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New amendments brought to the Methodological Norms of the Fiscal Code

Starting 1st of June 2015, the new amendments brought to the Methodological Norms of the Fiscal Code came into force. These refer to corporate income tax, income tax and social security mandatory contributions, VAT, excise and construction tax.

The amendments were published on 28 May 2015 in the Official Gazette no. 373, through Decision no. 367 concerning the amending of the Methodological Norms for applying Law no. 571/2003 regarding the Fiscal Code, approved by Decision no. 44/2004. The main amendments brought by this decision are described below.



Corporate income tax

The legal set-up of companies triggering the application of the Tax treatment of dividends received from the EU member states was also extended to “societăți în nume colectiv” and “societăți în comandită simplă”.

Income derived by individuals with severe or accentuated disabilities

The income derived by individuals with severe or accentuated disabilities from independent activities performed individually and / or in a form of association is exempt from paying income tax.

To qualify for exemption, the tax payers have the obligation to submit to the relevant tax authority documents proving their classification in the severe or accentuated disability. The documents will be presented in original and copy, in order for the authorities to verify the conformity with the original.

For the salary income, individuals with severe or accentuated disabilities are also exempt from paying income tax. Supporting documents must be submitted in this regard to the payer of income, in order to qualify for exemption.

The same provisions apply to income derived from pensions, agricultural activities, forestry and fisheries.

The exemption from income tax applies from the date when the individuals were assessed with the disability degree.

Individuals who no longer fall under the categories of persons exempted from the health insurance contribution will be liable to pay the contribution starting with 1st of the month following the one in which they no longer meet the conditions for exemption.

Income derived from rental activities

Income tax

The health insurance contributions are deducted by the competent tax authority for each source of income obtained from rental income, in order to calculate the taxable base and determine the income tax due.

If the total income taken into account in determining the base for calculating the annual health insurance contribution exceeds the threshold (i.e., set to 5 gross average salaries per month), the deductible health insurance contributions are proportionally allocated to each source of income.

Social security contributions

The annual health insurance contribution due for payment for income obtained from immovable property shall be determined by the competent tax authority by issuing an annual tax decision in this sense.

The annual base calculation is determined as sum of the annual calculations for each source of rent income derived from immovable property to which health contribution applies.

The maximum ceiling for the annual health contribution base is capped at 5 times the national average gross salary multiplied by 12 months.

Regularization of the salary income tax

Regularization of the salary income tax payable by individuals' tax residents in Romania who obtained salary income for work performed abroad is performed through the tax credit method.

In this sense, it will be submitted to the competent tax authority form 201, within the period prescribed by law, accompanied by supporting documents:

- Letter from the employer showing the Romanian salary income derived and income tax related;
- Assignment contract;
- Documents relating to termination report;
- Certificate attesting the income tax paid in the other country.

VAT

a) Taxing the tips

The tip that remains at the disposal of economic operators, registered for VAT purposes shall be taxed with 24% VAT, using the gross-up method (i.e. it is considered that the remaining amount includes VAT).

b) The applicability of the reduced 9% rate

- Accommodation

The reduced VAT rate of 9% is applicable including for accommodation with two meals, complete meals or “all inclusive” arrangements. In these cases, the 9% rate shall apply to the total value of the accommodation, which may include alcoholic beverages.

- Foodstuffs, live animals and birds, seeds, plants and ingredients

The Decision lists all the CN codes for the goods subject to the 9% VAT rate.

In addition, it is clearly mentioned that the VAT reduced rate applies also to the food supplements that are duly registered with the competent authorities.

The VAT reduced rate of 9% shall be applied by all the suppliers of the commercial chain until the sale to the end consumer.

For several goods (classified under certain NC codes) the seller should prove that the acquired goods will be used for:

- the preparation of foodstuffs intended for human/animal consumption;
- supplementing or substituting foodstuffs intended for human/animal consumption.

It is not mentioned how the proof can be made.



Moreover, in case of imports, the importer must prepare a declaration on its own liability and submit it to the relevant customs authority.

If for these goods it cannot be proven the use in the above purposes the standard VAT rate of 24% will be applied.

Another clarification brought refers to the VAT rate applicable to packages containing goods subject to both 9% and 24%. The applicable VAT rate shall be determined as follows:

- a) for the goods which can be split, the applicable rate for each good individually shall be applied;
- b) for the goods which cannot be split, the rate of 24% shall be applied to the total value of the package.

The goods offered free of charge for increasing sales, shall be excluded from the above rules.

- **Restaurant and catering services**

The reduced rate shall apply to the package of restaurant and catering services rendered with the exception of alcoholic beverages (in any concentration) for which the standard 24% rate shall apply.

Excise

The list of retail prices for cigarettes will be published with maximum 7 days and at least 24 hours before the effective date of entry into force of such prices.

The conversion in RON in order to determine the value category for excisable goods from intra-Community acquisitions is made based on the last exchange rate communicated by NBR available on the date of chargeability of excise duties and, for imported excisable goods, based on the exchange rate governing the calculation of customs value.

The methodological norms have been aligned with the Tax Code in respect of expressing in RON the value of excise duties and other amounts related to excise goods (i.e. guarantees).

For operators who produce and / or perform intra-Community acquisitions or imports of coal, coke or lignite and use these products, the excise duties become chargeable at the time the products are used.

Each economic operator who must set-up and maintain minimum safety stocks according to Law 360/2013 will be authorised as a single storage tax warehouse regardless of the number of locations it holds. After obtaining the authorisation, these operators do not have the obligation to submit the online monthly stock situation.

Exemption from excise duty on energy products used as fuel for vessels and aircrafts is no longer granted if the products are not used for the supply of transport services for consideration.

Provisions have been introduced regarding the dies and marking substances for diesel fuel used in exempt purposes.

Construction tax

The methodological norms state that from the value of constructions used for the taxable base computation, it is not subtracted the value of buildings from industrial, science and technological parks that do not benefit from building tax exemption. This fact seems to be in contradiction with the amendments brought to the Fiscal Code in January 16, 2015, according to which the value of the buildings from industrial, science and technological parks that do not benefit from building tax exemption is actually subtracted from the value of constructions used for the taxable base computation of construction tax.

Moreover, the provisions concerning the construction tax regarding the works of reconstruction, improvement, consolidation, modification or extension of rented buildings or leased buildings have been repealed.



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