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# Fiscal Bulletin



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1. **Emergency Government Ordinance No. 84/2016 for amendment and completion of certain normative documents regarding the tax/financial field**

## Emergency Government Ordinance regarding the amendment of the Tax Code and of the Procedural Tax Code

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Emergency Government Ordinance No. 84/2016 (“the Ordinance”), published in the Official Gazette, Part I, No. 977/06.12.2016, amends the provisions of the Law No. 227/2015 regarding the Tax Code (“Tax Code”) and of the Law No. 207/2015 regarding the Tax Procedural Code (“Tax Procedural Code”).

It is important to mention the fact that the amendments brought to the Tax Code do not alter the enforcement of the tax provisions applicable, starting from 2017, as encompassed by the publishing of the Tax Code of 1st of January 2016, among which: (i) Lowering the VAT rate to 19%; (ii) Capping the monthly health insurance individual contributions to the maximum of five average salaries; and (iii) Abolishing the construction tax.

Please find below the main amendments brought by the Ordinance to the Tax Code and to the Tax Procedural Code:

### 1. **Definitions**

The definition of the “Stock option plan” (“SOP”) is amended by abolishing the condition for companies to be publicly listed in order to be permitted to organize SOP’s.

### 2. **Corporate Income Tax**

New tax rules are implemented for tax payers which intend to return to a tax period matching with the calendar year, after previously opting for a modified tax year to correspond to their financial exercise.

Also, the newly introduced rules are applicable to tax payers that opt for a new adjustment of the tax year, different from the modified period which was initially opted for.

The rules are set out to follow the delimitations of the transitional fiscal periods, as well as of the deadlines under which the taxpayers have the obligation to notify the tax authorities regarding this topic.

The tax exemption for the reinvested profit is extended indefinitely. Moreover, this facility becomes applicable for the right to use of certain software programs.

Through the amendment brought to art. 25, para. (4), let. e) of the Fiscal Code, a list of non-taxable income for which related non-deductible expenses are not computed is now provided, including among other:

- Income recorded upon full or partial reversal of the provisions for which no deduction was granted;
- Income registered from the increases in value of the fixed assets, land, intangible assets resulted from the reevaluation which offset expenses recorded in connection with previous decreases costs relating to the same property;
- Income from derived from deferred tax, recorded by taxpayers applying accounting regulations in accordance with International Financial Reporting Standards, etc.

New measures for the development of the professional and technical education are introduced. Regarding the corporate income tax, they consist of:

- 100% deduction for the expenses incurred for the organization and development of this type of education, in accordance with the legal provisions set out by the educational law;
- The possibility of applying the amortization mechanism for the fixed assets and investments used in this regard.

### **3. Tax on Micro-Companies**

Under the new provisions, micro-companies which have a start-up capital of at least 45,000 lei can choose to apply the income tax system, governed by Title II. Previously, the minimum founding capital for exercising this option was set at 25,000 EUR.

The amendments also stipulate the possibility of accessing the corporate income tax reporting system for existing microenterprises, starting with the quarter in which the subscribed capital will be least 45,000 lei. This option is considered final as long as the company maintains the level of subscribed capital above the minimum threshold.

### **4. Income Tax**

Awards and other benefits such as accommodation, transport, workwear / safety and other similar advantages received by students during their professional and technical formation are included in the category of non-taxable income.

Expenses incurred for organizing and implementation of vocational and technical education systems now represent deductible expenses when computing personal income tax related to independent activities.

#### **5. Mandatory Social Contributions**

The gross remuneration received for daily labor work is not included in the base for computing the monthly social security contributions.

It is mentioned that in connection with amounts representing wages or salary differences, granted by law for prior periods, the mandatory social contribution rates that were in effect at the time are applicable. Social security contributions are computed according to the law and shall be withheld when the related payment is performed. Subsequently, the amounts withheld should be transferred to the State Budget by the 25th of the month in which the above wages or salary differences were paid.

#### **6. VAT**

Changes to the legal provisions applicable to taxpayers which regain their VAT code after it has been cancelled, meaning that:

- The taxpayer will have the possibility of invoicing with VAT all the sales performed during the period in which it had no VAT code;
- After re-registration the taxpayer will have the deduction right for the VAT on acquisitions related to the period in which the VAT code has been cancelled;
- The beneficiary will have the deduction right for the VAT related to its acquisitions, after the re-registration of the provider.

Changes to the applicability of the rules for performing the VAT adjustment in case of capital goods (i.e., in specific situations), in the sense that the mechanism for yearly adjustment shall be applicable vs. the adjustment mechanism for the entire amount.

A special (i.e., optional) VAT regime for farmers is introduced, which is based on the application of a compensation percentage upon the price (i.e., exclusive of VAT) of the deliveries/provision of farming goods/services. The percentage is of 1% for 2017, 4% for 2018 and 8% for 2019.

The obligation for registration within the Register for intra-EU taxpayers is repealed.

The obligation for submitting the informative returns 392A, 392B and 393 is suspended (i.e., until 31.12.2019).

#### **7. Tax Procedural Code**

It is stipulated that any payment performed to settle the current tax liabilities incurred by taxpayers after the date of communication of a tax decision, will compensate with priority the amounts due set out by the tax decision.

The value criteria for determining the competence of ANAF Central Direction for settling the tax administrative appeals was changed by lowering the threshold set by law from 5.000.000 lei to 1.000.000 lei.

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## Editors

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