

Tax Weekly Alert

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Articles in this issue

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New amendments brought to the Norms to the Tax Code ("Norms")

The changes aim to align the Norms to the latest amendments brought to the Tax Code (i.e. Emergency Ordinances no. 102/2013 and no. 111/2013).

The amendments refer to corporate income tax, withholding tax, VAT and excise duties.

Please find below an overview of the amendments:

Corporate income tax

- The Norms have been aligned to the Tax Code regarding the following aspects:
 - Change of the minimum holding period from 2 years to 1 year regarding income derived from dividends;
 - Replacement of the term "payer of the income" with "buyer" for capital gains;
 - Clarifications of the payment deadlines for the corporate income tax and for anticipated payments of the first modified tax year, if the tax payer opts for a modified tax year, as well as the amount of the tax due. In this respect, a relevant example has been introduced.
- Addenda and clarifications have been introduced, as follows:
 - The expenses incurred with losses from receivables registered from receivables taken over by cession from nominal value to the acquisition cost are treated as deductible;
 - Specification of the necessary documents in order to claim tax relief for income derived from dividends under the minimum holding condition;
 - Calculation method of the turnover for several types of tax payers (e.g. credit institutions) considered for determining the tax credit for sponsorship;
 - Update of the example regarding the calculation of tax credit for sponsorship specifying the possibility to carry forward over the next 7 consecutive years the amounts for which the taxpayer has not obtained a tax credit during the year when the expense was incurred.

Income tax on micro enterprises

- The Norms have been aligned to the provisions of the Tax Code regarding the following aspects:
 - Income considered when calculating the limit of EUR 65,000 or the percentage of income derived from management and consultancy activities of over 20% are the same as those used for establishing the taxable base specified at art. 112⁷ from the Tax Code;
 - Amendment of the taxable base by inclusion of several income categories (e.g. income derived from commercial discounts received after invoicing, the favorable difference between income and expense incurred from foreign exchange differences);
 - Deadline for submitting the tax return when a micro enterprise ceases activity during the year.
- The following aspects have been clarified:
 - Detailed specification of legal persons that do not fall under this taxation system.

Withholding tax

- The Norms have been aligned to the provisions of the Tax Code regarding the change of the minimum holding period from 2 years to 1 year regarding income derived from dividends.
- The following aspects have been clarified:
 - Definition of international transportation and specification of the exception when the means of transport is operated exclusively between locations situated in Romania.

VAT

Taxable persons

- Clarifications have been brought to the concept of independent activity for persons who are not bound to an employer by a labor contract, but by other legal means.

Cash – accounting scheme

- Several clarifications have been brought for taxable persons that apply the cash - accounting scheme, e.g. the optional character of the system, entering and exiting the system, computation of the qualifying threshold, etc.
- The Norms have been aligned to the Tax Code regarding the elimination of the 90-day term for VAT chargeability.

Leasing services

- Where the lessor recharges to the lessee the exact cost of insurance, the insurance cost is VAT exempt for the lessor, as the insurance is a distinct and independent transaction from the leasing service.

Taxable base adjustments

- A new provision has been added for cases when the VAT taxable base is reduced in the event of terminated contracts. A taxable person can reduce the VAT taxable base only for services that have not yet been rendered. The return of goods from the buyer to the seller upon termination of contracts is not considered a supply in the VAT scope.

Conditions to exercise the VAT deduction right

- A new provision has been added for acquisitions of goods/ services from taxable persons not established for VAT purposes in Romania and who are not obliged to register. In such cases the VAT deduction right can be exercised based on the invoice and the copy of the payment decision of VAT on the occasional supplies of goods/ services.

VAT refunds to non-resident taxable persons

- A new provision has been added stating that the invoices issued between 1 January 2009 and 31 December 2013 (inclusive) which were not paid by the date of the VAT refund claim can be included in a separate claim to be submitted by 30 September 2014 without having to prove the payment of invoices (or, as the case may be, depending on the limits set in the reciprocity agreements signed with other non-EU countries).
- The Norms have been aligned to the Tax Code on the elimination of the condition that a VAT refund can only be granted to non-established taxable persons if it can be proven that the VAT has been effectively paid to the supplier.

Adjustment of the VAT initially deducted

- The Norms have been aligned to the Tax Code on the elimination of the VAT adjustment for stolen, missing or destroyed goods, which are duly proved or confirmed.
- Similar provisions were introduced for capital goods.
- The burden of proof lies with the taxable person. According to the principle of proportionality, the tax inspectors cannot ask the taxpayer for more than what is necessary to prove the incident that led to the loss, destruction or theft of property.
- However, the tax inspectors still hold the power to assess whether the available documents are sufficient and can claim adjustment of the VAT initially deducted.

VAT registration code

- If the taxpayer was deregistered for VAT purposes and subsequently qualifies and applies for a new registration for VAT purposes, the tax code assigned will be the initial VAT code.

Excise duties

- The chargeability of excise duties for non-harmonized excisable products delivered under a contract of consignment occurs for the consignee when the consignor delivers the goods to its customers.
- Clarifications have been brought regarding the method used for calculating excise duties for beer produced by mixing beer base with non-alcoholic beverages. More specifically, excise duties are due only based on the Plato degrees from the beer base and not from the full mixture.
- Authorized economic operators active in the electricity field will owe excise duties for the own use of electricity for which they will issue a self-invoice for excise duty purposes. Own use refers to other uses than the one for maintaining the capacity to produce, transport and distribute electricity within the limits set by the National Regulatory Authority for Energy.
- The holding time for excisable products at place of reception has been reduced from 48 hours to a maximum of 24 hours for possible verification by local customs authorities.
- Delivery to and reception by end users of products exempted from excise duties shall be subject to the provisions concerning the «Movement and dispatch of excise goods in duty suspension arrangements» from the Tax Code.
- Registered consignors will determine the guarantee level for energy products that do not have specific excise level based on the excise duty level for diesel fuel.
- In order to benefit from direct excise duty exemptions for natural gas and electricity, the user must send a notification to the local customs authorities which will subsequently be submitted to the suppliers – it will apply starting with 1 April 2014.
- Direct delivery has been allowed also for cases where the authorized warehouse keeper or the authorized consignor, which deliver the excisable products, are economic operators from Romania.

Source: *Government Decision no. 77/2014 published in the Official Gazette no. 108 from February 12, 2014*

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Amendments to the real estate legislation due to the entering in force of the New Romanian Criminal code

On February 1, 2014, Law no. 187/2012 for the implementation of Law no. 286/2009 regarding the Criminal Code (hereinafter the „Law”), entered into force. The Law mainly involves the implementation of the new Romanian Criminal Code of Romania, as well as the amendment of laws in various areas.

In terms of real estate legislation, the Law amends the following legal provisions:

- **Law no. 50/1991 regarding construction authorization**

The amendments brought by the Law consist in the incrimination of the following actions that, until now, were considered to be misdemeanors:

- execution without building or demolition permit or without complying with the rules mentioned in their content of construction and reconstruction works, alteration, enlargement, repair, modernization and rehabilitation of the means of communication of any kind, forest roads, works of art, utility networks and facilities, branching and connections to utility networks, hydraulic works, river bed improvement works, land improvement works, infrastructure facility, works for new sources of generation, transport, distribution of electricity and / or heat and for the rehabilitation and refurbishment of the existing ones;
- execution without building or demolition permit or without complying with the rules mentioned in their content of drilling and excavation works necessary to conduct geotechnical and geological studies, the projection and opening of quarries and gravel pits, oil and gas probes and other surface exploitations, underground or underwater;
- execution without building or demolition permit or without complying with the rules mentioned in their content of arrangement of camps for tents, cabins or trailers;

Also, the court, by means of decision, may order the framing of the works within the permit's provisions or demolition of buildings which were unlawfully erected. The prosecutor or the court may order, *ex officio* or upon request, a temporary halting of the works throughout the trial.

- **Law no. 10/1995 regarding quality in constructions**

The amendments brought to law no. 10/1995 regarding quality in constructions lower the limits of punishment in the case that the design, verification, expertise, realization of constructions or execution of changes do not comply with the technical regulations regarding the stability and strength, thus threatening the life or body integrity of one or more persons, which constitutes a crime punishable by imprisonment from 1 to 5 years and deprivation of certain rights. If these acts were committed by negligence, special limits of punishment are reduced by half.

If the case as described above causes one or more of the following consequences: loss of lives, serious body or health injuries of one or more persons, destruction of the building, in whole or in part, destruction or degradation of important systems or equipment or other serious consequences, this could be qualified as a crime punishable by imprisonment from 3 to 10 years and the deprivation of certain rights.

- **Law no. 7/1996 regarding land registration and real estate publicity**

Changing of property boundaries, setting up or displacing limits and marks for marking railway areas, roads, canals, airports, ports, waterways, delimitation of cadastral, forest, geological and mining areas, without right are incriminated as being criminal offenses. These cases shall be punished with imprisonment from 3 months to 2 years or a fine, if the act is not incriminated as a more serious crime.

- **Land law. no 18/1991**

Following the Law's entry into force, some of the provisions of Law no. 18/1991 have been repealed. Thus, the articles providing that the following constituted crimes of destruction and were punished according to the Criminal Code are no longer effective: the degradation of agricultural and forest lands, their surroundings, the destruction and degradation of agricultural crops, land improvement works, terminals and topographic and geodetic marks, historical monuments, archaeological sites, or the prevention of conservation measures for such goods, as well as the removal of these measures; the same applies to declaring areas of land smaller than the surfaces actually owned or failing to declare surfaces of land actually owned which constituted false statements and was punished according to the Criminal Code.

- **Government Ordinance no. 43/2000 regarding the protection of archaeological heritage and classification of certain archaeological sites as areas of national interest**

Firstly, the Law establishes a period of 12 months beginning from the announcement of archaeological discoveries for the competent authorities to issue an archaeological discharge certificate. In the event that this deadline is not met, and the act is not considered a crime, the competent authority may be punished with a fine of RON 2,500 to RON 10,000. Access with metal detectors or their uses in archaeological areas without prior authorization are further regulated.

The amendment of the provisions incriminating the failure to notify the archaeological discoveries occasioned by construction or demolition works involves diminishing the punishment of imprisonment sentence, which ranges from 3 months to 2 years (or a fine). If the crime was committed by negligence, the punishment is imprisonment from 1 month to 1 year or a fine.

- **Law no. 10/2001 regarding the legal regime of real estate abusively expropriated between March 6, 1945 - December 22 1989**

The amendments consist of repealing the provisions providing that the issuance of the decision for restitution in the absence of documents proving ownership right, heir status of the former owner or, if applicable, the quality of shareholder of the legal person owning the expropriated property constitutes a crime and that the issuance of the decision for restitution in the absence of evidence regarding the entitlement of legal persons to obtain reparation constitutes a crime, as well. Although these provisions were removed from the special law, they can still be qualified as crimes under the general provisions of the Criminal Code.

- **Law no. 422/2001 regarding the protection of historical monuments**

The amendments regard repealing the provisions according to which unauthorized demolition, partial or total destruction, expropriation without approval of the Ministry of Culture, degradation and desecration of historical monuments are crimes, the same mention as above being applicable in this case as well - these facts can be further classified as crimes under the general provisions of the Criminal Code.

- **Law no. 138/2004 regarding land improvements**

In this case, the Law increases the length of the prison sentence for obstructing by violence or threats a legally-authorized specialist from performing his duties including inspecting land improvement infrastructure or exploiting, maintaining and repairing infrastructure. Thus, the limits of imprisonment are between 6 months and 3 years or a fine. Starting irrigation installations for watering crops on lands situated on an organization or federation territory or on irrigation facilities administered by the National Administration of Land Improvements (the "**Administration**"), without empowerment from the organization or federation or without prior conclusion of a seasonal agreement with the Administration, is further considered a crime and shall be punished with imprisonment from 3 months to 2 years or a fine.

The failure of a board president or of a director of an organization or federation to submit annual income statements and audited financial statements to the regulatory office is considered misdemeanor and shall be punished with a fine of RON 7,000 to RON 15,000.

We are at your disposal for identifying and finding solutions for any matters that may affect your company.

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