

Tax & Legal Weekly Alert

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Amendments to the Fiscal Code and to the Fiscal Procedure Code

The Emergency Ordinance no. 8/2014 (the Ordinance) was published in the Official Gazette no. 151 on 28th of February 2014. The Ordinance includes amendments to the Fiscal Code and to the Fiscal Procedure Code.

I. Amendments to the Fiscal Code

Withholding tax on non-residents' income

- The reimbursement procedure for the tax withheld in excess will no longer be regulated in the Fiscal Code, but in the Fiscal Procedure Code.

VAT

- The Ordinance introduces the definition of the telecommunication services.
- New rules are introduced regarding the place of taxation for electronic, telecommunication, broadcasting or television services to non-taxable persons.
- New amendments are brought in relation with registration in one single member state or for using a single VAT number for these services, rendered to non-taxable persons, the following regimes being listed:
 - the special regime applied by taxable persons who are not established in the European Union;
 - the special regime applied by the taxable persons established in the European Union, in a different member state than the state of consumption.
- The amendments brought to the Fiscal Code referring to VAT will enter into force starting with 1st of January, 2015.

Excise duties

- Economic operators that are in bankruptcy procedure and are performing activities with excisable products are not subject to the procedure for movement of excise goods under suspensive regime. In case the owned products no longer fulfil the legal conditions for trading, they will be sold only to warehouse keepers and will move accompanied by an invoice and under fiscal supervision.
- Producers of non-harmonized excisable products, liable to pay excise duties, are defined as economic operators that own raw materials and that produce these goods either themselves or by sending them to third parties for processing, whether the processing takes place in Romania or abroad.
- The provisions related to excise duties enter into force starting with 28th of February, 2014.

II. Amendments brought to the Fiscal Procedure Code

Interest

- The level of interest is reduced from 0.04% to 0.03% for each day of late payment of taxes or for refunds of taxes.
- The taxpayer is entitled to receive interest for tax receivables derived from cancellation of administrative acts.
- Accounts may be blocked only after 30 days from the date when the notification was communicated.
- The interest level for reschedule payment is set to 0.02% per each day of delay, starting with 1st of March, 2014.
- The above are applicable starting with 1st of March 2014.

VAT refund

- The VAT returns with request for refund, for which the amount requested is lower than RON 45.000, will be solved with subsequent tax audit (the previous threshold was of RON 10.000). However, this rule does not apply if:
 - the taxpayer has registered offences in the fiscal record;
 - the taxpayer discovers a risk of an undeserved reimbursement.

Reporting obligations

- A new compliance requirement is introduced for the payers of various types of income such as work related income, pensions or directors' fees. They have the obligation to submit a statement regarding the income paid to each beneficiary resident of another EU member state. The submission deadline is the end of February of the current year, for the previous year.
- Taxpayers may opt for certifying the tax returns. The certification represents an evaluation criterion in the risk assessment performed by tax authorities when selecting taxpayers for audits, decreasing the risk level.

Settlement and set-off for tax receivables

- New special rules for settlement of tax debts in case of suspension of the forced execution have been introduced.
- Amendments and clarifications regarding the set-off date for tax receivables have been introduced.
- New provisions regarding the reimbursement of withholding tax receivables to the income beneficiary have been introduced, among which:
 - The reconciliation of the amounts paid back by the income payer with other similar tax liabilities during the reimbursement period;
 - For the tax adjusted as mentioned above, the income payer will not submit a rectifying return.
- The conflict of competency concept regarding the administration of tax receivables has been defined. Also, the tax amount for which appeal letters are solved by the General Direction for Solving Appeals from ANAF was increased from RON 3,000,000 to RON 5,000,000.

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High Court of Cassation and Justice ruled on the tax treatment of gift tickets

Decision no. 605/2013 awarded by the High Court of Cassation and Justice in the public hearing held on 9 July 2013 with respect to tax treatment applicable to gift tickets

The court has ruled that gift tickets granted on a regular basis by an employer to its own employees (as a reward for their seniority within the company) would be considered a benefit assimilated to salary. Therefore, the respective expenses incurred by the employer cannot be qualified as social expenses (in the form of social support given for unforeseen events), *i.e.*, salary benefits that are not subject to social charges and Romanian income tax.

For assessing whether a particular amount qualifies as a social expense, the High Court of Cassation and Justice has considered the following criteria:

- **The social character:** the amounts are provided for events in which the employee incurs additional expenses;
- **The occasional character:** the amounts are not paid on a regular basis (annually, quarterly);
- **The voluntary character:** the amounts are not paid for performing an obligation arising from an individual or collective labour agreement;
- **The personal character:** the amount is granted only for a particular case involving a person/groups of persons. Otherwise, if the sum is granted to the entire personnel this may entail that the amounts are not meant for social purposes.

If the amounts paid by the employer do not meet the conditions mentioned above, the tax authorities may requalify them as salary assimilated income. Thus, gift tickets granted to employees for other purposes than social ones (in accordance with the provisions of Law no. 193/ 2006) will be treated as salary assimilated income and will be subject to taxation as any other benefits.

Thus, the practice of the courts also confirms that providing gift tickets on a regular basis by an employer to its own employees, based on the employment relationship and not for special events (*e.g.*, funeral, illness, childbirth), cannot legally be treated as a social expense. In such cases, the value of the gift tickets will be taxed as salary assimilated income.

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