

# Tax & Legal Weekly Alert

11-15 January 2016

## Articles in this issue:

### Amendments to the Fiscal Code

Law 358/2015 approving Government Emergency Ordinance 50/2015 amending and supplementing Law no. 227/2015 regarding the Fiscal Code was published in the Official Gazette no. 988 dated December 31st, 2015. This law brought a number of changes to the order published on November 3rd, 2015.

### Amendments to the procedure for issuing Advanced Tax Rulings and Advanced Pricing Agreements

Order of the National Agency for Fiscal Administration approving the procedure for issuing advance tax rulings ("ATR") and the application content was published in Official Gazette no. 964 dated December 24th, 2015.

Order of the National Agency for Fiscal Administration approving the procedure for issuing advance pricing agreements ("APA") and the application content was published in the Official Gazette no. 972 dated December 29th, 2015.

### The Tax Authority has published the implementation procedure on penalties for reporting failure

The procedure that regulates penalties for reporting failure imposed by the New Fiscal Procedure Code was published.

### The Tax Authority has published new rules for the administration of large and medium taxpayers

New orders on the administration of large and medium-sized taxpayers were published.

### Approved regulations and orders

Several orders and regulations of the National Bank of Romania ("NBR"), the National Agency for Fiscal Administration ("ANAF") and the Financial Supervisory Authority ("FSA") were approved between 22nd – 31st December.

### Official publication of the Union Customs Code Delegated Act and Implementing Act

The Delegated Act and the Implementing Act of the Union Customs Code were published in the Official Journal of the European Union on December 29, 2015 and will enter into force as of May 1, 2016.

## Amendments to the Fiscal Code

### Corporate income tax

- The guarantee fund for insurance policy holders is included among the taxpayers not subject to Title II - corporate income tax;
- Additional clarifications are brought in relation to receivable adjustments. Thus, the provisions of art. 26, par. (1), points a) and j) are applicable to receivables, other than the ones in relation to internal and external clients for goods, semi-finished goods, materials, sold goods, executed works and rendered services, booked after January 1st, 2016.

### Withholding tax

- Natural or legal persons earning income as a result of activities performed in Romania as entertainers or athletes are obliged to compute, declare and pay tax (under Title II or IV) if the income tax payer is located in a foreign state;
- Further additions are brought in relation to dividends distributed but not paid to the shareholders or associates until the end of the year, as regards companies with a fiscal year different from the calendar year. Thus, the declaration and payment deadline is 25th of the first month of the amended fiscal year following the year in which the annual financial statements were approved. No tax will be withheld if on the last day of the calendar year or the last day of the amended fiscal year, as the case might be, the legal person meets the conditions under Art. 229;

### Value Added Tax

- The simplification measures (reverse charge) as per the New Fiscal Code for transactions with mobile phones, integrated circuits, laptops or tablets will apply only if the value of the delivered goods on one invoice is at least 22,500 lei (without VAT);
- Furthermore, under the same provision, the term “buildings” is replaced with “constructions” – as defined by art. 292, para. (2), letter f), point 2 (any fixed structure in or on the ground).

### Local taxes

- Clarifications are brought in the case when taxes are applied on buildings / plots of land publicly or privately owned and leased, rented or given in administration or in use, as the case may be, if the right of concession, lease, management or use is subsequently transmitted;
- Clarifications are made in relation to declarative liabilities and the computation of tax on leased buildings / land for a period of less than 1 month;
- For non-residential buildings owned by individuals for more than 5 years, the new provisions state that the evaluation report prepared by an authorized evaluator should be submitted to the relevant local tax authority before the first payment deadline of the reference year;
- It is specified that the revaluation report used for updating the taxable value of buildings owned by legal entities every three years, prepared by an authorized evaluator, should be submitted to the relevant local tax authority before the first payment deadline of the reference year;
- Clarifications are brought to the article regarding the modification of buildings, as in the case of expansion, improvement, partial demolition or other modifications made to an existing building, including partial or full changing of usage, which increases or decreases the taxable value of the building by more than 25%. In such a case the owner is required to submit a new tax return to the local tax authority within whose territorial jurisdiction it stands within 30 days of the change, and shall owe tax on buildings computed under the new conditions starting with January 1st of the following year;

- Clarifications are brought for the situation in which tax is due for a building / land, and during the year certain situation which require tax on leased buildings / plots of land due for that building / land; the tax differences for which tax on leased buildings / plots of land is due shall be compensated or reimbursed in the next fiscal year.

### Excise duties and other special taxes

- The possibility to sell beer within a fiscal warehouse, exclusively authorized for beer production, is introduced.

### Amendments to the procedure for issuing Advanced Tax Rulings

Please find below the main amendments applicable starting January 1<sup>st</sup>, 2016:

- Amendments are made to the tax ruling request, which must contain, among others, information and data which are the subject of or could lead to the disclosure of the commercial, industrial and / or professional secrets;
- A new document necessary for issuing a tax ruling is requested, namely an affidavit of the taxpayer stating that there are no issued administrative acts, fiscal administrative acts or other acts related to the future state and that the tax treatment subject to the request has not been previously clarified;
- Clarifications are brought for when there are indications that the current fiscal situation covered by the request for issuing an ATR may be an artificial transaction; in this case, the relevant tax authority may initiate the procedure for the exchange of tax information under the Double Tax Treaty concluded between Romania and other countries, or under the Directive on administrative cooperation in tax matters (Directive 2011/16 / EU);
- A new situation for which an application for the issuance of ATR may be rejected is introduced, i.e. when the case at hand has been / is the subject of a criminal investigation or acts of tax evasion, as well as when the fiscal situation at hand has been regulated through legislative changes or issuance of administrative acts by the date of the ATS' issuance;
- New regulations are introduced for when the taxpayer disagrees with the issued ATR– in such case, the taxpayer / payer shall submit, within 30 days after the notification date, a notification to the issuing tax authority. The ATR will not produce any legal effect in this situation.

### Amendments to the procedure for issuing Advanced Pricing Agreements

Below are the main changes applicable to the procedure for issuing and amending APAs adopted by Order no. 3.735/2015 of the ANAF President and applicable starting 1<sup>st</sup> of January 2016:

- Clarifications over when the tax authority requests additional information regarding the object of the request for issuance/amendment of an APA are provided. In this case, the deadline for the issuance/amendment of an APA is suspended and shall be extended with the period between the date for requesting additional information and the date for providing such information;
- Clarifications and amendments to situations in which the request for the issuance and amendment of APAs may be rejected are provided; an important clarification is if the case described was/is subject to a tax, administrative or legal criminal

investigation, including for acts of tax evasion, and is related to the soliciting taxpayer;

- Clarifications regarding the testing of the arm's length principle have been added;
- It is clarified that the tax authority issues an APA for each transaction carried out with a related entity;
- The content of the issuance or amendment of the APA to be prepared by the taxpayer was supplemented with a series of formal items that must be completed in order to validate the request for issuance/amendment of an APA.

The provisions of this Order apply to the requests for issuance of APAs after January 1<sup>st</sup>, 2016. For the requests of issuing and amending APAs submitted prior to the aforementioned date, the legal provisions in force at the date of their submission will remain in force.

### **The Tax Authority has published the implementation procedure on penalties for reporting failure**

The procedure that regulates penalties for reporting failure imposed by the New Fiscal Procedure Code was published by ANAF and brings clarifications on the calculation method. Moreover, it introduces the forms to be used. The procedure was published in Official Gazette no. 984 / December 20<sup>th</sup>, 2015.

### **The Tax Authority has published new rules for the administration of large and medium taxpayers**

New orders on the administration of large and medium-sized taxpayers were published in the Official Gazette no. 969 dated December 28<sup>th</sup>, 2015. These orders will be applicable starting February 1<sup>st</sup>, 2016.

One of the main changes is that the General Directorate for the administration of large taxpayers will be in charge of a maximum number of 1,500 taxpayers. The main selection criteria will be annual turnover (without taking into account the volume of the contributions to the budget).

### **Approved regulations and orders**

#### **The procedure for VAT reimbursement has been updated**

The Order and the procedure for solving VAT refunds has been updated by the National Agency for Fiscal Administration. The new rules will apply for refund requests submitted after January 1<sup>st</sup>, 2016. The new procedure and its corresponding Order were published in the Official Gazette no. 969 dated December 28<sup>th</sup>, 2015.

#### **The list of fiscal offenses has been updated**

The list of fiscal offenses was published in the National Gazette no 977 dated December 30<sup>th</sup>, 2015. Among the offences included were those valid as per the new Fiscal Code (Law no. 227 / 2015), the new Fiscal Procedure Code (Law no. 207 / 2015) and those within the Companies Law (Law no. 31 / 1990). Moreover, the sanctions mentioned for some of the offenses were changed.

## The Tax Authority has defined the central administration structure

The fiscal authorities published an order to approve the administration competencies and to define the central administration structure.

For example, the central administration structure responsible for tax groups will be the tax administration of the leader of the tax group. Moreover, the Tax Administration for non-residents will manage the special regime for electronic services (Mini One Stop Shop) for companies that choose Romania as a member state for registration. The new order was published in the Official Gazette no. 973 dated December 29<sup>th</sup>, 2015.

## Instructions for solving tax appeals submitted as per the new Fiscal Procedure Code have been published

The National Agency for Fiscal Administration published the guidelines for the application of the provisions of the Title VIII of the new Fiscal Procedure Code (law no. 207 / 2015) on solving appeals. The new provisions keep some of those from the previous Fiscal Procedure Code. New provisions are also included, among which, the deadline for submitting the appeal, the option of an oral presentation of the arguments and the possibility of connecting several appeals. The new instructions were published in the Official Gazette no. 975 dated December 29<sup>th</sup>, 2015.

## The procedure for obtaining the postponing certificate for payment of VAT has been updated

The procedure for obtaining the postponing certificate for payment of VAT at customs was updated to meet the provisions of the New Fiscal Code (ex. cancelling the deadline by which the VAT is paid at the border for taxpayers that have the postponing certificate). The new procedure was published in the Official Gazette no. 976 dated December 29<sup>th</sup>, 2015.

## Approved rules and orders

- The National Bank of Romania amended and supplemented Order no. 5/2014 for approving the Methodological Norms regarding the preparation of periodic reports including financial and accounting statistical information, applicable to the Romanian branches of credit institutions of other Member States, as well as the Order no. 6/2014 for approving the Methodological Norms on the preparation of financial statements FINREP. [Read the Order](#)
- Official Gazette no. 954 dated December 23<sup>rd</sup>, 2015 approved Order no. 3.654/2015 regarding the procedure for issuing a tax certificate, certificate of budgetary obligations, as well as their format and content, replacing the old Order no. 752/2006. The new procedure brings the following amendments:
  - The situations in which the relevant tax authorities has the obligation of issuing the tax certificate is further supplemented;
  - A new timeframe for issuing the tax certificate is introduced as 3 working days starting from the date on which the issuance was requested;
  - New documents and decisions to be verified by the relevant tax authority are introduced in order for the tax certificate to be issued;
  - The format of the documents attached in the Order's Appendix is amended.
- The Financial Supervisory Authority has approved Rule no. 40/2015 for approving the Accounting Regulations regarding the annual financial statements and annual consolidated financial statements, applicable to authorized entities. [Read the Rule](#)
- The Financial Supervisory Authority has approved Rule no. 39/2015 approving the Accounting Regulations in accordance with the International Financial Reporting Standards (IFRS). Its provisions shall enter into force and be applicable for the annual financial statements FY 2015. [Read the Rule](#)
- Order no. 3.737/2015 of ANAF President regarding the model and content of the form "*Decision of adjustment/estimation of income or expense of any related entity*", entering in force starting with January 1<sup>st</sup>. 2016 was adopted.

- The decision of adjustment/estimation of the income or the expense of one related entity represents the fiscal administrative act issued by the Romanian Tax Authorities for the adjustment/estimation of the income or the expense of a Romanian related entity, part of a transaction, other than the one for which a tax audit was performed.
- The decision of adjustment/estimation of the income or the expense of one of the related entities shall be issued after it remains final in the system of administrative and judicial appeal of the decision issued to the taxpayer during a tax audit of the legal entity.

### For the attention of taxpayers

According to the Tax Code, taxpayers can opt for computing, declaring and paying the corporate income tax through quarterly advance payments.

Any amendments regarding the system of declaring and paying the corporate income tax (the option of applying or resigning of the advance payments system) should be notified to the tax authorities by **31 January**.

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

**Dan Badin**  
Partner  
+40 21 207 53 92  
[dbadin@deloittece.com](mailto:dbadin@deloittece.com)

**Vlad Boeriu**  
Partner  
+40 21 207 53 41  
[vboeriu@deloittece.com](mailto:vboeriu@deloittece.com)



## Official publication of the Union Customs Code Delegated Act and Implementing Act

The two acts along with the new Union Customs Code ("UCC") adopted by Regulation no 952/2013 are directly applicable in all EU Member States as of May 1, 2016.

The new customs legislation of the Union Customs Code aims to refocus its customs activity to a fully electronic environment and establish new customs legislation with a significant impact on businesses.

### What does it mean for you?

It is important to analyse what specific impact the new legislative changes will have for your company and to not be in the position of having to pause / change the way you perform customs clearance midway through 2016.

Some of the (practical) changes will depend on how the national customs authorities will interpret and apply the new legislation, following to harmonize national legislation with the Union's legislation.

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

#### **Pieter Wessel**

Partner  
+40 21 2075 242  
[pwessel@deloittece.com](mailto:pwessel@deloittece.com)

#### **Mihai Petre**

Senior Manager  
+ 40 730 585 665  
[mipetre@deloittece.com](mailto:mipetre@deloittece.com)

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