

# Tax & Legal Weekly Alert

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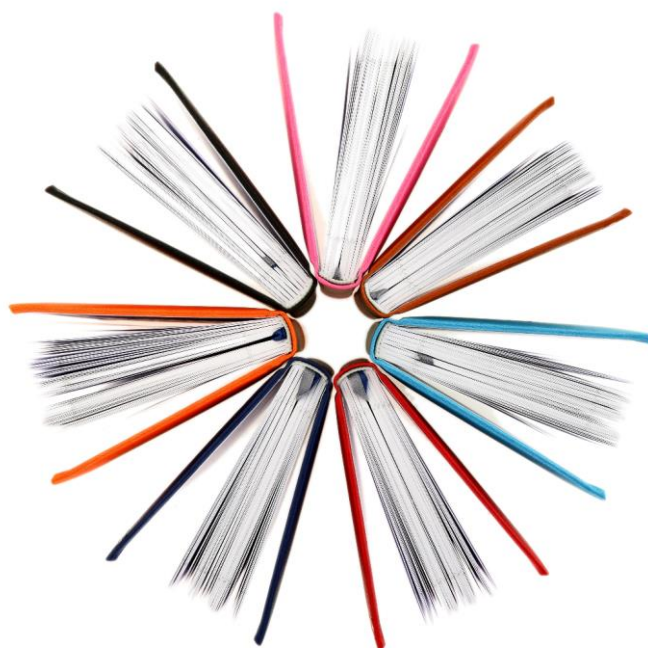
## In this issue:

### **Amendments to the Fiscal Code**

Law no. 227/2015 regarding the Fiscal Code was amended and supplemented by the Emergency Ordinance no. 84/2016 for amending and supplementing normative acts from financial and tax legislation, published in the Official Gazette no. 977/06.12.2016.

### **Amendments to the Tax Procedure Code**

Law no. 207/2015 regarding the Tax Procedure Code was amended according to the Government Ordinance no. 84/2016, amending and supplementing certain normative acts in the financial and fiscal domain, published in the Official Gazette no. 977/06.12.2016.



## Amendments to Fiscal Code

The Emergency Ordinance no. 84/2016 provides amendments and supplements to the Fiscal Code, the most important of them are summarized below:

### **Title I General Dispositions**

- The definition of the program „stock option plan“ was amended, as follows:
  - financial instruments that can be traded under such type of program are limited to equity securities (as defined by law) issued by the company;
  - the condition regarding the trading of the equity securities on a regulated market or under an alternative trading system is eliminated.
- New rules were introduced with respect to the deductibility of expenses for corporate income tax purposes by inactive taxpayers and their beneficiaries in case of their reactivation according to the Fiscal Procedure Code (i.e., during the same fiscal year or in different fiscal years).

### **Title II Corporate income tax**

- Introduction of new regulations governing the modified fiscal year in specific cases when returning from the modified fiscal year to the calendar year, as well as when changing the period of the modified fiscal year.
- Extension for an unlimited period of the tax incentive regarding the tax exemption of reinvested profit. The tax incentive is also extended to cover profit reinvested in the right to use informatics programs.
- Deductibility of expenses related to professional and technical education.

### **Title III Microenterprises income tax**

- The reduction of the share capital threshold above which newly established legal entities can apply the option to pay corporate income tax from EUR 25,000 to RON 45,000, including the transitory rules for legal entities that applied for such option until 31 of December 2016.

### **Title IV Income tax**

- The obligation to file the annual tax return regarding the computation and withholding of the income tax for each income beneficiary (Form 205) by the payers who apply tax withholding on income from: salary, intellectual property rights, pension, leasing of immovable property, associations between legal entities and individuals or an entity – association with no legal status was repealed.

### **Title V Mandatory social contributions**

- Any income received for the activity performed by daily laborers will be exempted from social security charges.
- An amendment was introduced to clarify the rules for declaring, calculating and paying the mandatory social contributions due for salary income differences determined for prior periods as per the applicable law: the rules will be similar as for income representing salaries or salary differences determined on the basis of court decisions.

### **Title VII Value Added Tax**

- A special scheme for farmers was introduced – the natural persons, authorized natural persons, individual enterprise or family-run company with its main business place in Romania, which performs agricultural services or activities of agricultural production. Individuals who apply the regime do not have the right to deduct or collect VAT on farming operations carried out, but they will charge a compensation percentage related to the value of the agricultural products supplied/agricultural services rendered. The compensation percentage is 1% for 2017, 4% for 2018 and 8% for the 2019. The beneficiaries of the goods/services purchased from the farmers have the right to deduct the value of compensation invoiced for agricultural activities.

- The obligation of the taxable persons to register in the Register of Intra-community Operators is repealed, in order to ensure the visibility of the VAT ID number of the operator in the VIES.
- Favourable measures are established with respect to the VAT deduction in situations in which the taxable person has the VAT ID number cancelled by the tax authority:
  - the taxable person will exercise its right of deduction for the goods and/or services purchased in the period in which its VAT ID number was cancelled, by enrolling it in the first VAT return submitted after the registration or, by case, in a subsequent VAT return, even if the invoice does not include the VAT ID number of the taxable person.
  - the beneficiaries of the supplies of goods/services performed by taxable persons who have had the VAT ID number canceled when the transactions took place, have the right to exercise their deduction right in respect of those acquisitions after the reactivation of the supplier's VAT ID number.
- Adjustment of deductible VAT in case of capital goods – the adjustment is carried out in a phased manner, in the last tax period of each year when a modification in the destination of those goods has taken place.
- The obligation to submit 392A, 392B and 393 statements is suspended until 31 December 2019.

#### **Title IX Local taxes**

- A full exemption will be applied for the building used as domicile, the land related to such building and one means of transportation of taxpayer's choice, owned in common with the spouse by persons with severe disabilities and persons considered first grade invalids, or the legal representatives of minors suffering of severe disabilities or considered first grade invalids.
- If the assets mentioned above are commonly owned by the two spouses and a third person, the exemption does not apply for that third person.

#### **Enter into force**

The amendments mentioned above enter into force from 1 January 2017, except for the amendments brought to the articles regulating social security contributions, which will be effective starting with the date of publication of this Emergency Ordinance in the Official Gazette of Romania, Part 1.

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

#### **Daniel Petre**

Director | Tax  
+40 (21) 2075 444  
[dpetre@deloittece.com](mailto:dpetre@deloittece.com)

#### **Elena Trifa**

Manager | Corporate Tax  
+40 21 2075 304  
[etrifa@deloittece.com](mailto:etrifa@deloittece.com)

#### **Alexandru Aparaschivei**

Senior Manager | Indirect Tax  
+40 (21) 2075 420  
[aapaschivei@deloittece.com](mailto:aapaschivei@deloittece.com)

#### **Adrian Stoian**

Senior Manager | Global Employer Services  
+40 21 207 53 90  
[fstoian@deloittece.com](mailto:fstoian@deloittece.com)

## Amendments to Tax Procedure Code

The Government Ordinance no. 84/2016 provides both amendments and additions to the Tax Procedure Code in accordance with the need for timeless application of the tax facility of exemption from income tax of the reinvested profit in order to stimulate the business environment, as well as the measures of reducing the bureaucracy and administrative simplification and **transposes the Directive 2015/2.376/UE** amending the Directive 2011/16/UE related to the automatic exchange of information in the tax domain.

The modifications are concerning, in particular, the following **items**:

### **Title III- General procedural provisions**

- It is expressly stated that **the provisions related to the content and the motivation of the administrative-tax document** shall apply to the enforcement deeds and to other documents issued by the tax bodies, unless otherwise provided by law.

### **Title IV – Registration for tax purposes**

#### **Regarding the register of inactive/reactivated taxpayers/payers**

- It establishes the rule that, in regard to inactive taxpayers/payers, they will be reactivated after the fulfilment of the following cumulative conditions: (i) the fulfilment of all the information obligations provided by law; (ii) they do not have outstanding tax liabilities and (iii) they are no longer in the situation for which they were declared inactive;
- With regard to the taxpayers/payers that entered insolvency proceedings in simplified form, that went bankrupt or for which a resolution for dissolving has been adopted or has been pronounced, they will be reactivated by the central tax bodies, at their request, after fulfilling their declarative obligations;
- Also, an exception established by the legislature, is the case of taxpayers/payers who evade the controls carried out by the central tax body by declaring identification data regarding the domicile for tax purposes that do not allow their identification the tax authority, or in case the central tax body notes that they no longer operate at the declared domicile for tax purposes, in which case the reactivation will be allowed as a result of the fulfilment of the above-mentioned conditions and if the central tax body that proposed the reactivation notes that the taxpayer operates at the declared domicile for tax purposes.

### **Title V – Tax assessment**

- It is stated that the submission of tax returns can be sent through electronic means, or electronic systems of remote transmission. The tax returns submitted using such means or systems shall be regulated through Order of the chairman of the A.N.A.F.;

### **Title V – Tax audit**

- New payment methods are provided – both electronic, such as “bank settlement”, “postal mandate” and cash;
- It regulates:
  - The **moment of the payment** in accordance with each type of payment newly introduced (regarding the cash payment, the date entered in the payment documents issued; regarding the cash payment made at terminals and equipment owned by credit institutions, the date recorded on the payment document issued terminals or equipment regarding payment made using a postal mandate, the date stated on the postal mandate, regarding payments made by means of remote payment, the date when the bank debits the account of the person);
  - The relevant **documentation** attesting the date and the payment;
  - The **proof of payment** and the **tax body’s verification method of the amounts paid** (including the procedure to be followed in case of

failure to collect the fiscal obligations – in this regard, within a period of 180 days starting from the date the public service has been provided/from the date the above mentioned documents have been accepted as proof of payment, the public institution issues and notifies to the debtor a **recovery decision**, which is enforceable. For those amounts, the tax bodies will calculate accessories, starting from the next day following the provision of the public service or from the due date).

- It is stated that **the age order of the principal and ancillary tax liabilities is set by their communication date**, unlike the old regulations that took into account the payment terms laid by article 156 para. 1.
- In case of an **anticipated tax audit conducted for the settlement of negative VAT tax returns**, the period subject to tax audit will only include the periods in which operations were conducted which generated the negative balance. In the event that, during the audit, the tax authority ascertains certain clues regarding non-compliance with the tax regulations or incorrect determination of fiscal obligations, the tax audit may be extended, pursuant to article 117.
- It expressly states the possibility of contesting the **decision ordering the establishment of safeguarding measures** by the concerned individual within 30 days of communication, without requiring preliminary proceedings.
- Enforcement bodies able to fulfil special enforcement acts and capitalize confiscated/pledged/mortgaged/seized assets are established by order of the chairman of ANAF.
- *Article 229* now expressly provides that in the case of enforcement measures which concern the **bank garnishment**, it is not necessary to indicate the writ of enforcement, the nature and the amount of debt which is the subject to enforcement.
- *Article 235* now provides that, **during the period of suspension of the enforcement of the letter of guarantee/policy of insurance warranty**, the tax authority will not be able to issue and will not communicate the decision relating to accessories from tax claims which are the subject of the suspension.
- **The amounts which represent revenues in money of the individual debtor**, which he/she obtains as employee, pensions of any kind, as well as aid or indemnities of special use, **shall be subject to seizure only by the payer of the income;**
- It expressly provided that, in the event of default, once the claim is individualized and reaches its due date, **garnishment** as a precautionary measure, on the debtor's revenues becomes enforceable. In this case, the tax authority will issue an address to set up enforceability of the attachment to the attached third party and for notifying the debtor regarding the procedure.
- **The limitation of the sale of seized assets only to natural or legal persons who do not have the tax arrears was repealed.** Thus, in the announcement on the sale it is no longer necessary to mention that all those interested in the purchase of the goods must show proof issued by the fiscal authorities certifying that they do not have any tax liability outstanding.
- It is expressly provided that **the amount obtained during the enforcement proceeding shall settle the tax receivables by order of the age of the writs of enforcement for which the enforcement has been started.**

#### **Title VIII- Settlement of appeals against administrative-tax documents**

- It is expressly provided that the **measure of reduction of tax loss** will be established through decision to amend the tax base, and not through an order of measures;

- With regard to **appeals**, changes have been brought to the authorized body, depending on their object;
- Thus, **the specialized appeal settlement structure with the general regional directorates of public finance with territorial authority over the tax domicile of the contesting parties has the authority to settle the appeals whose object refers to:**
  - a) tax receivables amounting to up to Lei 1 million;
  - b) the measure of reduction of tax loss amounting to up to Lei 1 million;
  - c) the reverification decisions, with the exception of those for which the General directorate of settlement of appeals of the A.N.A.F was the settlement authority;
  - d) accessory tax receivables, irrespective of the amount, related to main tax receivables set by tax notice/other assimilated tax administrative acts for which the authorized body was the specialized body for solving appeals with the regional general directorates of public finance;
- Also, the specialized structure with the General Directorate of Administration of Large Taxpayers is the authorized body to settle the appeals formulated by **large taxpayers** that have one of the aforementioned objects;
- The appeals formulated by **nonresident taxpayers** who do not have a permanent seat in Romania which refer to tax receivables **amounting to Lei 1 million** shall be settled by the specialized appeal settlement structure of the general regional directorates of public finance which is competent to administer the debts of that nonresident taxpayer or by the General Directorate of Administration of Large Taxpayers;
- The General directorate of settlement of appeals of the A.N.A.F is the appeal settlement authority for solving the appeals against:
  - a) tax receivables amounting to more than Lei 1 million;
  - b) the measure of reduction of tax loss amounting to more than Lei 1 million;
  - c) tax receivables and the measure of reduction of tax loss irrespective of the amount, as well as the reverification decisions, in the case of appeals formulated by tax payers against the acts issued by the tax bodies from the central unit of the A.N.A.F;
  - d) accessories tax receivables established through tax notice/other assimilated tax administrative acts, irrespective of the amount for which the authorized body was the General directorate of settlement of appeals of the A.N.A.F.

#### **Title X - International aspects**

Regarding the **administrative cooperation in the tax field**, the following changes have been brought:

- The automatic exchange of information has been redefined by extending the concept;
- New definitions, for the following terms, were introduced: "early tax decision cross-border implementation", "prior agreement concerning the transfer price", "associated undertakings", "transfer prices", "cross-border transaction" and "undertaking".

Regarding **the compulsory automatic exchange of information on early tax decisions with cross-border implementation and prior agreements on transfer prices:**

- **After 31 December 2016**, the competent Romanian authority is obliged to notify any issue, modification or renewal of an early tax decision with cross-border implementation and of a prior agreement on transfer prices to all competent authorities of the Member States and to the European Commission within 3 months from the end of the first semester of the calendar year in which the issue/changing/renewal was made.
- The above-mentioned obligation of the competent Romanian authority shall also apply to early tax decisions with cross-border implementation

and to prior agreements on transfer prices issued, modified, or renewed within a 5 years period before the date of 1 January 2017, under the following conditions and time-limits:

- if they have been issued, modified or renewed between **1<sup>st</sup> of January 2012 and 31<sup>st</sup> of December 2013**, the notification takes place if they were valid on 1<sup>st</sup> of January 2014
- if they have been issued, modified or renewed between **1<sup>st</sup> of January 2014 and 31<sup>st</sup> of December 2016**, the notification takes place whether they are valid or not on 1<sup>st</sup> of January 2017
- the time-limit of this obligation is prior to 1<sup>st</sup> of January 2018

Exceptionally, the tax decision issued, modified or renewed before 1<sup>st</sup> of April 2016 will not be notified if it relates to people (or groups of people) who are not mainly pursuing financial activities or investments and who are not having an annual net turnover (at the entire group level) which exceeds the equivalent in lei of EUR 40.000.000 in the course of the financial year preceding the issuance, modification or renewal date.

Also, the prior bilateral or multilateral agreements on transfer pricing agreements with third countries shall be excluded from the scope of the automatic exchange of information if the international agreement concerning the taxation under which the prior agreement on transfer prices has been negotiated does not allow its disclosure to third parties. They may, however, be the subject of a **spontaneous exchange of information** between the Member States, if:

- the prior agreement on transfer prices negotiated and,
- the competent authority of the third country grants permission to disclose information;

The notification shall be made using a form-type adopted by the European Commission, which may be in the Romanian language or in any other official language of the EU.

[For further questions regarding the aspects mentioned in this alert, please contact us.](#)

**Andreea Artenie**

Partner  
+40 21 2075435  
[aartenie@reff-associates.ro](mailto:aartenie@reff-associates.ro)

**Catalina Violeta Apostu**

Associate  
+40 21 2075355  
[capostu@reff-associates.ro](mailto:capostu@reff-associates.ro)

**Crina Catalina Constantin**

Associate  
+40 21 2221661  
[crconstantin@reff-associates.ro](mailto:crconstantin@reff-associates.ro)



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