

Fiscal Alert

March 22nd, 2013

Amending and Supplementing
The Methodological Norms for
applying Law No. 571/2003 on
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Government Decision No. 84/2013 amending and supplementing the Methodological Norms for the application of Law No. 571/2003 on the Fiscal Code, approved by the Government Decision No. 44/2004 (Official Gazette, Part I, no.136, 14.03.2013)

Government Decision No. 84/2013 (hereinafter “**Decision**”) has brought the following significant amendments to the Methodological Norms for the application of Law No. 571/2003 on the Fiscal Code (hereinafter „**Methodological Norms**”):

1. Corporate income tax

- **Bonds Valuation**

The income and expenses arising from bonds valuation are taken into account when determining the taxable profit. Prior to this, only participation titles were mentioned.

- **The tax regime of the differences arising from the actualization of the fixed assets value with the inflation rate, recorded by companies applying IFRS**

It is mentioned that the amounts recorded in the credit account of the retained earnings corresponding to the actualization of the fixed assets value with the inflation rate are not to be considered elements similar to revenues at the moment of their recording, being considered reserves and therefore taxed at the moment of the reduction or cancelation, provided that they are recorded in the credit balance of this account. A practical example is included in this respect.

- **Deductibility of protocol expenses**

When calculating the taxable profit, the VAT collected for gifts offered by taxpayers valuing more than RON 100 (in conjunction with Title VI of the Fiscal Code), is assimilated to protocol expenses being further subject to limitations under protocol deductibility rules.

- **Recovery of tax losses further to a partial spin-off process**

For the purposes of the application of the provisions regarding the recovery of tax losses further to spin-off operations, the concept of *part of a patrimony*

transferred as a whole is defined as being „the economic activity/branch of activity which, from an organizational point of view, is independent and capable of functioning on its own.” In case that further to a spin-off process, the detached part of a patrimony is not transferred as a whole, meaning that it is not actually transferred an economic independent activity/branch of activity, the fiscal loss recorded by the transferor before the spin-off will be further recovered entirely only by the transferor.

- **Recovery of tax losses by microenterprises**

Provisions have been introduced regarding the recovery of tax losses by taxpayers applying the microenterprises income tax regime as of February 1st, 2013. The tax loss recorded by a taxpayer when being a corporate income taxpayer will be recovered starting with the moment when the respective taxpayer will become a corporate income tax payer. In this respect, rules for counting the 5 and 7 years respectively for the recovering of the fiscal loss.

- **Provisions regarding the declaration and payment of corporate income tax by foreign taxpayers**

The foreign taxpayers obtaining revenues from property situated in Romania or from sale/assignment of shares in Romanian companies shall declare and pay the related capital gain tax by taking into account the quarterly tax withheld and paid by the buyer, Romanian tax resident or a Romanian permanent establishment of a foreign company, if the case, and also the quarterly corporate income tax declared and paid by them.

2. Income tax

- **Income assimilated to salaries**

The amounts paid to the coordinating lawyer named by the society for the managing activities carried out in the law firms are considered income assimilated to salaries.

The amounts received by employees during their delegation and secondment to another location exceeding 2.5 times the level provided by the law for personnel in public institutions are considered salary income for the rights related to the period starting February 1st, 2013.

- **Taxation of salaries paid by a Romanian employer for the dependent activities carried out in a foreign country**

Provisions are brought with respect to taxation of salaries paid by Romanian

employers or by a Romanian permanent establishment of foreign company for dependent activities carried out by employees in a foreign country. The main rules are as follows:

- If the employees work in the foreign state for a period not exceeding the period stipulated by the relevant Double Tax Treaty, the salary income is taxed in Romania.
- If the employees work in the foreign state for a period exceeding the period stipulated by the relevant Double Tax Treaty, the salary income is taxed in that foreign state.
- If the salaries are paid through the permanent establishment situated in the foreign state of the Romanian resident employer, the salary income is taxed in that foreign state.

- **Income obtained from renting and sub-renting of immovable goods**

The income obtained from lease contracts have been excluded from the sphere of income obtained from renting and sub-renting immovable goods.

3. Income from agricultural activities, forestry and fisheries

Provisions regarding the tax treatment of income from agricultural activities, forestry and fisheries, as well as certain non-taxable income obtained from these activities have been introduced.

Taxpayers who obtain income from forestry and fisheries, taxable on their real profits starting with February 1st, 2013, are required to submit the statement regarding the estimated revenue/income norm for 2013 within 15 days from the publication date of these Methodological Norms.

4. The tax on micro-enterprises revenues

The Decision correlates the previous provisions of the Methodological Norms with the new provisions imposed on all legal taxpayers entities and introduced by the Government Ordinance No. 8/2013 amending and supplementing the Law No. 571/2003 on the Fiscal Code.

The Decision mentions that, if a micro-enterprise exceeds the income threshold of EUR 65,000 during a fiscal year, the taxpayer should notify the competent tax authorities within 30 days by submitting a statement of mentioning.

5. Withholding tax

The Decision correlates the previous provisions of the Methodological Norms with

the new provisions imposed by the Government Ordinance no. 8/2013 amending and supplementing the Law No. 571/2003 on the Fiscal Code.

The list of services rendered abroad subject to withholding tax in Romania is as follows: management services, consultancy services in any field, marketing services, technical support services, research and project design services in any field, advertising and publicity services regardless the way they are accomplished as well as services rendered by lawyers, engineers, architects, notaries, accountants and auditors.

The tax residence of the income beneficiaries is not relevant for the purpose of the 50% tax rate if the income is paid in a state with which Romania has not concluded a legal instrument for the exchange of information.

It is also mentioned that the statement submitted by taxpayers who are required to withhold and pay withholding tax, can be filled out in the section „Identification data for the non-resident beneficiary of income” either with the fiscal registration number of the non-resident provided by the Romanian tax authorities, if available, or with the non-resident income beneficiary identification data, in case the non-resident income beneficiary does not have a Romanian fiscal identification number.

6. Value added tax

- **Fiscal group**

A member of a fiscal group can request for the cancellation of its quality as a member of a fiscal group, if the conditions for being a member are not fulfilled, before the expiration of the term of two years.

- **Protocol goods**

Following the change regarding the non-deductible VAT related to protocol expenses by introducing a threshold of RON 100 for supply of goods, the Decision establishes that the value of RON 100 does not include VAT.

- **Services supplied in connection with immovable goods**

Services such as installation or assembly of machine or equipment which, after installation or assembly, are or become part of immovable property. The decision mentions that they become part of immovable property if the movable goods cannot be removed without their own damaging or damaging of the immovable property.

- **Services of international passenger transportation**

It is considered that a single section of passenger transportation is effected, even when there are stops within the Community, in the situation when the journey is made with a single mean of transport.

- **Transition measures for the cases when a VAT taxpayer switches to the special regime for small enterprises**

Taxable persons who switch to the special regime for small enterprises and they issued partial invoices before the switch, have to settle the collected tax if the taxable event occurs after the VAT deregistration. The correction invoices have to be sent to the beneficiary which has the obligation to perform the adjustment of deducted VAT. The supplier may request the VAT reimbursement through a special form.

The same shall apply in cases when, after supplier deregistration, events which determine the tax base adjustments occur.

- **Market value**

When a comparable supply of goods or services is available, the methods for determining the market value are established.

- **Medical services exemption**

Services having only the purpose of beautifying and rejuvenation do not qualify for the medical services exemption

- **Exemption for reimporting the goods**

The exemption for reimporting the goods which have been placed under the outward processing regime is applicable also if the goods have been exported from another Member State than Romania.

- **VAT deduction right for acquisitions of constructions which are afterwards demolished**

The new Methodological Norms transpose the decision of the European Court of Justice in the Case C-257/11 Gran Via Moinești, based on which the VAT deduction right for the acquisition of constructions demolished afterwards is pertained if the land will be used for the purpose of performing economic activity.

- **VAT deduction right for the acquisitions subject to the VAT cash accounting system paid during the VAT deregistration period**

The Decision clarifies the way of deducting input VAT by the persons who switch to the special regime for small enterprises, when the payment of the invoices subject to the VAT cash accounting system is performed after the VAT code in cancelled.

- **The VAT deduction right based on fiscal receipts**

The fiscal receipts are justifying documents for the VAT deduction if they have a value below EUR 100 including VAT and if they have also the VAT number of the beneficiary mentioned by using the electronic machine.

These provisions are applicable also for supply of fuel.

- **Adjusting the VAT deduction right**

The not repossessed goods by the lessor under the financial leasing contract are not considered missing inventory goods and the lessors do not have the obligation to adjust the VAT deducted.

- **Forms 392a and 392b**

The notifications regarding supplies and acquisitions to be submitted until February, 25th by the persons who obtained in the previous year a turnover below RON 220.000, registered or not registered for VAT purposes (Forms 392a and 392b) will include only the local operations. The notifications are not submitted if the amount to be reported is zero.

For the purpose of these forms, the statute of the person as of December, 31th of the year for which the notification is submitted is important, disregard of any VAT registration / deregistration during the year.

- **Correction of non-application of reverse charge by the beneficiary**

The mechanism by which the tax inspectors can impose the VAT collection VAT at the level of the beneficiary, if it did not collect VAT concomitant with the deduction of VAT. The suppliers, who collected, erroneously, the VAT, can issue correction invoice with minus sign and transfer the VAT amount back to the beneficiary.

7. Excise duties and other special taxes

- **Destruction of coffee**

For the coffee withdrawn from the market and destroyed, the excise duties can be refunded upon submitting a request accompanied by certain justifying

documents. Destruction of coffee is made under certain conditions, being necessary also the advance notification of the territorial customs agency.

- **Completions regarding the alcoholic products which are subject to excise duties**

The procedures applicable for the refund of excise duties for beer and other excisable fermented beverages withdrawn from the market, being improper for consumption or commercialization are mentioned. Also, the procedure applicable for intra-Community acquisitions, exports and intra-Community supplies in case of these products are mentioned.

- **Provisions regarding the end-user authorization**

The end-user authorization does not need to be held for additives, placed on sale or used as motor fuel or heating, but the territorial customs authority must be notified.

For obtaining / holding the end-user authorization, operator need not register outstanding tax liabilities to the general consolidated budget.

The situation regarding the acquisition and use of the energetic products which need to be transmitted monthly by end-users must be submitted online.

Also, other situations sent monthly by certain economic operators to customs authority will be sent online.



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This material is for reference only. It does not seek to provide final fiscal advice, which may be requested according to each specific issue.

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