Summary of the main changes to the Norms to the Fiscal Code in Romania
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Government Decision no. 1/2016 for the approval of the methodological norms for the application of the new Tax Code has been published in the Official Gazette no. 22 on 13 January 2016.

As a general note, the newly published Norms bring more examples and details in order to clarify the provisions of the Fiscal Code applicable starting 1 January. We have summarized below the main amendments and clarifications introduced by the Norms, organized as the titles of the Fiscal Code.

General framework
Corporate tax
Taxation on revenue of small and medium enterprises (SME)
Income tax
Social contributions
Withholding tax and taxation of representative offices
VAT
Excise duties
Local taxes
Construction tax
General framework

Independent activity

Clarifications regarding the classification of an independent activity have been introduced. The norms provide additional information regarding the mandatory conditions that should be included in agreements between independent parties, e.g. agreed scope of work, rights and obligations of both parties so that it does not result in the existence of a subordinating relationship but of the individual’s freedom to decide as regards the performance of activities.

Transfer pricing

Clarifications have been introduced concerning the concept of control, within the meaning of the provisions for determining related party relationships.

Clarifications are provided concerning the interpretation of the term transaction without economic purpose, such term indicating any transaction/activity which is not designed for generating economic advantages, benefits, profits and which artificially or conjecturally determines a more favorable tax position.

For transactions concluded between two affiliated parties, clarifications have been introduced regarding the performance of adjustments/estimates by the tax authority with the aim of reflecting the arm’s length principle. Adjustments/estimates imposed by the tax authority will also be reflected at the level of the other affiliated person, being subject to the mutual agreement procedure for Romanian affiliated parties or non-resident affiliated parties.

Permanent Establishment

Additional clarifications and additional examples have been introduced in order to assess the conditions under which a permanent establishment is set-up in Romania.
Corporate tax

Definitions of some types of taxpayers subject to corporate income tax have been introduced.

In the case of non-profit organizations, clarifications have been brought concerning the computation of the fiscal result (e.g., when computing fiscal results, elements similar to revenues, expenses, fiscal deductions, as well as fiscal losses that are recoverable are taken into consideration).

Clarifications have been brought regarding taxpayers that receive special tax treatment in relation to computing fiscal results when such taxpayers undertake activities such as night bars, clubs, discos and casinos.

New categories of elements similar to revenues and to expenses have been introduced:

- Elements similar to revenues – legal reserve and the reserves for tax incentives under certain conditions, the amounts recorded in the retained earnings which are taxable as per the provisions of the new Tax Code, the amounts representing the reduction or cancellation of the prudential filters that were deductible for the purpose of the computation of the taxable profit, etc;
- Elements similar to expenses – amounts recorded in retained earnings which are deductible as per the provisions of the new Tax Code, certain amounts transferred to retained earnings as a result of the application of the accounting regulations compliant with the European directives, etc.

Clarifications are brought concerning the computation of fiscal results for taxpayers with a modified fiscal year comprising both periods from 2015 as well as 2016. These categories of taxpayers will apply the tax treatment in force for the periods before / after 1 January 2016 for the income, expenses, similar items recorded before / after 1 January 2016.

Provisions were introduced in respect of the way in which the adjustments / price estimates, established by the tax authorities at the level of the other related party, are treated in the profits tax computation by the Romanian related party.

There have been introduces numerous examples and clarifications have been made regarding the computation of cumulated gross profit for applying tax exemptions for reinvested profit. It is also stated that when assets are acquired through financial leasing, the user can apply the tax incentive.

Clarifications and examples were introduces regarding non-taxable income, i.e. amounts representing the value of the new participation titles or by the increase in the nominal value of the existing participation titles, amounts received as a refund of the contribution share of the shareholders / associates as a result of a share capital reduction under certain conditions.

The deductible expenses stipulated in the Fiscal Code applicable until 31.12.2015, are included in the Methodological Norms for the application of the New Fiscal Code, as a clarification to the general rule for deductibility referred to in the art. 25, alin. (1).

The clarifications regarding the justification of the use of vehicles for business purposes that existed in the Methodological Norms for applying the Fiscal Code applicable until 31.12.2015 in Title VI – VAT, are now also included as clarification in the Methodological Norms for applying the New Fiscal Code applicable starting from 01.01.2016, in Title II – Corporate Income Tax.
The destruction of inventories or depreciable fixed assets enabling the deductibility of the expenses with the inventories or depreciable fixed assets discovered as missing or damaged may be carried out either by own means, as well as when these are delivered to specialized units.

Clarifications and amendments were introduced in respect of the tax treatment applicable for reserves, provisions and depreciation adjustments as follows:

- The legal reserve set up once again, in the same limit, after its use for covering losses or distribution in any form would be considered deductible for the computation of the tax result;
- Explanations were introduced regarding the tax deduction of the adjustments for doubtful receivables;
- Bad debt adjustments are deductible within the limit of 30% of the amount of the outstanding debt, including VAT;

Clarifications have been introduced regarding the computation of the tax depreciation for investments in fixed assets subject to lease agreements, concession or location management and the deductible value applicable for motorized vehicle being written-off.

Clarifications have been brought concerning the computation of the fiscal value of fixed assets.

**Taxation on revenue of small and medium enterprises (SME)**

The reduced taxation rate of 1%, applicable under certain conditions, is available only to small SMEs set-up after 1 January 2016.

Elements not included in the taxable base of SMEs ceasing their existence through reorganization or liquidation and which were previously subject to profits tax were regulated.
Income tax

Further information have been provided regarding the types of income under the nontaxable income category for independent activities incomes, salaries and incomes assimilated to salaries, pensions, agricultural activities, forestry and fishery activities performed by individuals with severe or pronounced disabilities.

Independent incomes

Clarifications have been brought regarding the manner of computing the taxable base for income derived from independent activities. In addition, two updates were brought to the expenses with limited deductibility:

- Assignment/delegation allowances and travel and accommodation expenses paid only to employees;
- A 10% rate applied to the gross income obtained from accounting and technical expertise, judiciary and extra judiciary, owed to the local expertise office.

Changes are brought to the deadline concerning the submission the tax return regarding the estimated income/income norm by the taxpayers carrying out independent activities and who start their activities during the tax year. New deadline is now extended from 15 to 30 days from the date the activity starts.

Intellectual property: The advance payment withheld by the income payer of intellectual property rights is calculated by applying the 10% rate to the gross income.

Income from other sources

The matter of the income obtained by tax payers that are not fiscally registered in accordance with the applicable legislation has now additional clarifications. Addressed income is originating from following types of activities: production, commerce, service delivery, liberal professions, intellectual property rights, as well as income obtained from agricultural activities, forestry and fishery, if they do not have a continuity character and for which are not applicable the legal provisions of chapter II “Income from independent activities” and chapter VII “Income from agricultural activities, forestry and fishery” of titles IV of the Tax Code.

Income from salaries and assimilated to salaries

Exemplification of income obtained from other sources (e.g. gift vouchers derived outside of a revenue generating relationship). The gift tickets within the limit of RON 150 granted on special occasions for each employee and his/her minor child, irrespective if the parents work for the same employer, are now non-taxable incomes.

Definition of the concept concerning the international legal instruments (in the context of computing the income tax on salary income and assimilated to salary) is inserted.

Income obtained by non-residents individuals from dependent activities

Activities performed by non-resident individuals in relation to international transport performed by companies having the effective management or considered resident in Romania, is now also considered dependent activity.
Social contributions

Clarifications have been made regarding the definition of taxpayers/payers of income to the pension system. Thus, it is considered that individuals carrying out employment activities (having non-resident employers) in third countries and non-treaty countries in social security area do not owe pension, health fund contributions and unemployment contributions in Romania.

The notion of foreign citizen is correlated with the specific immigration legislation.

Further clarifications are brought in respect of the ceiling provided for health fund contributions due by the employers starting 1 January 2017.

Withholding tax and taxation of representative offices

Income from management and consultancy services

It is clarified that income derived by non-residents or their Permanent Establishments from supplies of management and consultancy services are taxable in Romania irrespective of the effective place where they are performed if no applicable Double Tax treaty exists or proof of tax residency is not made available.

Interest

The Norms specify that negative interest payments are not taxable income subject to withholding tax.

Dividends

The more favorable withholding tax rates of Double Tax Treaties or EU Legislation apply to income from dividends distributed but not paid by the end of the year for which the financial statements have been approved if the non-resident income beneficiary presents a tax residency certificate valid for the year for which the financial statements were approved.

The reduced withholding tax rate of 5% applies to dividends distributed starting with 1st of January 2016.

Compensations and refunds

Clarifications are brought on the compensation option for interest income/independent activities income/income of artists or sportsmen derived from Romania by residents of the EU or EEA, namely, required documents and types of expenses take into consideration.

Once the holding conditions are fulfilled, the non-resident beneficial owner may request the refund of WHT paid in excess.

Representative offices

It is clarified that representative offices established din Romania are not allowed to carry on activities such as production, trade or supplies of services.
VAT

Definitions

The Romanian VAT territory will include also the contiguous zone and Exclusive Economic Zone of Romania as delimited through Law no. 17/1990.

Additional clarifications are brought by the methodological norms in respect of transactions where taxable person act as a buyer reseller, on own name but on behalf of a third party taxable person.

Supply of goods and services

Further exemplification are provided by the new norms in respect of the VAT regime applicable to goods granted free of charge, e.g. donation of infrastructure work to public authorities, goods used free of charge on tooling contracts.

Chargeable event and chargeability

The VAT chargeable event for medicines that are subject to cost-volume-result agreement will occur in the moment medical results are recorded. Such provisions are applicable on transactions carried out on the entire medicine distribution chain which are subject to cost-volume-result agreements.

Clarification in relation to VAT treatment on single purpose vouchers and multi-purpose vouchers have been introduces. For example, the sale of prepaid vouchers card or recharge of credit for telephone cards which can be used solely for telecommunication services is deemed a supply of telecom services for which the chargeable event and VAT chargeability occurs in the moment the voucher is sold. Additional examples are included in the methodological norms on the supply of vouchers through retailers or other taxable persons.

Following the ruling of the European Court of Justice in the Asparuhovo Lake Investment Company OOD (C-463/14), it will be considered that the VAT chargeable event for subscription services, including advisory, juridical, accounting, maintenance services, will occur at the date of payment specified in the agreements, irrespective if such services are used by the beneficiary in the subscription period.

The applicable VAT treatment on supplies of goods and services started in 2015 and finalized in 2016 is cleared up in the context of shifting from a higher VAT quota of 24% to 20%. The methodological norms provide with examples for of such operations.

Taxable base

The taxable base is nil for food products that are expired and cannot be sold, being granted free of charge to non-profit organizations, public or religious institutions, if are proved to be granted for social or philanthropic purposes.

The adjustment of the taxable base in applicable also in case the value of the supplied goods or services cannot be cashed due to the implementation of a reorganization plan acknowledged and confirmed by a Romanian Court of law, based on which the claim of the creditor is modified or deleted. The adjustment is permitted starting the confirmation date of the reorganization plan, if this fact occurs after 1st of January 2016.
**VAT exemptions**

When performing VAT exempted taxable operation with deduction right, e.g. intra-Community supplies of goods, exports of goods, international transport, etc. for which the supplier will charge VAT will not affect the deduction right at the level of the beneficiary.

**Adjustment of the VAT deduction right**

Details regarding the obligation to adjust the input VAT on unused services treated as intangible assets are brought. Through unused services are understood non-tangible assets which are not fully depreciated in the moment the liability or right to adjust the input VAT occurs. The VAT adjustment shall be made in accordance with the remaining depreciation value.

The VAT right of deduction will no longer be adjusted for capital goods which are written-off. A definition of the write-off concept for capital goods is mentioned also in the methodological norms.

**Applicability of domestic simplification measures**

Further clarification are brought in respect of the simplification measures applicable for the supply of PC, laptop, tablets, gaming consoles, mobile phones and devices with integrated circuits.
**Excise duties**

The manner in which the guarantees are constitute for end users and registered consignee are simplified, according to which the guarantee for end user will cover also the guarantee for registered consignee.

Following the amendment of the validity of authorizations tax warehouse, from 3 years to 5 years, the validity of a tax warehouse licenses issued before 31st of December 2015 and valid to 1st of January 2016 will extend up to 5 years.

The new methodological norms clarify the rules applicable on marking and dyeing operation for diesel fuel exempted from excise duty payment, as well as for other products admitted for marking.

The conditions in which the non-harmonized excised duty regime for certain type of goods, e.g. liquids which contain nicotine to be inhaled through e-cigarettes or heated tobacco products are specified.
Local taxes

Building tax / fee

The notion “economic activity” is defined and additional clarifications are rendered regarding its meaning. As such, it is qualified as “economic activity” any activity consisting of the rendering of goods and services as well as works done on certain markets and comprise the activity of producers, merchants and service providers, including mining activities, agriculture and independent activities or others similar to the latter. As an example, the norms mention the case of a high-school that despite its non-profit activities, can still render economic activities (e.g. renting the gym or the dinner).

An additional clarification is made concerning the definition of the building with a particular emphasis on its permanence character (i.e. any building fixed in the earth with permanent character). In this regard, some practical examples are presented. Containers used for selling newspapers will be considered buildings for the purpose of taxation, as long as they are maintained in the same place for more than one year.

Details on the method of determining the tax/fee on buildings depending on their destination (residential, non-residential or mixed) are provided, new examples being included in this respect.

It is specified that the valuation reports prepared with the view of establishing the building tax, are not recorded in the accounting books.

Details are rendered in what concerns the bearer of the payment obligations regarding the building/land tax following the changes in the Fiscal Code.

Individuals who have a registered office in a building should submit the declaration regarding the destination of the respective building until 31 March 2016, even if they do not deduct the expenses with utilities.

Land tax / fee

Land tax/fee is due also for the area of the plot of land covered by a building.

Explanations are given concerning the notion of “land area covered by buildings”, this being a surface built at ground-floor level, as well as concerning the tax computation for the terrain involved in this situation.

Tax on vehicles

Clarifications with respect to the method of computing and reporting the tax on vehicles, by including certain examples, are provided.

Additional clarifications are brought concerning financial lease contracts. As such, after concluding the contract, the lessee has to submit the tax return registering the vehicle.

Other provisions

Details are provided regarding the increase by up to 500% of the building tax and land tax for poorly maintained buildings and plots of land inside the built-up areas of localities), as well as of land tax for agricultural land uncultivated for 2 consecutive years, irrespective whether they are located inside the built-up areas of localities or outside.
Construction tax

For taxpayers that apply IFRS and accounting policies appropriate for the depreciation of fixed assets related to the exploration and production of oil, natural gas and minerals, the discarded constructions are not subject to the construction tax.

The value of constructions for which building tax is due, which should be deducted from the taxable base for the purpose of determining the construction tax, is the value booked as debit balance of the accounts in which the constructions are recorded (even if this is different from the taxable base declared for building tax purposes).

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