

# Tax & Legal Weekly Alert

9-13 November 2015

## Articles in this issue:

### **The norms on granting the Authorised Economic Operator ("AEO") status have been revised**

This is the first sign that the customs authorities are encouraging companies to apply for this certification, considering that the Union Customs Code, which relies on this certification, will enter into force starting from May, 1<sup>st</sup> 2016.

### **New regulations on business interruption sanctions due to non-observance of fire security regulations**

The Government Decision no. 915 establishing the criteria for stopping the operation or use of buildings or establishments determined by serious breach of the requirements for fire safety in terms of endangering lives of occupants and intervention forces, failing to ensure the stability of the bearing elements, namely limiting the spread of fire and smoke inside the building and in the neighbourhood was published on November 4, 2015 in the Official Gazette, Part I, no. 824.

### **Law no. 249/2015 regarding the management of packaging and packaging generated waste**

On the 30<sup>th</sup> October 2015, Law no. 249/2015 regarding the management of packaging and packaging generated waste was published in the Official Gazette, Part I, no. 809. The Law states certain obligations for suppliers of packaging materials, manufacturers of packaging and packaged products, importers, retailers, distributors and public authorities, regarding the manufacturing, labeling, collecting and recycling of packaging and it clarifies the notion of packaging and the person responsible in case of intra-Community acquisition.

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

Government Emergency Ordinance no. 50 / 2015 brings important amendments to the tax legislation, applicable from January 1 2016.

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

Recent amendments concern the nullity of the administrative deed, the interstate collaboration between tax authorities, the amount of the letter of bank guarantee/ guarantee insurance policy, the compensation of tax obligations generated previous to the commencement of insolvency procedures, the competent structure for solving tax challenges, among many others.

## The norms on granting the Authorised Economic Operator ("AEO") status have been revised

After six years from the date of the last amendment, the General Customs Directorate has revised the national norms for granting the AEO status. They entered into force on October, 27th, this year.

The new form provides the following:

- clarification of the role and responsibility of the customs authorities involved in the authorization process, both on central and local levels (e.g. steps to follow and periods for resolving the application file);
- implementing the self-assessment questionnaire and their guidelines in the form approved by the European Commission;
- references to the checklists, audit plans, list of threats, risks and possible solutions and the template of the audit report have been mentioned.

The AEO status is granted to businesses conducting customs activities in the European Union and which meet specific criteria, such as safety and supply chain security and proven financial solvency.

### What does this mean for you?

On May 1st, 2016 the Union Customs Code will come into force. It provides that customs procedures such as inward or outward processing, customs warehousing, temporary admission and local clearance procedure may be performed only by companies that have met the AEO criteria. By revising the norms, customs authorities have ensured a clear legal framework for applicants considering the new legislative changes to come.

### What to do?

If you are involved in customs activities and do not hold an AEO certification, we recommend applying for it as soon as possible. The Union Customs Code, which relies on this certification, will enter into force in less than one year.

Deloitte has the experience and expertise to provide assistance services in terms of obtaining this certification.

**For more details please do not hesitate to contact us.**

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## New regulations on business interruption sanctions due to non-observance of fire security regulations

The Government Decision no. 915 establishing the criteria for stopping the operation or use of buildings or establishments determined by serious breach of the requirements for fire safety in terms of endangering lives of occupants and intervention forces, failing to ensure the stability of the bearing elements, namely limiting the spread of fire and smoke inside the building and in the neighbourhood was published on November 4, 2015 in the Official Gazette, Part I, no. 824 (“**Decision**”).

Directly related to this Decision, on 5 November 2015, the Government Emergency Ordinance no. 52 (“**Ordinance**”) amending and supplementing Law 307/2006 regarding fire security (“**Law**”) was published in the Official Gazette, Part I, no. 828.

Firstly, the provisions of the Decision are applicable to buildings or establishments having commercial, cultural or touristic destination. The definition attributed by Decision for the phrase of “*buildings or establishments with commercial trade*” is comprehensive, referring both to bars, clubs and restaurants but also to shopping centres, shops and supermarkets.

Secondly, the Decision establishes the criteria for applying the complementary measure consisting in functioning interruption of constructions or establishments with any of the above destinations, with a developed area larger than 200 sq. m.

This measure may be applied both to (a) **authorized buildings in terms of fire safety**, (b) **as well as to those unauthorized**, but the situations that attract these penalties differ depending as follows:

Authorized buildings in terms of fire safety	Unauthorized buildings in terms of fire safety
<ul style="list-style-type: none"> <li>• exceeding by more than 10% of the number of users for which the authorization was granted;</li> </ul>	<ul style="list-style-type: none"> <li>• exceeding by more than 10% in the number of users compared to the reference value;</li> </ul>
<ul style="list-style-type: none"> <li>• exceeding the number of over-ground levels compared to the reference value limit for buildings with fire stability level V / degree of fire resistance;</li> </ul>	<ul style="list-style-type: none"> <li>• exceeding the number of over-ground levels compared to the reference value limit for buildings with fire stability level V / degree of fire resistance;</li> </ul>
<ul style="list-style-type: none"> <li>• removing the evacuation routes when, according to specific technical regulations were imposed on two or more escape routes, according to the reference value;</li> </ul>	<ul style="list-style-type: none"> <li>• non-providing the minimum number of ways to escape towards the reference value;</li> </ul>
<ul style="list-style-type: none"> <li>• reduction of more than 25% of the reference value of height or width of the escape routes, if deficiencies cannot be corrected during inspection;</li> </ul>	<ul style="list-style-type: none"> <li>• reduction of more than 25% of the reference value of height or width of the escape routes, if deficiencies cannot be corrected during inspection;</li> </ul>
<ul style="list-style-type: none"> <li>• removing the systems for extinguishing, signalling, detection and warning of fire;</li> </ul>	<ul style="list-style-type: none"> <li>• not equipping with extinguishing systems, signalling, fire detection and warning, according to the reference value;</li> </ul>
<ul style="list-style-type: none"> <li>• removal of smoke exhaust systems, and of lighting security systems for the evacuation.</li> </ul>	<ul style="list-style-type: none"> <li>• not equipping with systems for extinguishing, signalling, detection and warning of fire;</li> </ul>
	<ul style="list-style-type: none"> <li>• categories of construction or establishments for which have not been identified the date of the technical documentation authorizing the construction works or the date of commissioning the operation.</li> </ul>

**The reference values** referred to in the above situations must be reported and verified, as following:

- for the authorized buildings - the technical regulatory requirements indicated in the documentation that was the basis of the authorization, and
- for the unauthorized buildings - specific technical regulations in force at the time of the technical documentation authorizing the construction or at the time of commissioning the operation.

The state bodies authorized to ascertain the infringement of the obligation regarding the number of users for which the authorization was granted / number of users compared to the reference value are represented by the personnel of inspectorate for emergencies (“**ISU**”), which can require support from personnel from the Romanian Police and Gendarmerie.

According to the Decision, interruption of the functioning or using the building or the establishments will be applied until the fire security authorization will be obtained. By means of exception, in case that the measure was applied in the situation when the number of users for which the authorization was granted is over-stepped, the measure lasts for a period of 60 calendar days from the communication of the minutes of finding and sanctioning the contravention.

According to the Ordinance, the measure of stopping the functioning implies the application of a seal by the ISU inspectors, together with posting an announcement about the sanction applied, concluding in this regard the minute ascertaining the application of the seal. A complaint filed against this measure does not suspend its enforcement.

The Ordinance also provides the situations when lifting the seal can be ordered, as follows: (i) at the expiration of the period for which the measure was applied (ii) on the basis of an enforceable judgment; (iii) when the owner or user of the space where construction or establishments of the economic operators is changed (in case this implies changes in the destination of the building or of the business profile), (iv) in case of urgent or necessary repairs in order to achieve the fire security requirements; (v) after obtaining the fire security authorization.

The Ordinance also amends the obligations of the manager or head of institution (as defined in the Law), clarifying that it is in its responsibility and obligation to implement fire security measures.

**We stay at your disposal in order to identify and find solutions, to the specific situations that your company meets, considering the specific of the activity.**

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## Law no. 249/2015 regarding the management of packaging and packaging generated waste

On the 30<sup>th</sup> October 2015, Law no. 249/2015 regarding the management of packaging and packaging generated waste ("**Law**") was published in the Official Gazette, Part I, no. 809. The Law provides certain obligations for suppliers of packaging materials, manufacturers of packaging and packaged products, importers, retailers, distributors and public authorities, regarding the manufacturing, labeling, collecting and recycling of packaging

The Law transposes the provisions of Directive no. 94/62/CE of the European Parliament and of the Council, from 20<sup>th</sup> December 1994, regarding packaging and packaging generated waste.

A *package* is defined by the Law as any object, regardless of the materials it is comprised of or its nature, with a function in retaining, protecting, handling, distributing and presenting products, from raw materials to processed goods, from manufacturer to user or consumer. Non-returnable objects fulfilling the same function are also considered to be packaging.

The Law contains provisions regarding:

1. Base criteria for designating an object as packaging.
2. Annual objectives, at a national level, regarding the recovery, incineration or recycling of packaging generated waste and the responsibilities of economic operators which place packaged products on the market, for the packaging generated waste.
3. The publishing of a list containing all the economic operators mentioned at point 2 above, on the Environment Fund Administration's official homepage.
4. The obligation for economic operators that purchase packaging or packaged products directly from the economic operators mentioned at point 2 above, to ensure that the latter are registered on the list mentioned at point 3 above.
5. The obligation for economic operators which sell products to final consumers through sale units with medium and large surface areas, according to Government Ordinance no. 99/2000, to ensure that the customers are able to dispose of the packaging from purchased products, without any additional costs.
6. The maximum amount for concentration levels for lead, cadmium, mercury and hexavalent chromium present in packaging and its components.
7. Prohibiting the conditioning, under any form, of the customer's legal rights regarding the purchased products, on keeping the packaging.
8. Granting priority, when purchasing goods using public funds, to products made from recycled materials or with packaging made from recycled materials.
9. The definition of "*placing on the national market of a product*" has been redefined as "the supply made by a legal person established in Romania for the first time, of a product for distribution, consumption or use on the national market during a commercial activity, for consideration or free of charge."

In case of products sold directly to end users in Romania by a producer established in another Member State of the European Union, placing on the market is made by itself, if registered in Romania, or by its authorized representative established in Romania.

Examples for packaging were extended to: refillable steel cylinder, matchboxes, sterile barrier systems, beverage system capsules which are left empty after use, cake doilies sold

with a cake, rolls, tubes and cylinders around which flexible material is wound, CD spindles, clothes hangers (sold with a clothing item), plastic foil for cleaned clothes in laundries.

Economic operators who take over the responsibility and do not fulfill the recovery and recycling objectives established by law for 2 consecutive years, will have their operating license annulled starting the date that it was ascertained that the obligations were not met.

Economic operators which manufacture products that are packaged using reusable packaging have the following obligations:

- To utilize a system of marking and identifying packaging, according to Annex no. 3 of the present Law;
- To write „reusable packaging” on the packaging or label of the product;
- To organize a collection system, through the economic operators that sell the products or through specialized collection centers;
- To ensure an optimal distribution and an adequate capacity for the collection centers;
- To inform consumers about the packaging storage and collection centers;
- To inform retailers and consumers about any packaging that will no longer be reused and to continue to provide collection for said packaging for a period of 6 months starting from the date when it is no longer reused.

Failure to comply with the provisions of the Law is subject to fines between RON 2,000 and 25,000.

In this regard we recommend that companies consider whether the packaging placed on the market is subject to contributions to the Environmental Fund, considering that the new law appeared in the context of this years' multiple controls from the Environmental Fund Administration.

**We remain at your disposal in order to identify and find solutions to the specific situations that your company meets, considering the specific of the activity.**

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## Amendments brought to the Fiscal Code

Government Emergency Ordinance no. 50 / 2015 brings important amendments to the tax legislation, applicable from January 1 2016.

### Taxation of dividends

Starting from 1 January 2016, the tax on dividends will decrease from 16% to 5%. This tax rate is applicable for dividends received by individuals and legal entities, regardless their country of residence.

The current exemption conditions provided by the Tax Code will remain the same.

### Microenterprises

The limit for a company to qualify as microenterprises will be raised up to EUR 100.000, compared to the current EUR 65.000 cap. Starting from 1 January 2016, the 3% tax rate will be replaced with a differentiated system, as per the following (with certain exceptions):

- 1% for microenterprises with more than 2 employees;
- 2% for microenterprises with one employee;
- 1% for microenterprises with no employees;

### Local taxes

31 March 2016 is the new deadline for submitting notification returns, applicable to:

- Individuals who own non-residential or mixed-use buildings (as of 31 December 2015);
- Companies, irrespective of the purpose of the buildings owned as of 31 December 2015 (the return should include the purpose and the tax base of the building).

### VAT

Starting from 1 January 2016, the 9% reduced VAT rate will be applied for the supply of drinking water and irrigation water for agriculture.

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

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## Amendments brought to the Tax Procedure Code

### Nullity of the administrative deed

The amendment on this matter only makes a correlation between the articles on the New Tax Procedure Code, since there existed a material error on this aspect in the Law no. 207/2015; hence, it establishes the possibility to issue, by large printing centers, administrative deeds that are valid even when lacking the empowered person's signature. Their validity is expressly provided under art. 49 para. (1) letter b of the Tax Procedure Code.

### Interstate collaboration between tax authorities

- ANAF is the competent Romanian authority for the exchange of information for tax purposes with the states, other than EU member states, with which Romania has concluded treaties for the exchange of information for tax purposes;
- information is transferred upon the request made by the soliciting authority. The terms provided under art. 290 for communicating the information apply accordingly, except the cases expressly provided under international treaties.
- the exchange of information is performed in accordance with the provisions of Law no. 677/2011 on the protection of individuals with respect to the processing of personal data and the free circulation of such data.

### The establishment ex officio of tax debts

The amendment of art. 107 only makes a correlation between the articles on the New Tax Procedure Code; hence, it is provided that, in case the declaration is submitted after the expiration of the status of limitation, a new status of limitation commences after the submission.

### The verification of personal tax status by the tax authority

Preliminary tax assessments of individuals will only be carried out by the tax authorities following notification of the individual.

### Conditions for maintaining the validity of the rescheduling of tax debts in case of merger

The rescheduling granted to a debtor maintains its effects if, in 30 days as of the payment notification, the tax debts owed by the debtors that merge and have not been granted a rescheduling of debts pay the said amounts/are granted a rescheduling.

### The compensation of tax obligations generated previous to the commencement of insolvency procedures

By amendment to the art. 167 para. (12), the negative VAT provided by the VAT deduction corresponding to the tax period previous to the commencement of the insolvency procedure is compensated with the tax obligations generated previous to the commencement of the procedure.

### The amount of the letter of bank guarantee/ guarantee insurance policy

In order to suspend the enforcement of the administrative deed, the guarantee letter/ insurance policy's amount must be equal to the value of tax obligations contested and unpaid **at the date the guarantee is submitted**.

### The competent structure for solving tax challenges

- **The specialized tax challenge resolution structures of the general regional directions for public finances** – tax challenges having as subject:
  - tax receivables below 5 mil. lei;

- tax loss diminution measures below 5 mil. lei and the re-verification decisions.
- **The specialized tax challenge resolution structures of The General Direction for Administrating Large Taxpayers** – tax challenges made by large taxpayers and having as subject:
  - tax receivables below 5 mil. lei, except those issued under the customs legislation;
  - tax loss diminution measures below 5 mil. lei.
- **The General Direction for Tax Challenge Resolution under ANAF** – tax challenges having as subject:
  - tax receivables over 5 mil. lei;
  - tax loss diminution measures over 5 mil. lei;
  - re-verification decisions, in case of tax challenges made by large taxpayers;
  - tax receivables and tax loss diminution measures, regardless the amount, in the case of tax challenges against deeds issued by tax authorities part of the central office of ANAF;
  - regularization decisions issued on customs matters, in the case of tax challenges made by large taxpayers, regardless the amount.
- **local tax authorities** – tax challenges having as subject administrative deeds issued by such authorities.
- **public authorities that administrate tax receivables (other than the above mentioned authorities)** – tax challenges having as subject administrative deeds issued by those authorities.

The tax challenges submitted prior to 1 January 2016 are resolved by the authority that was competent at the moment of their submission.

### The status of limitation

The cases of interruption or suspension of the status of limitation are subject to the law in force at the moment they appeared.

### The applicability of the new tax procedure law

- the provisions in respect to the tax authority's right to conduct appreciations, the provisions in respect to the official language, the interpretation of the law and the possibility of issuing temporary tax decisions are applicable to the procedure in progress at 1 January 2016.
- the provisions in respect to the amount of bail established in order to suspend the tax-administrative deed are applicable to suspension claims submitted after 1 January 2016, as well as to suspension claims ongoing at that time.

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