

Real Estate Alert

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Amendments to the Tax Code and the Application Norms affecting the real estate industry

The most important modifications affecting the real estate industry, considering the newly published Decision no. 1/ 2016 for the approval of the Application Norms for Law no. 227/2015 regarding the Tax Code and the most recent changes to the Tax Code.

Real Estate events:

9 February: Buildings' taxation in 2016

Deloitte tax consultants Elena Trifa and Ana Petrescu will speak about imminent changes regarding taxes on buildings, impacting both taxpayers and the entire business environment.

11 February: New FIDIC contractual issues related to claims, disputes and arbitration

Robert Ionita, Associate Partner with Reff & Associates, will speak on new FIDIC contractual issues related to claims, disputes and arbitration at Masters Conference organized by Prime Consulting.



Amendments to the Tax Code and the Application Norms affecting the real estate industry

On January 13, 2016 Decision no. 1/ 2016 for the approval of the Application Norms for Law no. 227/2015 regarding the Tax Code (applicable starting 1 January 2016) was published. As such, we have listed below the most important modifications affecting the real estate industry, considering also the most recent changes to the Tax Code.

Corporate Income Tax (“CIT”)

The concept of “place of effective management” in Romania has been defined. Non-resident legal entities that have the place of effective management in Romania are included in the category of taxpayers who are required to declare and pay corporate income tax according to Romanian law.

The interest rate limitation for foreign currency loans has been reduced from 6% to 4%.

Dividends received from a Romanian legal entity, irrespective of the holding percentage and period, become non-taxable income.

Amendments have been made with respect to the taxation of income from the transfer of real estate in Romania, from the exploitation of natural resources, as well as from the sale / assignment of participation titles held in a Romanian legal entity. As such, non-residents obtaining income from the sale of shares in companies owning real estate in Romania are not subject to 16% tax if:

1. Romania has a Double Taxation Treaty (“DTT”) concluded with the country of residency of the non-resident,
2. The Company receiving the income holds more than 10% of the shares and if the operation is performed after a period of minimum one year.

Still, if the conditions above are not met, the non-resident obtaining income from the sale of shares in companies owning real estate in Romania are not subject to 16% tax if:

1. A DTT is concluded between the country of residency of the non-resident and Romania,
2. The non-resident provides the buyer with a fiscal residency certificate,
3. According to the DTT, the taxation right does not belong to Romania.

Clarifications have been brought regarding the computation method of the gains derived from selling real estate situated in Romania and obtained by non-resident legal persons.

Contributions in kind with assets are taxable starting 1 January 2016.

Withholding Tax (“WHT”)

As regards the taxation of dividends distributed but not paid to shareholders until the end of the year in which the annual financial statements were approved, the non-resident must provide the fiscal residency certificate valid for the year in which the annual financial statements were approved in order to apply the most favourable tax rate provided under the Tax Code or the double taxation treaty.

Clarifications have been made in relation to the WHT recovery for interest income derived from Romania by legal persons resident in an EU or EEA state (e.g. documents, types of expenses taken into consideration for determining the fiscal result related to interest income).

Local Taxes

Following the provisions of the new Tax Code, the amendments brought by the norms concerning local taxes are significant.

The regulations closely follow the changes in the Tax Code concerning the computation method for the building tax (i.e. depending on its purpose). Additional clarifications have been made for all of the following three categories:

- **Residential buildings:** buildings used for the purpose of sheltering individuals, consisting in one or more rooms and outbuildings, equipped with necessary utilities
- **Non-residential buildings:** buildings used for administrative, leisure, economic, education activities, etc. More importantly, if a part of the building represents a working place or a secondary domicile for an enterprise, it will be considered a non-residential building. As another example, the norms mention that any building used for tourist accommodation will be considered a non-residential building
- **Mixed buildings:** if a building has elements which are included in both categories above, it will be considered a mixed building

It is specified that if no activity occurs in some buildings, the purpose of the building is given by its construction authorization.

Details have been provided concerning the responsible party for payment obligations of the building/land tax, following the changes in the Tax Code:

- the owner of the building at 31st of December of the previous fiscal year;
- the tenant, if at the 31st of December of the previous fiscal year the building is subject to a financial leasing contract;
- the fiduciary, if at the 31st of December of the previous fiscal year, the building is subject to the fiduciary contract;
- It is mentioned that when an owner does not report a building without a building permit, the tax authorities can register the building in their records, with the aim of imposing tax based on the minutes prepared by the designated structures. Moreover, it is specified that when the date for the building construction predates 2016, the building tax due on 31 December 2015 is established based on the legal framework in effect until that date

An additional clarification has been made concerning the definition of a building with a particular emphasis on its permanence character (i.e. any building fixed in the earth with permanent character). As examples, the norms mention that containers used in construction sites for the use of works will not be considered buildings, in the sense of the article.

Separately, containers used as selling points for newspapers, will be considered buildings. Additional clarifications have been made concerning the annexed building (i.e. outbuildings that are not used for economic activities).

As such, if certain outbuildings are used for business activities, they will not be qualified as annexed buildings for the purpose of the Tax Code.

It is specified that in the case of non-residential buildings, the tax payer may decide to attach an evaluation report containing the value of the building. In this case, the evaluation report must contain the proof that the evaluation results have been registered in the ANEVAR database. Moreover, the results of the evaluation report must not be registered in the company's books.

Starting from 1 January 2016 land tax is due for land below buildings.

Value Added Tax ("VAT")

The new Tax Code, together with the related Application norms, provide significant changes also in respect to VAT, affecting the real estate industry.

The most important change is that the standard VAT rate has been reduced from 24% to 20%. Starting 2017, it will be further reduced to 19%.

- **Example:** In the case of rent services, the applicable VAT rate depends on the payment date according to the contract, or the issuance of an invoice.

- **Case study:** If the contract provides a fixed date in 2016 for payment, then the applicable VAT rate is 20%. If an invoice was already issued in 2015, with 24% VAT, the VAT rate needs to be adjusted to 20%.

The threshold for the application of 5% reduced VAT rate for the sale of houses has been increased to 450,000 RON.

Moreover, for the sale of land and buildings with VAT, either by law or by option, the buyer will be the person liable to pay VAT via reverse charge (i.e. with no cash flow impact), if both the supplier and the customer are VAT registered in Romania.

In the case of rental agreements, the recharge of utilities represents a different transaction if the tenant has the right to choose the suppliers, quantity or way of using the utilities; otherwise, it is ancillary to the rent services and follows the same VAT treatment.

The transfer of all assets or part thereof via a merger or a spin-off always falls outside the VAT scope if the receiver is a taxable person established in Romania, without any additional conditions.

It has been clarified that pre-agreements for the sale or construction of real estate represent supplies of goods, if the transaction is finalized, or supply of services if the transaction is not closed.

The VAT treatment for a roundabout built to facilitate the access to a commercial centre that is donated to the local authorities, under certain conditions, has been clarified.

For further questions regarding the aspects mentioned in this alert, please contact us.

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Real Estate Upcoming Events

9 February: Buildings' taxation in 2016

2016 brings important changes regarding building tax, having an impact both on taxpayers and on the entire business environment. The "Building tax" section of the new Fiscal Code, the implementing rules and GEV 500 standard contain important aspects for companies owning buildings and it is essential to understand the changes.

"Buildings' taxation in 2016. Local taxes for legal entities." seminar is organized by BusinessMark and it will approach subjects like:

- the impact of new amendments on local taxes;
- building tax – recent cases dealt with by local authorities in practice;
- the taxable value and tax rate in 2016;
- buildings with a mixed-usage – the challenge of the new tax code;
- evaluation guide – 500 GEV etc.

Among speakers you will find **Elena Trifa** and **Ana Petrescu**, experienced managers of Deloitte's Corporate Tax Department.

For more information about the event, please follow this [LINK](#).

11 February – New FIDIC contractual issues related to claims, disputes and arbitration

Masters Conference is a full day conference held in English, offering both a Romanian and an international legal perspective on the new FIDIC contractual issues related to claims, disputes and arbitration.

A panel of Romanian lawyers, including **Robert Ionita**, attorney at law and Associate Partner with Reff & Associates, will provide legal analysis (based on Romanian law) of some of the most critical issues under the FIDIC conditions of contract related to claims, disputes and arbitration. Additionally, Prime Consulting's Managing Partner, N. M. Raj, will present an international legal perspective on several important topics including some of the key issues covered by the lawyers.

For more information about the event, please follow this [LINK](#).

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