouchers and Law no. 165/2018 on the granting of value tickets with subsequent amendments and additions until December 31, 2020 inclusive.

Additionally, the annulment also applies in cases where gift vouchers have been granted by the income payer to the employer of individuals for distribution to their employees on behalf of the income payer.

The beneficiaries of the tax facility might be:

- Legal entities for whom tax authorities have established differences in fiscal liabilities as a result of the reclassification of gift voucher income into salary related income categories;
- Legal entities that have granted such gift vouchers to persons other than their employees but for which no tax assessment decision has been issued yet. In this case, it should be noted that the amnesty law has limited the right of tax authorities to issue assessment decisions for tax periods prior to December 31, 2020 inclusive in the future.

A preliminary aspect to mention regarding the procedures to be applied in this regard is that the tax inspection structures will have the obligation to prepare a list that includes taxpayers and tax obligations established through assessment decisions that meet the legal conditions to benefit from the favorable effects of the amnesty. This list will be transmitted to the administrative structure responsible for the annulment of the outstanding fiscal liabilities.

Summarizing, the main procedures regulated by Order no. 906/2023 are and could be classified as follows:

- **Procedure applicable to the annulment of fiscal liabilities made ex officio by the fiscal authorities-** This procedure applies to cases where tax assessment decisions have been issued as a result of tax audits but have not been communicated to taxpayers.

In this case, the tax assessment decisions will no longer be communicated to taxpayers, and the fiscal liabilities imposed related to the reclassification of amounts granted as gift vouchers will not be recorded in the payment records of the payer.

Also, this procedure may be applicable in cases where the tax assessment decisions were communicated to the taxpayers, but the payment has not been made.

- **Procedure applicable to the annulment of fiscal liabilities upon taxpayer's request** - This procedure applies to taxpayers who have been communicated tax assessment decisions establishing tax obligations related to the reclassification of amounts granted as gift vouchers.

Thus, in the case of taxpayers who have paid the fiscal liabilities eligible for annulment, they have the right to claim a refund, but only upon submitting a refund request in accordance with the provisions of the Fiscal Procedure Code, as well as Chapter I of the Procedure for refund and reimbursement of amounts from the budget, approved by Order of the Minister of Public Finance no. 1899/2004.

In this situation, the tax authority will conduct verifications to determine if the taxpayer is included in the list of fiscal liabilities eligible for amnesty. If not, the taxpayer's request will be forwarded to the issuing tax authority of the tax assessment decision to verify if the conditions for amnesty are met.

If the fulfillment of the legal conditions is confirmed, the tax authority will proceed with a favorable response to the request for the refund of the annulled amounts. However, if the fulfillment of the legal conditions will not be confirmed, the refund request will be dismissed.

For more information, please contact us



Vlad Boeriu
Partener Coordonator
Deloitte Tax & Legal
vboeriu@deloittece.com



Elena Roşculeţ
Senior Manager
Deloitte Tax
erosculeţ@deloittece.com



Maria Butcu
Director
Deloitte Accounting
mbutcu@deloittece.com



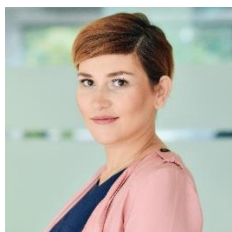
Adina Evelina Călin (Mateescu)
Manager
Deloitte Accounting
AMateescu@deloittece.com



Ciprian Gavrilu
Partner
Deloitte Tax
cgavrilu@deloittece.com



Bogdan Barbu
Partner
Deloitte Tax
bbarbu@deloittece.com



Monica Tariuc
Tax Director
Deloitte Tax
mtariuc@deloittece.com



Maria-Diana Alexandru
Senior Consultant
Deloitte Tax
malexandru@deloittece.com



Alex Slujitoru
Partner
Reff & Asociații | Deloitte legal
aleslujitoru@reff-associates.ro



Laura Epure
Managing Associate
Reff & Asociații | Deloitte legal
epure@reff-associates.ro

Deloitte.

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee (“DTTL”), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as “Deloitte Global”) does not provide services to clients. Please see www.deloitte.com/ro/about to learn more about our global network of member firms.

Deloitte provides audit, consulting, legal, financial advisory, risk advisory, tax and related services to public and private clients spanning multiple industries. Deloitte serves four out of five Fortune Global 500® companies through a globally connected network of member firms in more than 150 countries and territories bringing world-class capabilities, insights, and high-quality service to address clients' most complex business challenges. To learn more about how Deloitte's approximately 244,000 professionals make an impact that matters, please connect with us on Facebook or LinkedIn.

Reff & Associates SCA is a law firm member of Bucharest Bar, independent in accordance with the Bar rules and represents Deloitte Legal in Romania. Deloitte Legal means the legal practices of Deloitte Touche Tohmatsu Limited member firms or their affiliates that provide legal services. Visit the global Deloitte Legal website <http://www.deloitte.com/deloittelegal> to see which services Deloitte Legal offers in a particular country.

This alert is offered as guidance and must not be considered a consultancy service. Before taking any action based on this document, you should ask for professional fiscal/legal advisory.

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively, the “Deloitte Network”) is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional advisor. No entity in the Deloitte Network shall be responsible for any loss whatsoever sustained by any person who relies on this communication.

© 2023. For information, contact Deloitte Romania