

# Tax & Legal Weekly Alert

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### **Significant changes brought by Law no. 186/2007 for the amendment and completion of Law no. 18/1991 on the land resources**

The new provisions under Law no. 186/2017 set forth amendments mainly concerning the procedure for change of the use category pertaining to arable lands, as well as the legal prerequisites for the final or temporary removal from the agricultural circuit of the arable lands located outside the urban boundaries.

Additionally, the new legislation includes specific provisions on the obligation of returning into the agricultural circuit of arable land temporarily removed, as well as on non-agricultural energy crops. Amendments are also implemented in relation to the regime of contraventions by providing new sanctioned deeds, changing the amount of fines and the applicable conditions on sanctioning.



## Significant changes brought by Law no. 186/2007 for the amendment and completion of Law no. 18/1991 on the land resources

Law no. 186/2007 for the amendment and completion of Law no. 18/1991 on the land resources was published in the Official Gazette, Part I, no. 598 dated 25 July 2017 ("**Law 186**").

The legislative changes will enter into force within 30 days of their publication with the Official Gazette, namely on 26 August 2017. The Law 18/1991 shall be republished and the articles shall be re-numbered. Additionally, the specific normative acts for effectively implementing Law 18/1991 shall be approved by order of the Agricultural and Rural Development Minister within **30 days** from the entry into force of Law 186 (e.g. a new procedure regarding the change of the category of use of the lands located outside the urban boundaries of the localities).

### The change of the category of use

#### Distinction depending on the location of land within urban/outside urban boundaries, and between individuals/legal entities

One of the first amendments set forth by the Law 186 is the introduction of the distinction between lands located within the build-up area and unincorporated areas, respectively, as well as the removal of the distinction between natural and legal persons. Thus, the provisions regarding the change of category of use of plough lands applies **only to unincorporated areas (in Romanian "extravilan"), irrespective of them being in the ownership of individuals or legal entities, although there are some differences regarding the necessary approvals for natural persons.**

Moreover, according to the new legislation, the same procedure for changing the category of use, will be applied, irrespective of whether the legal persons holding the lands are entities with the state as majority stakeholder.

### Approvals

However, the new regulation differentiates the approvals needed, according to the area of the land for which the category of use is to be changed, as follows:

- for lands with an area of **less than one hectare**, inclusively, only the decision of the county directorate for agriculture is required;
- for lands with an area **larger than one hectare**, the decision of the Ministry of Agricultural and Rural Development is required.

One important amendment concerns the possibility of natural persons that hold an area less than and including one hectare, to **change the category of use of the land based only on a statement**. Nevertheless, such persons have the obligation to communicate this change within 30 days to the municipality, in order to be included in the agricultural register. The same obligation applies to all the beneficiaries of the approval issued for the category change.

If previously it was only required to have the approval of the National Commission for Historical Monuments, for lands under the incidence of the monuments protection area, at present, the approval of the National Archaeological Commission shall also be needed, however tailored to each case. Law 186 does not specify the cases upon which such an approval will be required.

### Location of buildings

Law 186 provided a new definition for "*constructions of any type*" (constructions built based on and according to a construction building permit legally issued, according to the legislation in force).

The rule regarding the building of constructions on lands located outside urban boundaries remains the same, namely that such constructions are forbidden.

However, a series of additional exceptions from this rule are stipulated, as opposed to the old regulation, among which we mention the following:

- different investment objectives can be placed on the agricultural lands with the **class of quality III, IV and V**, that have the arable category of use, vineyards and orchards, or on which have been performed land improvements, such as the ones that form the object of public or private projects, which by their own nature cannot be placed within the build-up areas, or the ones that serve agricultural activities, the ones declared of public utility, as well as other similar ones, **expressly** mentioned in the law.
- on the agricultural lands with the **class of quality I and II**, and also on the lands which constitute national parks, reservations, monuments, archeological and historical ensembles, there can be placed only constructions that serve the agricultural activities, with military destination, railways, highways of great importance and other similar ones that are **expressly** mentioned in the law.

### **The final or temporary removal from the agricultural circuit**

#### **The exclusion of the fee for the removal from the agricultural circuit in certain situations**

The categories of lands for which **no tax is due** for the final or temporary removal from the agricultural circuit has risen. Amongst the categories of lands that were not previously exempted from payment are also the following:

- household annexes of agricultural holdings;
- water adductions for agricultural holdings;
- investment objectives of national, county or local interest, declared of public utility;
- agricultural perimeters from demolished villages or hamlets, in course of reconstruction;
- agricultural lands that have been included from the unincorporated areas to the build-up areas of the territorial and administrative divisions, through the General Urban Plan/ Zonal Urban Plan, if the beneficiaries are the authorities and the institutions of the public administration;
- lands for which the inclusion within the build-up areas of the territorial administrative units is demanded.

#### **The amendment of the procedure for temporary removal from the agricultural circuit**

The temporary removal from the agricultural circuit can be performed for **a period of two years**, with the obligation of payment of **half the tax** provided for the definitive removal (in the previous version of the law, there was no term mentioned and the tax was paid by providing a guarantee equal to the full tax applicable for the final removal from the agricultural circuit).

The new regulation provides for the possibility of **a 2 year extension of the initial 2 year period**, regarding the temporary removal from the agricultural circuit, based on strong justifications raised by the beneficiary. At the end of the period of temporary removal from the agricultural circuit, the beneficiaries can request the approval of the final removal from the agricultural circuit, subject to the obligation to pay half of the tax provided for the final removal.

The paid **tax shall not be returned** (contrary to the previous provisions), with the following exceptions, when it is returned without interest:

- if the competent authorities have not issued the decision for definitive/ temporary removal from the agricultural circuit or the prior notice regarding the quality class; or

- if the Government does not approve the decision regarding the removal from the agricultural circuit.

### **The obligation of returning the land in the agricultural circuit**

An innovation of Law 186 is the obligation of returning the lands temporarily removed from the agricultural circuit, as well as the applicable procedure. Therefore, the beneficiaries of the temporary removal of lands from the agricultural circuit have the obligation to return, **within one year from the end of the period of temporary removal**, the lands in the agricultural circuit, at the class of quality and use that they used to have before the approval.

The return or the inclusion in the agricultural circuit are approved as it follows:

- by decision issued by the county directions for agriculture, based on the pedological and agrochemical study and on the ascertaining minute of the land situation, if the land does not exceed 100 hectares;
- by government decision, initiated by the Ministry of Agricultural and Rural Development, if the area exceeds 100 hectares;
- in the case of lands with special destination, the approval is given through decision issued by the Ministry of Agricultural and Rural Development, based on the notice of the Ministry of National Defense;
- in the case of lands within reservation perimeters occupied with fishing facilities, by decision of the Ministry of Agricultural and Rural Development, based on the decision of the county council, with the approval of the reservation administrator, the pedological and agrochemical study and on the ascertaining minute of the land situation;

The obligations of holders of works of investment or production that they do not longer use in production, to take arrangement and flattening measures and to give them an agricultural use (fish or forestry, if agricultural is not possible anymore) within two years from the closing of the production process, applies now **only to the holders that own lands finally removed from the agricultural circuit.**

### **Necessary approvals for the temporary or permanent removal**

According to the new regulation, if the temporary or final removal from the agricultural circuit is performed in order to build constructions which are allowed to be erected on lands located outside urban boundaries (if permitted by the law), the following approvals are necessary:

- the decision of director of the county agricultural direction, for lands with an area up to and including 1 hectares;
- the director's decision of the county agricultural direction, with the approval of the special department within the Ministry of Agricultural and Rural Development, for lands with an area up to and including 100 hectares;
- the Government decision, at the initiative of the Ministry of Agricultural and Rural Development, for lands with an area exceeding 100 hectares.

### **Non-agricultural energy crops**

Law 186 introduces certain provisions regarding the non-agricultural energy crops. The list of these non-agricultural energy crops will be established by order of the Agricultural and Rural Development Minister, within 30 days from the date of entry into force of this law.

The cultivation of this type of crops may be performed only on arable lands from classes of quality IV-V. Therefore, the placement of such crops on lands having a superior quality class is forbidden.

Moreover, for this type of crops the removal from the agricultural circuit shall be necessary, with the payment of the relevant tax. The same procedure is necessary for fishpond establishments or for such establishment that use the extraction of mineral aggregates.

## Contraventions and fines

The following new contraventions are newly included:

- failure to return the lands located outside urban boundaries, after expiry of the period approved for the temporary removal from the agricultural circuit;
- cultivating non-agricultural energy crops on the arable lands located outside urban boundaries, without having the notices and approvals required by the law.

The following new sanctions are newly included:

- failure to return the lands located outside urban boundaries within the legal term, by the beneficiaries, shall result in the lack of approval for final or temporary removal from the agricultural circuit of other lands, for a period of 10 years;
- placing any type of objectives, excepting those permitted by the law, on the lands located outside urban boundaries, without having the notices and approvals required by the law, leads to the lack of approval of the final or temporary removal from the agricultural circuit of other lands owned by the same person, for a period of 10 years.

The amount of the fines provided for contraventions has changed, and the new values are set between 5.000 lei and 20.000 lei for individuals and between 10.000 lei and 40.000 lei for legal persons.

The contraventions **can no longer be ascertained also** by specialists assigned by the general director of the general direction for agriculture and alimentation neither by the chief inspector of the county forestry inspectorate.

## Special provision for removal from the agricultural circuit

According to the amendments brought by the new law, for a period of **2 years** as of the entry into force of the new law, the arable lands located outside the administrative territorial units, on which **constructions built before the entry into force of Law 186** are located without the approval of removal from the agricultural circuit of these lands, the removal from the agricultural circuit may be requested.

Approval of such request shall be subject to the payment of three times the tax provided for the permanent removal from the agricultural circuit.

For further questions, please contact us.



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