

Tax & Legal Alert

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In this issue:

The main amendments to the Methodological Norms for applying the Fiscal Code have been published in the Official Gazette

Please note that the Methodological Norms for the application of Law no. 227/2015 regarding the Fiscal Code were amended and completed through Decision no. 159/2016 that was published in the Official Gazette no. 208/21.03.2016. As such, you will find in the document attached the most important changes brought.



The main amendments brought to the Methodological Norms for applying the Fiscal Code

Microenterprises income tax

- The tax rate is determined by considering the number of employees at the end of the last month of the respective quarter, if the number of employees changes.

Personal income tax

From an income tax perspective, clarifications are brought in relation to the tax treatment applicable to certain expenses incurred for employees and which are specifically exempt from taxation, as follows:

- The private use of mixed-used vehicles is not subject to income tax if the expenses incurred are deductible by 50% in terms of corporate tax;
- The working conditions under which employees can be granted with free alimentation and hygiene materials are modified from difficult, harmful and specific to working conditions as per the regulations of health and safety at work.

Value Added Tax

- The example on tooling contracts was amended to include also the case when subcontractors perform supplies of goods.
- Clarifications are brought regarding the chargeable event (in the context of changing the VAT rate):
 - for rental, lease, concession or lease of goods, grants paid for a certain period of real rights on immovable property;
 - for re-invoicing utility expenses that are distinct from rental expenses (i.e. the chargeable event occurs at the date the utilities suppliers issue the invoices).
- For medicines that are subject to a cost-volume-outcome agreement, an exception was introduced to the general rule for the chargeable event and chargeability in the case of intra-community acquisitions (the acquisitions are taxable at the date of the medical outcome registration as per paragraph 24 (2) of the Methodological Norms to the Tax Code). The beneficiary has the option to apply the general rules.
- The chargeability for multi-purpose vouchers occurs at the moment of the effective redemption. Exceptions apply in case of traders of multi-purpose phone cards that cannot track the use of credit - in this case, the chargeability will occur at the moment of the card's sale.

In addition, the sale of multi-purpose vouchers constitutes a transaction outside the scope of VAT if their seller is not in charge with the related supply of goods/services.

- In cases where the consideration for a supply is established by law, auction, court decision or other similar situations without making any reference to VAT, the VAT is deemed to be included in the consideration.
- The option for taxation of the supply of immovable properties or lease, concession, renting and leasing of real estate, granting of real rights over immovable property is no longer limited to only taxable persons established in Romania.

- The input VAT adjustments on capital goods performed by taxpayers whose VAT numbers were canceled will be reflected in a special statement (if they have not adjusted the VAT in their last return or if they made erroneous adjustments).
- The addresses of suppliers / beneficiaries mentioned on invoices must include also the county or district.
- A new example is introduced for the cases where some of the goods resulting from an association are distributed to its members. Such distribution represents, from a VAT standpoint, a supply of goods for consideration within the VAT scope.
- The simplification measures for supplies of integrated circuit devices shall apply to the goods falling within the CN code 8542.

Excise duties and other special charges

- It is noted that in all cases where economic operators are authorized / reauthorized within the jurisdiction of the commission, the tax certificate and data regarding the tax record will be obtained by the specialized department that provides committee secretariat from the tax authority headquarters.
- A requirement is annulled by which registered consignees must submit a request to amend the authorization in case of modifying the quantity of excisable goods and the obligation to submit the monthly report summarizing the excisable goods deliveries.
- It is noted that failure to file on time a restitution request and accompanying documents, does not void the refund, provided they are made within the prescription period (5 years from 1st of January of the year following the one that the right to a refund incurred).
- Cases where a tax warehouse can deliver bulk denatured ethyl alcohol under the direct and indirect exemption from excise duty are clarified.
- The documents that economic operators must provide in order to be eligible for a refund of excise duties in case of indirect exemption are established.

Local taxes

Tax on buildings

- The taxable base of buildings with non-residential use is that resulting from the valuation report attached to the local tax statement even if the building was commissioned or acquired during the past 5 years in the case of individuals, or 3 years for legal entities.
- The building tax for buildings with mixed destination use owned by individuals where a fiscal domicile is registered, an economic activity is carried out and the surfaces used for residential and non-residential purpose cannot be separately distinguished is determined according to the rules applied for residential buildings when the utility expenses are not borne by the person carrying out the economic activity. The utility expenses are detailed as common expenses of the building, expenses for electricity, gas or water supply and sewerage.
- The transitional provisions bring additional clarifications regarding the taxpayers' obligation to submit local tax statements for 2016, as well as the documentation that needs to be attached:
 - The local tax statement should also be filed by individuals who own mixed destination buildings where no economic activity is carried out, without attaching any other supporting document;
 - Individuals who own buildings where economic activity is carried out, the residential surfaces cannot be distinguished from the non-residential ones,

and the utility costs are not borne by the person who carries out the economic activity, are not required to attach any supporting documents to the local tax statement;

- The following documents may be attached to the statement submitted by legal entities:
 - o The valuation report issued by an authorized evaluator, in accordance with the valuation standards of assets in force at the valuation date, which reflects the value of the building as at 31 December 2015;
 - o The final commissioning document attesting the value of the building, in the case of a building commissioned in the last 3 years;
 - o The document for acquiring the property right over the building, in the past 3 years stating the value of the building; if the value of the building is not distinctly recorded, the building tax will be set at the total value stated within the document.

Legal entities which do not submit the statement referred to above are liable to sanctions. Moreover, the buildings will be considered to have a non-residential destination while their taxable value will be considered the last value existing in the evidence of the local tax authorities.

Tax on land

- Additional clarifications and examples are introduced in respect of the land tax computation method.

Tax on vehicles

- Further procedural clarifications are brought in relation to the method of determining the tax on vehicles.

Tax for using advertising and publicity means

- Further explanations are brought in relation to the obligation of the beneficiary of advertising and publicity services to submit the tax return for the aforementioned services, based on the situation received from the provider of advertising and publicity services.

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

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