

# TAX ALERT



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## AMENDMENT OF THE METHODOLOGICAL NORMS FOR THE APPLICATION OF THE TAX CODE

The amendments brought to these Norms refer in detail to the calculation method for tax exemption of the reinvested profit, correlating it with the method of calculation of the lowest tax. They also specify the following: the calculation method of the gross income obtained from independent activities; the documents which should be provided by a nonresident entity to the income payer so that the provisions of the European Union legislation should be applied;

the manner in which the place of supply of services should be established from a VAT perspective and the documents which should be required by the service supplier from the service beneficiary to establish which one is taxable and the manner in which the information received should be verified so that the supplier can prove that it has acted in good faith in respect to establishing the place of supply.

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# Amendment of the methodological norms for the application of the Tax Code

*Monitorul Oficial al Romaniei* No. 927 of 31 December 2009 has published **Government Resolution No. 1620 / 2009 which amends and supplements the Methodological Norms for the Application of Law No.571/2003, regarding the Tax Code**, approved under Government Resolution No. 44 / 2004 (the “Resolution”).

The major amendments brought by the Resolution refer to the following:

## 1. Profit Tax

- ▶▶ Specific references are made to the closing of the taxable period in the case of taxpayers that cease operating during a fiscal year as an outcome of dissolution, going through or without going through liquidation.
- ▶▶ Specific mentions are made and examples are given of the calculation method for tax exemption of the profit reinvested in the production and/or acquisition of technological equipment.
- ▶▶ The items assimilated to income and expenditure, when the taxable profit is calculated, are referred to in details.
- ▶▶ Provisions are introduced regarding the deductibility of expenses related to the value added tax paid in a Member State for the acquisition of goods or services for the achievement of taxable income.
- ▶▶ The provisions referring to the non-deductibility of expenses representing differences in the value of shares which have been acquired by a taxpayer and are annulled afterwards are abrogated.
- ▶▶ Details are given with regard to the expenses related to social security contributions under the Collective Bargaining Agreement, which are deductible in consideration of the tax on profit.
- ▶▶ The Methodological Norms also regulate the deductibility of the penalties incurred under economic contracts concluded with nonresident entities.
- ▶▶ The calculation method for profit tax prepayments is clarified in the case of taxpayers that were payers of microenterprise income tax in the previous year, as well as of the taxpayers that submit rectifying annual tax returns regarding the previous year.

## 2. Income Tax

- ▶▶ The gross income obtained from independent activities shall also include: the income from bank interest on business cash; the income from related activities; and the income obtained subsequently to the cessation of independent activities on the basis of invoices which have been issued but have not been paid until cessation.
- ▶▶ The Resolution specifies that the assets of a business undergoing reorganization, which are transferred to another business of the same taxpayer, shall not be deemed gross income from independent activities, if such assets are used for the same purpose. Rules are set for the manner in which net income / tax loss should be reported in the case of reorganization during a fiscal year.
- ▶▶ Provisions are introduced with regard to the deductibility of expenses incurred for the maintenance and operation of the spaces used for the performance of independent activities when documents are issued under owner’s name rather than under taxpayer’s name.

- ▶▶ New provisions are set out according to which employers shall hand over a copy of the tax sheet to the natural entity who ceases obtaining salary or salary-related income during a fiscal year, when employment termination forms are finalized or the relations on the basis of which salary income has been obtained by such entity are discontinued.
- ▶▶ The Resolution specifies that any indemnity received by an employee at the date on which employment relations are discontinued shall be deemed salary and salary-related income and shall be subject to taxation. Also, it specifies that bonuses received by administrators / directors / managers under professional insurance contracts shall not be considered taxable fringe benefits.
- ▶▶ Details are given on the calculation of investment gains in the case of operations such as exclusion / withdrawal / inheritance of shares.
- ▶▶ Specific mention is made of other categories of taxable income which are subject to withholding tax, such as:
  - income in the form of goods, services and other rights received by pensioners, former employees, and their family members, by virtue of employment contracts or special laws;
  - income realized by a natural entity under a forestry services / administration agreement concluded on the strength of Law No.46/2008, regarding the Forest Code, as amended and supplemented.
- ▶▶ Provisions of the Norms are correlated with the new provisions of the Tax Code in respect to the annulment of the tax return on realized income, taxpayers' obligation to calculate and declare the annual tax, and the new deadline for the filing of such return and payment of the annual tax (25 May of the following year).
- ▶▶ Details are provided on the calculation of the foreign tax credit by taxpayers obtaining income abroad.
- ▶▶ Specific mention is made of tax authority's obligation to refund the tax retained and paid by Romanian employers' from Romanian employees carrying on their activity abroad, when the Romanian State has no right to levy tax on such income in compliance with Double Taxation Treaties.

### 3. Tax on the Income Obtained from Romania by Nonresidents

- ▶▶ Further details are provided on categories of taxable income such as royalties and gains achieved from the transfer of securities.
- ▶▶ The definition of tax-exempt income is further clarified.
- ▶▶ Amendments are brought to the provisions referring to the tax refund procedure in the case of the income tax paid in addition by a Romanian resident to nonresidents; starting 2010, the general tax refund procedure stipulated by the Tax Procedure Code shall be applied.
- ▶▶ To benefit from the application of the Convention for the Avoidance of Double Taxation, the income tax payer shall submit the original tax residence certificate or a translated and legalized copy thereof to the relevant authority, as well as an affidavit stating that s/he/it meets the terms and conditions of the European Union legislation.

### 4. Tax on Representative Office

- ▶▶ The deadline for the payment of this tax has been amended, being set for 25 June and 25 December.

## 5. Value Added Tax (VAT)

- ▶▶ The terms and expressions used in Title VI of the Tax Code are further clarified.
- ▶▶ The method is established for the calculation of the RON equivalent of the ceiling of EUR 10,000 worth of intra-Community acquisitions.
- ▶▶ Details are provided on the economic activities subject to VAT, inclusive of the cases in which a natural entity is obligated to register for VAT purposes.
- ▶▶ The provisions regarding tax groups and the conditions which should be met for the establishment of such groups are amended.
- ▶▶ Amendments are also brought to the supply of goods and provision of services subject to taxation (e.g. technological losses, goods granted with a view to stimulating sales, goods given free of charge according to their destination provided under law, digital photo processing, etc.).
- ▶▶ Clarifying references are made to the place of supply of goods and the place of intra-Community acquisition of goods.
- ▶▶ The rules for the determination of the place of delivery of services have been amended. New elements have been added to the terms on which VAT becomes due and payable, the taxation base, the VAT exemptions related to operations performed inside the country and special exemptions in the case of international movement of goods.
- ▶▶ Clear references are made to the procedure for VAT refund to taxable entities that have not registered for VAT purposes in Romania and to VAT refund by other Member States to taxable entities established in Romania.
- ▶▶ Specific mention is made of the special exemption regime applicable to small enterprises the annual turnover of which is lower than the EUR 35,000 ceiling, particularly to tourism agencies and sellers of second hand goods.
- ▶▶ Clarifying references are made to the registration for VAT purposes, in the case of services included.
- ▶▶ Details are given on VAT records in the case of joint ventures.
- ▶▶ Specific mention is made of the manner in which the right of deduction should be adjusted when errors are discovered in the final pro rata calculation of VAT for previous periods, after the VAT return has been submitted to the relevant authorities.
- ▶▶ Taxpayers' right of VAT deduction over a period spanning five (5) consecutive years is specifically regulated, i.e. starting 1 January of the year following the year in which such right emerges, even after tax control, provided that the VAT contained in the acquisition invoice was due and payable in the period subject to inspection.
- ▶▶ The requirements for the issuance of invoices by electronic means and the procedure regarding the approval of simplified invoices are also amended.
- ▶▶ Further details are given on how invoices may be corrected during tax inspection and how they may be issued after tax inspection, as well as on how such invoices may be treated.

## 6. Excise Duties

- ▶▶ New provisions have been introduced with regard to the harmonized excise duty regime, such as:
  - general provisions and definitions;
  - products subject to excise duties;
  - exceptions from the excise duty regime in the case of energy products and electric power;

- bonded warehousing;
- registered receiver;
- transportation and reception of excisable products under excise duty suspension;
- excise duty refund;
- intra-Community movement and taxation of excisable products after being released for consumption;
- excise duty payers' obligations and responsibilities;
- exemptions from the payment of excise duties; and
- labeling of alcoholic beverages and processed tobacco.

## 7. Other changes

Also, starting 1 January 2010, the following Orders amend and supplement former Orders clarifying the value added tax regime:

- ▶▶ **Order No. 3417 / 2009 of the Minister of Public Finance** abrogates **Order No. 1823 / 2007** which approved of the Instructions for the application of simplified measures to Community multipartite operations on tangible movable property, as well as of the Instructions for the application of simplified measures in the sphere of the value added tax related to the return of goods into the Community space and the tax treatment of repair works performed in the guarantee and post-guarantee period. **Order No. 3417 / 2009** comes into full force and effect on 1 January 2010.
- ▶▶ **Order No. 3418 / 2009 of the Minister of Public Finance** which amends the Norms for the application of VAT exemptions to international movement of goods provided under Art.144 (1) of Law No.571/2003, regarding the Tax Code, as amended, approved under **Order No. 2218 / 2006 of the Minister of Public Finance**
- ▶▶ **Order No. 3419 / 2009 of the Minister of Public Finance** which amends and supplements the Instructions for the application of VAT exemption to the operations specified under Art.143 (1) (a)-(i), Art.143 (2) and 144<sup>1</sup> of the Tax Code, as amended and supplemented, approved under **Order No. 2222 / 2006 of the Minister of Public Finance**
- ▶▶ **Order No. 3420 / 2009 of the Minister of Public Finance** which amends and supplements other Orders of the Minister of Public Finance, such as:
  - **Order 2067 / 2007** which approved of the Norms for the application of VAT exemptions as provided under Art.143 (1) (j), (k), (l) and (m) of the Tax Code, as well as under Articles X and XI of the Agreement between The United States of America and Romania, Regarding the Activities of United States Forces Located on the Territory of Romania, executed in Washington on 30 October 2001 and ratified under Law No.260/2002;
  - **Order 2216 / 2006** which approved of the Instructions for the application of simplified measures to intra-Community-related acquisitions and transfers provided under Art.128 (10) and Art.130<sup>1</sup> (2) (a) of the Tax Code;
  - **Order 2226 / 2006** regarding the use of financial and accounting forms by the entities specified under Art.1 of Accounting Law No.82/1991, as republished; and
  - **Order 500 / 2007** which approved of the Norms regarding the procedure for the issuance of the Certificate of deferred payment of VAT at customs and release of the warranty for imported goods.

**Tax Alert** contains a selection of the major latest issues occurred in the Romanian legislative framework, is intended only to provide information and, hence, shall not be deemed to provide professional advice or consultancy.

Therefore, we assume no responsibility in this respect.

Should you require any information related to the foregoing, please do not hesitate to contact us.

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