

Tax & Legal Weekly Alert

9 – 13 January 2017

In this issue:

New Methodology for the computation of contributions, taxes, penalties and other amounts owed to the Environmental Fund entered into force

On December 29, 2016, a new Methodology for the computation of contributions, taxes, penalties and other amounts owed to the Environmental Fund (the "New Methodology") was published in the Official Gazette of Romania and entered into force on the same day. The New Methodology was approved by Order of the Minister of the Environment, Waters and Forests No. 2413/2016 for the amendment of Order No. 578/2006 and was published in the Official Gazette of Romania No. 1064/2016.

Extension of the application term for certain taxes within energy & resources sector

The Emergency Ordinance no. 99/2016 published in the Official Gazette no. 1035/22.12.2016 extends the application term of certain taxes within energy & resources sector as set by Ordinance no. 5, 6 and 7 /2013 issued by the Romanian Government.

Amendments to the Tax Code

Law no. 227/2015 regarding the Tax Code was amended and supplemented according to Emergency Ordinance no. 3/2017 published in the Official Gazette no. 16 / 06.01.2017.

Emergency Ordinance no. 3/2017 amends Title II "Income tax", III "Micro Enterprise Income Tax", IV "Personal Income Tax" and V "Mandatory Social Contributions".

Law regarding the removal of fees and the amendment of certain laws

Decision regarding the national minimum gross salary

New Methodology for the computation of contributions, taxes, penalties and other amounts owed to the Environmental Fund entered into force

What does the New Methodology change?

Most importantly, the New Methodology details the situations in which the new contributions introduced in June 2016 apply and the related procedures and supplements and tries to bring more clarity to the conditions which must be met for fulfilling individually the waste packaging recovery targets. Also as a novelty compared to the previous methodology, the New Methodology details the computation method of the penalty for failure to surrender annually greenhouse gas emission allowances and of the amount due for failure to fulfil the annual quota of acquisition of green certificates and the related procedures. Other modifications (mainly for clarification) concern the contributions for substances hazardous for the environment, waste tyres, waste oils and for failure of municipalities to meet the target for reducing the quantities of municipal waste landfilled.

The novelties introduced by the New Methodology include, among others: In what regards the contribution for incomes related to revenues from the sale of goods intended for dismantling:

- the contribution of 3% of the revenues from the sale of goods intended for dismantling was removed.

In what regards the contribution for waste landfilling:

- the recoverable waste storage tax due by the economic operators using new lands for landfilling will have to be declared and payed only for the storage carried out until 31 December 2016;
- starting 1 January 2017, the tax shall be due by the owners/ administrators of landfills (either new or not) for inert and non-hazardous waste and the computation basis for the tax is represented by the quantities of inert waste and non-hazardous waste, entrusted by a third party for final disposal in landfills.

In what regards the contribution for packaging waste owed by responsible operators (not by operators authorized for the take-over of responsibility - OTRs):

1. Indicating the conditions which must be met for using packaging waste taken over from third parties (a possibility introduced in June 2016 but until now not reflected in the methodology for the computation of taxes and contributions owed to the Environmental Fund) for fulfilling, individually (not by transfer of responsibility to OTRs) the legal annual recovery targets, particularly:
 - a contract governed by Law No. 249/2015 must be entered into with authorized waste collectors and recovery operators;
 - the contract must provide expressly that the transactions are performed for fulfilling the operator's annual targets of recovery or incineration with energy recovery;
 - the take-over of the packaging waste requires a service provided by the waste generators or holders, sorting stations, authorized collectors, which hand over the respective waste quantities for fulfilling the annual targets of the responsible operators.
2. The mandatory records on packaging and packaging waste which must be kept by operators which fulfil their targets individually must include additional information to that required until now, such as:
 - date of introduction on the national market;
 - dates of the transactions of the packaging waste resulting from the own activity;
 - waste traceability records containing particular information per type of packaging material: identification data of waste generators/ collectors/

sorting stations, identification data of all intermediaries and of the recovery operators / holders of incineration installations with energy recovery; quantities transacted, distinctly for generators/ collectors/ sorting stations, intermediaries and recovery operators / holders of incineration installations with energy recovery and transaction dates.

3. Detailing and supplementing the conditions which must be met for accepting as recovered/ incinerated in incineration installations with energy recovery quantities of packaging waste for fulfilling the annual targets, such as: (a) existence of invoice for the recovery/ incineration of the waste, based on documents attesting the recovery; (b) the waste must be subject to a recovery/ recycling service provision, where the supplier is the recovery operators/ holder of incineration installation with energy recovery (for direct hand-over of own waste) or the entity administering the waste and the beneficiary is the responsible operator; (c) the mentioning by the collectors/ recovery operators in the contracts, fiscal documents and waste transport documents of the following information:
 - if the hand-over of the waste is made for fulfilling the annual targets;
 - the identification data of the operator whose annual targets are fulfilled;
 - if a quantity of waste is meant for fulfilling the annual targets of more operators, the fiscal and transport documents must indicate the quantity transacted for each operator, per type of packaging.
4. Traceability is fulfilled through documents dated until January 25th of the next year for the preceding year.
5. The contribution of 2 lei/kg will be paid for failure to fulfil the annual objectives for recovery / recycling for the corresponding quantities of packaging placed on the national market for which the responsibility was not transferred to the authorized economic operators or which were not declared under contracts of taking over the responsibility

In what regards the contributions for packaging waste and waste tyres for OTRs:

- clarification of the conditions in which the contributions apply, including the records which must be held and conditions which must be fulfilled in order not to have to pay the contributions.

In what regards the contributions for waste electrical and electronic equipment (WEEE) and waste batteries and accumulators, for both entities introducing such items on the market and, starting January 1, 2019, for OTRs:

- clarification of the conditions in which the contributions apply, including the records which must be held and conditions which must be fulfilled in order not to have to pay the contributions, the principles being generally similar to those applicable in what regards packaging waste.

In 2017, monthly statements must be filled with AFM by the responsible operators (not OTRs) regarding the quantities of electrical and electronic equipment and batteries and accumulators introduced on the market, by the 25th of each month for the preceding month – first statement is due by February 25th for January 2017.

What does this mean for you?

We recommend a review of the internal processes and procedures implemented in relation to obligations which (may) trigger contributions and other obligations to the Environmental Fund so as to ensure alignment with the newly-introduced requirements of the New Methodology and limit exposure. In the process, particular care and specialized legal and tax assistance are recommendable since the New Methodology is not entirely clear on certain aspects, particularly in what regards the requirements applicable to meeting individually the annual waste packaging recovery targets.

For further questions regarding the aspects mentioned in this alert,
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Extension of the application term for certain taxes within energy & resources sector

The term of application of the following taxes is extended up to 31 December 2017:

- Tax on natural monopoly within the electricity and natural gas sector, as regulated by Ordinance no. 5/2013 issued by the Romanian Government;
- Tax on income on exploitation activities of natural resources, as regulated by Ordinance no. 6/2013 issued by the Romanian Government;
- Tax on additional income obtained further to deregulation of natural gas prices, as provided by Ordinance no. 7/2013 issued by the Romanian Government.

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Amendments to the Tax Code

The Emergency Ordinance no. 3/2017 provides amendments and supplements to the Fiscal Code, the most important of them are summarized below:

Title II Corporate Income Tax

- A new provision was introduced whereby taxpayers exclusively engaged in innovation, research and development activities (defined as per the specific legislation in-force) are exempt from any corporate income tax obligations for the first 10 years of activity, while taxpayers already established at the date of entry into force of the present ordinance, for 10 years starting with the previously mentioned date.
- This exemption will operate subject to compliance with state aid regulations.

Title III Micro Enterprise Income Tax

- OUG 3/2017 amended the maximum threshold value for a Romanian legal entity to qualify as a micro enterprise from EUR 100,000 to EUR 500,000.
- Also, in the case of micro enterprises that have employees, regardless of their number, the corporate income tax rate shall be 1%.

Title IV Personal Income Tax

- Individuals who derive income from salary or salary assimilated income based on an employment contract, concluded for a period of 12 months with a Romanian company performing seasonal activities, in the HoReCa industry, should be exempted from paying salary income tax.
- The cost for the subscription to medical services, covered by employees can be deducted, together with the voluntary health insurance premiums, for the purpose of the salary income tax computation, within the annual threshold of EUR 400.
- Certain amendments were introduced with respect to the method for computing the tax due for income derived from the transfer of real estate personally owned.

Title V Mandatory Social Contributions

- The provisions regarding the caps applicable for the pension contributions (due at the level of the employee and employer) and the cap applicable for the individual health insurance contribution were repealed for salary income, investment income and income from other sources;
- The health insurance contribution is no longer due for investment or other sources income, if the individual derives also other types of income, such as salary, income from independent activities or pensions.

Entry into force

The amendments mentioned above in title II and III are applicable starting with 6 January 2017, while amendments mentioned in title IV and V are applicable for the income derived starting with 1 February 2017.

Law regarding the removal of fees and the amendment of certain laws

According to the Law no.1/2017 regarding the removal of fees and the amendment of certain laws, published in Official Gazette no. 15 / 06.01.2017, certain fees charged by public institutions were removed, including consular fees charged by consular offices from abroad and fees for obtaining the tax record.

Entry into force

The amendments mentioned above enter into force from 1 February 2017.

Decision no. 1/2017 regarding the national minimum gross salary

Starting with February 1, 2017, the national minimum gross salary is 1,450 lei per month.

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