

Amendments to the Fiscal Code

In the Official Journal no. 310 from 29 May 2013, it was published the Law no. 168 approving the Government Ordinance no. 8/2013 amending the Fiscal Code. The Law approves the amendments to the Fiscal Code bringing however significant changes. We will further present the most important changes brought by the law:

Permanent establishments

Foreign legal entities performing economic activities in Romania through several permanent establishments must register one of them as their permanent establishment designated to fulfill the tax obligations for all the other permanent establishments.

If one of the permanent establishment is also a fixed establishment from a VAT perspective, then it will also be the permanent establishment designated for corporate income tax purposes.

The revenues and expenses of all the permanent establishments belonging to the same foreign legal entity will be cumulated at the level of the designated permanent establishment.

The profit tax rate will be applied to the taxable profit at the level of the designated permanent establishment, calculated based on revenues and expenses allocated to each permanent establishment using transfer pricing rules.

Permanent establishments belonging to the same foreign legal entity are required to close their taxable period by 30 June 2013. Profit tax for the period 1 January – 30 June 2013 has to be calculated, paid and declared by 25 July 2013.

Tax losses incurred by 30 June 2013 by permanent establishments of the same foreign legal entity are transferred to the designated permanent establishment and recovered as follows:

- The tax losses incurred during the period 1 January - 30 June 2013 are included in the calculation of the taxable profit / tax loss for the period 1 July - 31 December 2013, before recovering the tax losses carried forward from previous years. The period 1 July - 31 December 2013 is not considered a fiscal year within the meaning of the seven consecutive years;
- The tax losses from years prior to 2013 which are still not covered as at 30 June 2013 will be recovered during the period remaining from the initial five or seven years. The year 2013 is considered a single fiscal year within the meaning of the five or seven consecutive years.

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Corporate tax

It is canceled the provision according to which the deductibility of daily allowances granted to employees who travel in Romania or abroad is capped at 2.5 times the threshold set for public institutions.

The Law allows for full deductibility of depreciation for the following categories of means of transport (canceling the limitation of tax depreciation of RON 1,500/month for these categories of vehicles): vehicles used exclusively for emergency, protection and courier services, vehicles used by sales and acquisitions agents, vehicles used for paid passenger transport, as well as those rented or granted to third parties under operational leasing contracts.

For taxpayers applying the IFRS accounting regulations, in case of fixed assets used for the exploration and production of oil and gas resources, as well as other natural substances, the undepreciated fiscal value of these assets remaining at the moment of write-off / IFRS restatement will be deducted during the remaining period using the same fiscal depreciation method used before their write-off / IFRS restatement.

Income tax

New provisions are added to establish the tax exemption level of daily allowances received by employees working for foreign employers during their assignment and detachment to Romania for business purposes. This is established at the same level as for public institutions in the country of residence of the foreign employer which Romanian public servants would receive if seconded to that foreign country.

Micro-enterprise tax

It is canceled the option of newly incorporated Romanian legal entities to apply the micro-enterprise tax for those entities which, upon registration with the Trade registry, are due to perform banking, insurance, gambling, consultancy and management activities. Also, it is allowed to newly incorporated Romanian legal entities that have an issued share capital of at least EUR 25,000 to apply corporate income tax if they maintain the initial level of their share capital for an indefinite period.

Withholding tax

The Fiscal Code provisions were correlated with the existing provisions of the Norms for the application of the Fiscal Code regarding the payments for certain types of services rendered abroad that are subject to taxation in Romania.

Clarifications were also brought regarding the application of the 50% withholding tax rate for income paid in a state with which Romania does not have a legal instrument in place for the exchange of information. Specifically, the 50% rate will apply only in situations where the income is paid as part of an artificial transaction.

VAT

The application of the simplification measures for the domestic supply of cereals and industrial crops is extended to 31 May 2014.

The provisions of the Law are applicable starting 1 June 2013, except for those related to permanent establishments, which will enter into force starting 1 July 2013.

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Modificari aduse Codului Fiscal

In Monitorul Oficial nr. 310 din 29 mai 2013 a fost publicata Legea nr. 168 privind aprobarea Ordonantei Guvernului nr. 8/2013 pentru modificarea si completarea Legii nr. 571/2003 privind Codul Fiscal si reglementarea unor masuri financiar-fiscale. Actul normativ aproba cu modificari importante Ordonanta Guvernului nr. 8/2013 privind amendarea Codului fiscal. Mentionam in continuare cele mai importante modificari aduse Codului Fiscal de Legea 168/2013:

Sedii Permanente

Persoanele juridice straine care desfasoara activitati economice in Romania prin intermediul mai multor sedii permanente trebuie sa stabileasca unul dintre aceste sedii ca si sediu permanent desemnat pentru indeplinirea obligatiilor fiscale pentru toate sediile permanente.

Daca unul din sediile permanente constituie si sediu fix din punct de vedere al TVA, atunci acel sediu va reprezenta si sediul permanent desemnat.

Veniturile si cheltuielile tuturor sediilor permanente ale aceleasi entitati juridice straine se cumuleaza la nivelul sediului permanent desemnat.

Impozitul pe profit se aplica la profitul taxabil determinat la nivelul sediului permanent desemnat, calculate pe baza veniturilor si cheltuielilor inregistrate de fiecare sediu permanent prin utilizarea regulilor preturilor de transfer. Sediile permanente ale aceleasi persoane juridice straine sunt obligate sa inchida perioada impozabila pina la data de 30 iunie 2013. Calculul, plata si declararea impozitului pe profit datorat de fiecare sediu permanent pentru perioada 1 ianuarie – 30 iunie 2013 se efectueaza pina la 25 iulie 2013.

Pierderile fiscale inregistrate pina la 30 iunie 2013 de sediile permanente care apartin aceleasi persoane juridice se transfera catre sediul permanent desemnat si se recupereaza astfel:

- Pierderea fiscala inregistrata in perioada 1 ianuarie-30 iunie 2013 este luata in calcul la stabilirea profitului impozabil/pierderii fiscale din perioada 1 iulie-31 decembrie 2013, inaintea recuperarii pierderilor fiscale din anii precedenti anului 2013. Perioada 1 iulie-31 decembrie 2013 nu este considerata an fiscal in sensul celor 7 ani consecutivi.
- Pierderea fiscala inregistrata in anii anteriori anului 2013, ramasa nerecuperata la data de 30 iunie 2013, se recupereaza pe perioada de recuperare ramasa din perioada initiala de 5 ani, respectiv 7 ani. Anul 2013 este considerat un singur an fiscal in sensul celor 5 ani, respectiv 7 ani consecutivi

Impozit pe profit

Se elimina tratamentul nedeductibil al diurnelor pentru deplasarea salariatilor, cand nivelul acesteia depaseste de 2,5 ori nivelul stabilit pentru institutiile publice.

Pentru urmatoarele categorii de mijloace de transport se introduce posibilitatea deducerii integrale a amortizarii (eliminandu-se pragul de 1.500 lei): cele utilizate exclusiv in activitati de paza si protectie, curierat, vehiculele utilizate de agentii de vanzari si achizitii, autoturismele utilizate in activitatea de taximetrie si cele inchiriate sau acordate in leasing operational catre terti.

Pentru contribuabilii care aplica Standardele Internationale de raportare financiara, in cazul mijloacelor fixe utilizate in activitati de explorare si productie a resurselor de petrol si gaze si alte substante minerale, valoarea

Impozit pe venit

fiscala ramasa neamortizata a mijloacelor fixe casate/retratate se deduce prin utilizarea metodei de amortizare fiscala utilizate inainte de casarea/retratatarea acestora, pe perioada ramasa.

Se introduce prevederea potrivit careia diurnele primite pe perioada delegarii/detasarii in Romania de catre salariatii angajatorilor nerezidenti sunt neimpozabile pina la nivelul legal stabilit pentru institutiile publice de care ar beneficia personalul din institutiile publice din Romania daca s-ar deplasa in tara de rezidenta a angajatorului.

Impozitul pe veniturile microintreprinderilor

Se elimina optiunea de a aplica impozitul pe veniturile microintreprinderilor de catre persoanele juridice nou-infiintate care incepand cu data inregistrarii in registrul comertului intentioneaza sa desfasoare activitati in domeniul bancar, asigurari, jocuri de noroc, consultanta si management. Totodata, se permite persoanelor juridice nou-infiintate care au la constituire un capital social de cel putin 25.000 EUR sa aplice impozitul pe profit cu conditia mentinerii valorii initiale a capitalului social pentru intreaga perioada de existenta a persoanei juridice respective.

Impozit cu retinere la sursa

Au fost corelate prevederile Codului Fiscal cu prevederile Normelor de aplicare a Codului Fiscal in ceea ce priveste platile pentru anumite tipuri de servicii prestate in afara Romaniei care sunt subiect de impunere in Romania.

Au fost aduse clarificari cu privire la aplicarea cotei de impunere de 50% pentru platile efectuate catre statele cu care Romania nu are incheiate instrumente juridice privind schimbul de informatii. Astfel, se precizeaza ca impunerea cu o cota de 50% se aplica doar in cazul platilor aferente unor tranzactii artificiale.

TVA

Se extinde aplicarea masurilor de simplificare privind livrarile locale de cereale si plante tehnice pina la 31 mai 2014.

Prevederile legii intra in vigoare la 1 iunie 2013, cu exceptia prevederilor referitoare la sediile permanente , care vor intra in vigoare incepand cu data de 1 iulie 2013

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